Federal Register

4–01–05 Friday
Vol. 70 No. 62 Apr. 1, 2005

Pages 16691–16920

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 70 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, April 19, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 70, No. 62

Friday, April 1, 2005

Agricultural Marketing Service
PROPOSED RULES
Irish potatoes grown in—
Washington, 16759–16761

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Food and Nutrition Service
See Forest Service

Animal and Plant Health Inspection Service
RULES
Overtime services relating to imports and exports:
Commuted traveltime allowances, 16691–16693
NOTICES
Meetings:
National Wildlife Services Advisory Committee, 16791

Antitrust Division
NOTICES
National cooperative research notifications:
AAF Association, Inc., 16843
Airborne Law Enforcement Accreditation Commission, Inc.; correction, 16899
Institute of Electrical and Electronics Engineers, 16843
Mobile Enterprise Alliance, Inc., 16844
Petroleum Environmental Research Forum; correction, 16899
Portland Cement Association, 16844

Army Department
See Engineers Corps
NOTICES
Reports and guidance documents; availability, etc.:
Government/nonappropriated fund purchase card program; contracting regulation; correction, 16899

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Census Bureau
NOTICES
Meetings:
Census Advisory Committees, 16799

Centers for Disease Control and Prevention
NOTICES
Committees; establishment, renewal, termination, etc.:
Smoking and Health Interagency Committee, 16821

Centers for Medicare & Medicaid Services
RULES
Medicare:
Physician fee schedule (2005 CY); payment policies and relative value units; correction, 16720–16724
Psychiatric facilities; hospital inpatient services prospective payment system; correction, 16724–16729

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Developmental Disabilities Councils and Protection and Advocacy Formula Programs; Federal allotments to States, 16821–16824

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 16798

Coast Guard
PROPOSED RULES
Regattas and marine parades:
Fort Myers Beach Air Show, 16781–16784
NOTICES
Committees; establishment, renewal, termination, etc.:
National Boating Safety Advisory Council, 16829

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

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 16797–16798

Defense Department
See Army Department
See Engineers Corps
See Navy Department

Drug Enforcement Administration
RULES
Schedules of controlled substances:
Electronic orders for controlled substances, 16901–16919
NOTICES
Meetings:
Electronic orders for controlled substances, 16919–16920

Education Department
PROPOSED RULES
Meetings:
Special Education and Rehabilitative Services Office programs, 16784

Employment and Training Administration
PROPOSED RULES
Aliens; temporary employment in U.S.:
Nonimmigrants on H-1B visas in specialty occupations and as fashion models; labor condition applications and requirements; filing procedures, 16774–16781
NOTICES
Adjustment assistance:
Aim Nationalease, 16844–16845
BASF Corp., 16845
CIGNA Healthcare, 16845
Electrolux Home Products, 16845
GE Security, 16845

Hamilton Sundstrand, 16845
Industrial Distribution Group, 16845
R.J. Reynolds Tobacco, 16846
Wrigley Manufacturing Co. et al., 16846–16851
Grants and cooperative agreements; availability, etc.:
Workforce Investment Act—
Prisoner Re-entry Initiative, 16853–16870
Applications, hearings, determinations, etc.:
Royal Appliance Mfg. Co. et al., 16851–16853

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 16870–16871

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Savannah River Site, GA; salt waste disposal, 16809–16810

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Onondaga Lake Watershed Management Plan, NY, 16807–16808
Environmental statements, notice of intent:
Sacramento County, CA; Folsom Bridge Project, 16807

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 16717–16720
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 16784–16785
Pesticide programs:
Conventional chemicals; registration data requirements Public workshop, 16785–16786
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 16815–16816
Weekly receipts, 16815
Meetings:
Exposure Modeling Work Group, 16816–16818
Pesticide, food, and feed additive petitions:
Sulfuryl Fluoride, 16818–16819

Executive Office of the President
See Management and Budget Office

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
Boeing, 16761–16764, 16767–16769
Extra Flugzeugproduktions- und Vertriebs- GmbH, 16771–16774
GROB-WERKE, 16769–16771
Short Brothers, 16764–16767

Federal Bureau of Investigation
NOTICES
Committees; establishment, renewal, termination, etc.:
Criminal Justice Information Services Advisory Policy Board, 16844

Federal Communications Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16819

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Missouri and Texas, 16738–16742
Various States, 16730–16738
PROPOSED RULES
Flood elevation determinations:
Missouri and Nebraska, 16786–16789
Tennessee, 16789–16790
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16829–16832

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings, 16813–16815
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission, LLC, 16810
CenterPoint Energy Gas Transmission Co., 16810–16811
East Tennessee Natural Gas, LLC, 16811
Florida Gas Transmission Co., 16811
Maritimes & Northeast Pipeline, L.L.C., 16811–16812
Northern Natural Gas Co., 16812
Texas Eastern Transmission, LP, 16812–16813
Transcontinental Gas Pipe Line Corp., 16813
Wyoming Interstate Co., Ltd., 16813

Federal Highway Administration
RULES
Right-of-way and environment:
Highway traffic and construction noise; abatement procedures, 16707–16711

Federal Motor Carrier Safety Administration
NOTICES
Meetings:
Protection against shifting or falling cargo; North American standard; implementation, 16884–16885
Motor carrier safety standards:
Driver qualifications—
Adkins, William I, et al.; vision requirement exemption applications, 16885–16886
Alejandro, Eddie, et al.; vision requirement exemption applications, 16887–16892
Bolding, John D., Jr., et al.; vision requirement exemption applications, 16886–16887

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 16819–16820

Food and Drug Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16824–16827

Harmonisation International Conference; guidelines availability:
E2E pharmacovigilance planning, 16827–16828

Food and Nutrition Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16791–16792

Forest Service
NOTICES
Environmental statements; notice of intent:
Deschutes National Forest, OR, 16792–16795
Tongass National Forest, AK, 16795–16797
Reports and guidance documents; availability, etc.:
National Forest System lands—
Forest Service manuals and handbook; interim directives; comment request; correction, 16899

General Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16820–16821

Geological Survey
NOTICES
Meetings:
Scientific Earthquake Studies Advisory Committee, 16835

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Citizenship and Immigration Services

Housing and Urban Development Department
NOTICES
Environmental statements; availability, etc.:
Manhattan, New York, NY; World Trade Center memorial and redevelopment plan, 16833–16834
Grants and cooperative agreements; availability, etc.:
Homeless assistance; excess and surplus Federal properties, 16834
Meetings:
Manufactured Housing Consensus Committee, 16834–16835

Interior Department
See Geological Survey
See Land Management Bureau
See National Park Service

Internal Revenue Service
RULES
Practice and procedure:
Administrative summonses; designated IRS officer or employee, 16711–16712
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16893–16894
Meetings:
Taxpayer Advocacy Panels, 16894–16895

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Administrative review requests, 16799–16800
Five year (sunset) reviews—
Initiation of reviews, 16800–16801

Justice Department
See Antitrust Division
See Drug Enforcement Administration
See Federal Bureau of Investigation

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Inyo County et al., CA; West Mojave Plan, 16835–16836

Management and Budget Office
NOTICES
Reports and guidance documents; availability, etc.:
Compliance assistance resources and points of contact available to small businesses; list, 16882–16883

National Aeronautics and Space Administration
NOTICES
Meetings:
Education Advisory Committee, 16875

National Archives and Records Administration
RULES
Presidential records:
Denial of access; appeals extension, 16717

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Defect and noncompliance—
Recalled tires disposition, 16742

National Institute of Standards and Technology
NOTICES
Help America Vote Act:
Voting equipment evaluations; 2004 elections voting equipment research and testing, 16801–16802
Inventions, Government-owned; availability for licensing, 16802–16803

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific halibut; subsistence fishing, 16742–16754
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 16754–16758
Northeastern United States fisheries—
Yellowtail flounder, 16758
NOTICES
Endangered and threatened species:
Incidental take permits—
North Carolina Marine Fisheries Division; sea turtles, 16803–16804

Fishery conservation and management:
Northeastern United States fisheries—
Georges Bank cod, 16804–16806
Meetings:
International Whaling Commission, 16806

National Park Service
RULES
Special regulations:
Apostle Islands National Lakeshore, WI; snowmobile and off-road motor vehicle routes designation and portable ice augers and power engines use, 16712–16717
NOTICES
Meetings:
National Park System Advisory Board, 16836–16837
Native American human remains, funerary objects; inventory, repatriation, etc.:
American Museum of Natural History, New York, NY, 16837
Field Museum of Natural History, Chicago, IL, 16837–16838
Interior Department, National Park Service, Natchez Trace Parkway, Tupelo, MS, 16838–16839
New York State Museum, Albany, NY, 16839
Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA, 16839–16842
University Museum, University of Arkansas, Fayetteville, AR, 16842–16843

National Science Foundation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16875–16876

Navy Department
NOTICES
Inventions, Government-owned; availability for licensing, 16808–16809
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Assure Bioassay Controls, Inc., 16809
Autolive Inc.; correction, 16809

Nuclear Regulatory Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16876–16877
Environmental statements; availability, etc.:
Augustana College, Sioux Falls, SD, 16879–16881
Sacramento Municipal Utility District, 16881–16882
Applications, hearings, determinations, etc.:
FirstEnergy Nuclear Operating Co., 16877
Southern Nuclear Operating Co., Inc., 16877–16879

Occupational Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16871–16874

Office of Management and Budget
See Management and Budget Office

Postal Rate Commission
NOTICES
Meetings:
Greeting card industry issues; briefing, 16883

Securities and Exchange Commission
RULES
Staff accounting bulletins:
Share-based payment; interaction and valuation, 16693–16707
NOTICES
Self-regulatory organizations; proposed rule changes:
Depository Trust Co., 16883
Fixed Income Clearing Corp., 16884

Substance Abuse and Mental Health Services Administration
NOTICES
Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 16828–16829

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Denver Rock Island Railroad, 16892

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16892–16893

U.S. Citizenship and Immigration Services
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16832–16833

Veterans Affairs Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Homeless Providers Grant and Per Diem Program, 16895–16898

Separate Parts In This Issue

Part II
Justice Department, Drug Enforcement Administration, 16901–16920

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
354 16691
Proposed Rules:
946 16759

9 CFR
97 16691

14 CFR
Proposed Rules:
39 (5 documents) 16761, 16764, 16767, 16769, 16771

17 CFR
211 16693

20 CFR
Proposed Rules:
655 16774

21 CFR
1305 16902
1311 16902

23 CFR
772 16707

26 CFR
301 16711

33 CFR
Proposed Rules:
100 16781

34 CFR
Proposed Rules:
Ch. I 16784

36 CFR
7 16712
1270 16717

40 CFR
52 16717
Proposed Rules:
52 16784
152 16785
158 16785

42 CFR
403 16720
405 16720
410 16720
411 16720
412 16724
413 16724
414 16720
418 16720
424 16720
484 16720
486 16720

44 CFR
65 (2 documents) 16730, 16733
67 (2 documents) 16736, 16738
Proposed Rules:
67 (2 documents) 16786, 16789

49 CFR
573 16742

50 CFR
300 16742
622 16754
648 16758
679 16742

Rules and Regulations

Federal Register
Vol. 70, No. 62
Friday, April 1, 2005

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

9 CFR Part 97

[Docket No. 04–108–1]

Commuted Traveltime

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of the Agency's Plant Protection and Quarantine (PPQ) and Veterinary Services (VS) programs by adding or amending commuted traveltime allowances for travel between certain locations in Texas, New Mexico, and Mexico. Commuted traveltime allowances are the periods of time required for PPQ or VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by PPQ and VS employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime for these locations.

DATES: Effective April 1, 2005.

FOR FURTHER INFORMATION CONTACT: For information regarding Plant Protection and Quarantine programs, contact Mr. Michael J. Caporaletti, Program Analyst, Quarantine Policy, Analysis and Support, PPQ, APHIS, 4700 River Road Unit 120, Riverdale, MD 20737–1238; (301) 734–5781. For information regarding Veterinary Services programs, contact Ms. Inez D. Hockaday, Director, Management Support Staff, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737–1231; (301) 734–7517.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal products, or other commodities intended for importation into, or exportation from, the United States.

When these services must be provided by an employee of the Animal and Plant Health Inspection Service (APHIS) on a Sunday or holiday, or at any other time outside the employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR part 354 (for services provided by an employee of APHIS' Plant Protection and Quarantine [PPQ] program) and 9 CFR part 97 (for services provided by an employee of APHIS' Veterinary Services [VS] program). Under circumstances described in 7 CFR 354.1(a)(2) and 9 CFR 97.1(a), this fee may include the cost of commuted traveltime. The regulations in 7 CFR 354.2 and 9 CFR 97.2 contain administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for PPQ and VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending 7 CFR 354.2 and 9 CFR 97.2 by adding commuted traveltime allowances for travel between certain locations in Texas, New Mexico, and Mexico. The new allowances are set forth in the rule portion of this document. In 9 CFR 97.2, we are also increasing the commuted traveltime allowance from 1 to 2 hours for Dallas-Fort Worth International Airport served from Fort Worth or Dallas, TX, within the metro area, and removing the commuted traveltime allowance for Dallas-Fort Worth International Airport served from Fort Worth or Dallas outside the metro area. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

We are also amending the table in 7 CFR 354.2 to change the entry for ''Dallas-Fort Worth Regional Airport'' to ''Dallas-Fort Worth International Airport.'' The corresponding entry in 9 CFR 97.2 has already been updated to reflect the change in the airport's name.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

The number of requests for overtime services of a PPQ or VS employee at the locations affected by this rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

9 CFR Part 97

Exports, Government employees, Imports, Livestock, Poultry and poultry products, Travel and transportation expenses.

■ Accordingly, we are amending 7 CFR part 354 and 9 CFR part 97 as follows:

Title 7—(Amended)

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

■ 1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 354.2, the table is amended as follows:

■ a. Under Mexico, by adding, in alphabetical order, the entries set forth below.

■ b. Under Texas, by removing the word ''Regional'' each time it appears and adding the word ''International'' in its place, and by adding, in alphabetical order, the entries set forth below.

354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from—	Metropolitan area	
		Within	Outside
* * *	* * *	*	
Mexico:			
* * *	* * *	*	
Ciudad Acuna	Eagle Pass, TX		3
Ciudad Acuna	Laredo, TX		6
Ciudad Acuna	Pleasanton, TX		6
* * *	* * *	*	
Nuevo Laredo	Del Rio, TX		4
Nuevo Laredo	Eagle Pass, TX		5
* * *	* * *	*	
Nuevo Laredo	Pharr, TX		6
Nuevo Laredo	Pleasanton, TX		5
* * *	* * *	*	
Ojinaga	El Paso, TX		6
* * *	* * *	*	
Piedras Negras	Laredo, TX		5
Piedras Negras	Pharr, TX		10
Piedras Niegros	Pleasanton, TX		5
Reynosa Eagle	Pass, TX		12
* * *	* * *	*	
Reynosa	Laredo, TX		5
Reynosa	Mission, TX		1
Reynosa	Pharr, TX		1
San Jeronimo	Presidio, TX		6
San Jeronimo	Santa Theresa, NM		1
* * *	* * *	*	
Texas:			
* * *	* * *	*	
Dallas-Fort Worth International Airport	Decatur		2
* * *	* * *	*	
Houston (including Houston Intercontinental Airport)	Bellville		4
Houston (including Houston Intercontinental Airport)	Bryan		4
Houston (including Houston Intercontinental Airport)	Georgetown		8
Houston (including Houston Intercontinental Airport)	Pleasanton		8
* * *	* * *	*	

Title 9—(Amended)

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

■ 3. The authority citation for part 97 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 49 U.S.C. 80503; 7 CFR 2.22, 280, and 371.4.

■ 4. In § 97.2, the table is amended as follows:

■ a. Under Mexico, by revising the entries for Ciudad Acuna, Nuevo Laredo, Ojinaga, Piedras Negras, Reynosa (Pharr International Bridge), and San Jeronimo to read as set forth below.

■ b. Under Texas, by revising the entries for Dallas-Forth Worth International Airport and Houston (including Houston Intercontinental Airport) to read as set forth below.

§ 97.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUNTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from—	Metropolitan area	
		Within	Outside
* * *	* * *	*	
Mexico:			
Ciudad Acuna	Del Rio, TX		1½
Do	Eagle Pass, TX		3
Do	Laredo, TX		6
Do	Pleasanton, TX		6
* * *	* * *	*	
Nuevo Laredo	Del Rio, TX		4
Do	Eagle Pass, TX		5
Do	Laredo, TX		1½
Do	Pharr, TX		6
Do	Pleasanton, TX		5
Ojinaga	El Paso, TX		6
Do	Presidio, TX		1
Piedras Negras	Eagle Pass, TX		1
Do	Laredo, TX		5
Do	Pharr, TX		10
Do	Pleasanton, TX		5
Reynosa (Pharr International Bridge)	Eagle Pass, TX		12
Do	Hidalgo, TX		1
Do	Laredo, TX		5
Do	Mission, TX		1
Do	Pharr, TX		1
San Jeronimo	El Paso, TX		2
Do	Presidio, TX		6
Do	Santa Theresa, NM		1
* * *	* * *	*	
Texas:			
Dallas-Forth Worth International Airport	Decatur		2
Do	Ft. Worth or Dallas		2
* * *	* * *	*	
Houston (including Houston Intercontinental Airport)			2
Do	Bellville, TX		4
Do	Bryan, TX		4
Do	Georgetown, TX		8
Do	Pleasanton, TX		8
* * *	* * *	*	

Done in Washington, DC, this 28th day of March, 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–6458 Filed 3–31–05; 8:45 am]

BILLING CODE 3410–34–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 107]

Staff Accounting Bulletin No. 107

AGENCY: Securities and Exchange Commission.

ACTION: Publication of staff accounting bulletin.

SUMMARY: The interpretations in this staff accounting bulletin (''SAB'') express views of the staff regarding the interaction between Statement of Financial Accounting Standards Statement No. 123 (revised 2004), *Share-Based Payment* (''Statement

123R'' or the ''Statement'') and certain Securities and Exchange Commission (''SEC'') rules and regulations and provide the staff's views regarding the valuation of share-based payment arrangements for public companies. In particular, this SAB provides guidance related to share-based payment transactions with nonemployees, the transition from nonpublic to public entity status, valuation methods (including assumptions such as expected volatility and expected term), the accounting for certain redeemable financial instruments issued under share-based payment arrangements, the classification of compensation expense, non-GAAP financial measures, first-time adoption of Statement 123R in an interim period, capitalization of compensation cost related to share-based payment arrangements, the accounting for income tax effects of share-based payment arrangements upon adoption of Statement 123R, the modification of employee share options prior to adoption of Statement 123R and disclosures in Management's Discussion and Analysis (''MD&A'') subsequent to adoption of Statement 123R.

DATES: March 29, 2005.

FOR FURTHER INFORMATION CONTACT: Shan L. Benedict, Chad A. Kokenge, or Alison T. Spivey, Office of the Chief Accountant (202) 942–4400 or Craig Olinger, Division of Corporation Finance (202) 942–2960, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–1103.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission, nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: March 29, 2005.

Margaret H. McFarland,

Deputy Secretary.

PART 211—[AMENDED]

■ Accordingly, part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 107 to the table found in subpart B.

[**Note:** The text of SAB 107 will not appear in the Code of Federal Regulations.]

Staff Accounting Bulletin No. 107

The staff hereby adds Topic 14 to the staff accounting bulletin series. Topic 14 provides guidance regarding the application of Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment.* The staff also hereby amends the following staff accounting bulletins.

1. Topic 4.D.2. is modified to update the references in footnote 4 from APB Opinion No. 25, *Accounting for Stock Issued to Employees* (''Opinion 25'') and FASB Statement No. 123, *Accounting for Stock-Based Compensation* (''Statement 123'') to Statement 123R. Opinion 25 and Statement 123 were superseded by Statement 123R.

2. Topic 4.E. is modified to delete the references and related guidance to compensation and deferred compensation. Statement 123R requires compensation costs to be recognized in the financial statements as services are provided by employees and does not permit those costs to be recognized as deferred compensation on the balance sheet before services are provided.

3. Topic 5.T. is modified to update the references from ''AICPA Interpretation 1 to Opinion 25'' to ''paragraph 11 of Statement 123R.'' AICPA Interpretation 1 to Opinion 25 was superseded by Statement 123R.

Topic 14: Share-Based Payment

The interpretations in this SAB express views of the staff regarding the interaction between Statement 123R and certain SEC rules and regulations and provide the staff's views regarding the valuation of share-based payment arrangements for public companies. Statement 123R was issued by the Financial Accounting Standards Board (''FASB'') on December 16, 2004. Statement 123R is based on the underlying accounting principle that compensation cost resulting from share-based payment transactions be recognized in financial statements at fair value.[1] Recognition of compensation cost at fair value will provide investors and other users of financial statements with more complete and comparable financial information.[2]

Statement 123R addresses a wide range of share-based compensation arrangements including share options, restricted share plans, performance-based awards, share appreciation rights, and employee share purchase plans.

Statement 123R replaces Statement 123 and supersedes Opinion 25. Statement 123, as originally issued in 1995, established as preferable, but did not require, a fair-value-based method of accounting for share-based payment transactions with employees.

The staff believes the guidance in this SAB will assist issuers in their initial implementation of Statement 123R and enhance the information received by investors and other users of financial statements, thereby assisting them in making investment and other decisions. This SAB includes interpretive guidance related to share-based payment transactions with nonemployees, the transition from nonpublic to public entity[3] status, valuation methods (including assumptions such as expected volatility and expected term), the accounting for certain redeemable financial instruments issued under share-based payment arrangements, the classification of compensation expense, non-GAAP financial measures, first-time adoption of Statement 123R in an interim period, capitalization of compensation cost related to share-based payment arrangements, the accounting for income tax effects of share-based payment arrangements upon adoption of Statement 123R, the modification of employee share options prior to adoption of Statement 123R and disclosures in MD&A subsequent to adoption of Statement 123R.

The staff recognizes that there is a range of conduct that a reasonable issuer might use to make estimates and valuations and otherwise implement Statement 123R, and the interpretive guidance provided by this SAB, particularly during the period of the Statement's initial implementation. Thus, throughout this SAB the use of the terms ''reasonable'' and ''reasonably'' is not meant to imply a single conclusion or methodology, but to encompass the full range of potential conduct, conclusions or methodologies upon which an issuer may reasonably base its valuation decisions. Different conduct, conclusions or methodologies by different issuers in a given situation does not of itself raise an inference that any of those issuers is acting unreasonably. While the zone of reasonable conduct is not unlimited, the staff expects that it will be rare when there is only one acceptable choice in estimating the fair value of share-based payment arrangements under the provisions of Statement 123R and the interpretive guidance provided by this SAB in any given situation. In addition, as discussed in the Interpretive Response to Question 1 of Section C, Valuation Methods, estimates of fair value are not intended to predict actual future events, and subsequent events are not indicative of the reasonableness of the original estimates of fair value made

[1] Statement 123R, paragraph 1.

[2] Statement 123R, page iv.

[3] Defined in Statement 123R, Appendix E.

under Statement 123R. Over time, as issuers and accountants gain more experience in applying Statement 123R and the guidance provided in this SAB, the staff anticipates that particular approaches may begin to emerge as best practices and that the range of reasonable conduct, conclusions and methodologies will likely narrow.

* * * * *

A. Share-Based Payment Transactions With Nonemployees

Question: Are share-based payment transactions with nonemployees included in the scope of Statement 123R?

Interpretive Response: Only certain aspects of the accounting for share-based payment transactions with nonemployees are explicitly addressed by Statement 123R. Statement 123R explicitly:

- Establishes fair value as the measurement objective in accounting for all share-based payments;[4] and
- Requires that an entity record the value of a transaction with a nonemployee based on the more reliably measurable fair value of either the good or service received or the equity instrument issued.[5]

Statement 123R does not supersede any of the authoritative literature that specifically addresses accounting for share-based payments with nonemployees. For example, Statement 123R does not specify the measurement date for share-based payment transactions with nonemployees when the measurement of the transaction is based on the fair value of the equity instruments issued.[6] For determining the measurement date of equity instruments issued in share-based transactions with nonemployees, a company should refer to Emerging Issues Task Force (''EITF'') Issue No. 96–18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services.*

With respect to questions regarding nonemployee arrangements that are not specifically addressed in other authoritative literature, the staff believes that the application of guidance in Statement 123R would generally result in relevant and reliable financial statement information. As such, the staff believes it would generally be appropriate for entities to apply the guidance in Statement 123R by analogy to share-based payment transactions with nonemployees unless other authoritative accounting literature more clearly addresses the appropriate accounting, or the application of the guidance in Statement 123R would be inconsistent with the terms of the instrument issued to a nonemployee in a share-based payment arrangement.[7] For example, the staff believes the guidance in Statement 123R on certain transactions with related parties or other holders of an economic interest in the entity would generally be applicable to share-based payment transactions with nonemployees. The staff encourages registrants that have additional questions related to accounting for share-based payment transactions with nonemployees to discuss those questions with the staff.

B. Transition From Nonpublic to Public Entity Status

Facts: Company A is a nonpublic entity[8] that first files a registration statement with the SEC to register its equity securities for sale in a public market on January 2, 20X8.[9] As a nonpublic entity, Company A had been assigning value to its share options[10] under the calculated value method prescribed by Statement 123R[11] and had elected to measure its liability awards based on intrinsic value. Company A is considered a public entity on January 2, 20X8 when it makes its initial filing with the SEC in preparation for the sale of its shares in a public market.

Question 1: How should Company A account for the share options that were granted to its employees prior to January 2, 20X8 for which the requisite service has not been rendered by January 2, 20X8?

Interpretive Response: Prior to becoming a public entity, Company A had been assigning value to its share options under the calculated value method. The staff believes that Company A should continue to follow that approach for those share options that were granted prior to January 2, 20X8, unless those share options are subsequently modified, repurchased or cancelled.[12] If the share options are subsequently modified, repurchased or cancelled, Company A would assess the event under the public company provisions of Statement 123R. For example, if Company A modified the share options on February 1, 20X8, any incremental compensation cost would be measured under Statement 123R, paragraph 51(a), as the fair value of the modified share options over the fair value of the original share options measured immediately before the terms were modified.[13]

Question 2: How should Company A account for its liability awards granted to its employees prior to January 2, 20X8 which are fully vested but have not been settled by January 2, 20X8?

Interpretive Response: As a nonpublic entity, Company A had elected to measure its liability awards subject to Statement 123R at intrinsic value.[14] When Company A becomes a public entity, it should measure the liability awards at their fair value determined in accordance with Statement 123R.[15] In that reporting period there will be an incremental amount of measured cost for the difference between fair value as determined under Statement 123R and intrinsic value. For example, assume the intrinsic value in the period ended December 31, 20X7 was $10 per award. At the end of the first reporting period

[4] Statement 123R, paragraph 7.

[5] *Ibid.*

[6] Statement 123R, paragraph 8.

[7] For example, due to the nature of specific terms in employee share options, including nontransferability, nonhedgability and the truncation of the contractual term due to post-vesting service termination, Statement 123R requires that when valuing an employee share option under the Black-Scholes-Merton framework, the fair value of an employee share option be based on the option's expected term rather than the contractual term. If these features (*i.e.*, nontransferability, nonhedgability and the truncation of the contractual term) were not present in a nonemployee share option arrangement, the use of an expected term assumption shorter than the contractual term would generally not be appropriate in estimating the fair value of the nonemployee share options.

[8] Defined in Statement 123R, Appendix E.

[9] For the purposes of these illustrations, assume all of Company A's equity-based awards granted to its employees were granted after the adoption of Statement 123R.

[10] For purposes of this staff accounting bulletin, the phrase ''share options'' is used to refer to ''share options or similar instruments.''

[11] Statement 123R, paragraph 23 requires a nonpublic entity to use the calculated value method when it is not able to reasonably estimate the fair value of its equity share options and similar instruments because it is not practicable for it to estimate the expected volatility of its share price. Statement 123R, paragraph A43 indicates that a nonpublic entity may be able to identify similar public entities for which share or option price information is available and may consider the historical, expected, or implied volatility of those entities' share prices in estimating expected volatility. The staff would expect an entity that becomes a public entity and had previously measured its share options under the calculated value method to be able to support its previous decision to use calculated value and to provide the disclosures required by paragraph A240(e)(2)(b) of Statement 123R.

[12] This view is consistent with the FASB's basis for rejecting full retrospective application of Statement 123R as described in Statement 123R, paragraph B251.

[13] Statement 123R, footnote 103. The staff believes that because Company A is a public entity as of the date of the modification, it would be inappropriate to use the calculated value method to measure the original share options immediately before the terms were modified.

[14] Statement 123R, paragraph 38.

[15] Statement 123R, paragraph 37.

ending after January 2, 20X8 (when Company A becomes a public entity), assume the intrinsic value of the award is $12 and the fair value as determined in accordance with Statement 123R is $15. The measured cost in the first reporting period after December 31, 20X7 would be $5.[16]

Question 3: After becoming a public entity, may Company A retrospectively apply the fair-value-based method to its awards that were granted prior to the date Company A became a public entity?

Interpretive Response: No. Before becoming a public entity, Company A did not use the fair-value-based method for either its share options or its liability awards granted to the Company's employees. The staff does not believe it is appropriate for Company A to apply the fair-value-based method on a retrospective basis, because it would require the entity to make estimates of a prior period, which, due to hindsight, may vary significantly from estimates that would have been made contemporaneously in prior periods.[17]

Question 4: Upon becoming a public entity, what disclosures should Company A consider in addition to those prescribed by Statement 123R?[18]

Interpretive Response: In the registration statement filed on January 2, 20X8, Company A should clearly describe in MD&A the change in accounting policy that will be required by Statement 123R in subsequent periods and the reasonably likely material future effects.[19] In subsequent filings, Company A should provide financial statement disclosure of the effects of the changes in accounting policy. In addition, Company A should consider the applicability of SEC Release No. FR–60[20] and Section V, ''Critical Accounting Estimates,'' in SEC Release No. FR–72[21] regarding critical accounting policies and estimates in MD&A.

[16] $15 fair value less $10 intrinsic value equals $5 of incremental cost.

[17] This view is consistent with the FASB's basis for rejecting full retrospective application of Statement 123R as described in Statement 123R, paragraph B251.

[18] Statement 123R disclosure requirements are described in paragraphs 64, 65, A240, A241 and A242.

[19] *See* generally SEC Release No. FR–72, ''Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations.''

[20] SEC Release No. FR–60, ''Cautionary Advice Regarding Disclosure About Critical Accounting Policies.''

[21] SEC Release No. FR–72, ''Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations.''

C. Valuation Methods

Statement 123R, paragraph 16, indicates that the measurement objective for equity instruments awarded to employees is to estimate at the grant date the fair value of the equity instruments the entity is obligated to issue when employees have rendered the requisite service and satisfied any other conditions necessary to earn the right to benefit from the instruments. The Statement also states that observable market prices of identical or similar equity or liability instruments in active markets are the best evidence of fair value and, if available, should be used as the basis for the measurement for equity and liability instruments awarded in a share-based payment transaction with employees.[22] However, if observable market prices of identical or similar equity or liability instruments are not available, the fair value shall be estimated by using a valuation technique or model that complies with the measurement objective, as described in Statement 123R.[23]

Question 1: If a valuation technique or model is used to estimate fair value, to what extent will the staff consider a company's estimates of fair value to be materially misleading because the estimates of fair value do not correspond to the value ultimately realized by the employees who received the share options?

Interpretive Response: The staff understands that estimates of fair value of employee share options, while derived from expected value calculations, cannot predict actual future events.[24] The estimate of fair value represents the measurement of the cost of the employee services to the company. The estimate of fair value should reflect the assumptions marketplace participants would use in determining how much to pay for an instrument on the date of the measurement (generally the grant date for equity awards). For example, valuation techniques used in estimating the fair value of employee share options may consider information about a large number of possible share price paths, while, of course, only one share price path will ultimately emerge. If a company makes a good faith fair value estimate in accordance with the provisions of Statement 123R in a way that is designed to take into account the assumptions that underlie the instrument's value that marketplace participants would reasonably make, then subsequent future events that affect the instrument's value do not provide meaningful information about the quality of the original fair value estimate. As long as the share options were originally so measured, changes in an employee share option's value, no matter how significant, subsequent to its grant date do not call into question the reasonableness of the grant date fair value estimate.

[22] Statement 123R, paragraph A7.

[23] Statement 123R, paragraph A8.

[24] Statement 123R, paragraph A12, states ''The fair value of those instruments at a single point in time is not a forecast of what the estimated fair value of those instruments may be in the future.''

Question 2: In order to meet the fair value measurement objective in Statement 123R, are certain valuation techniques preferred over others?

Interpretive Response: Statement 123R, paragraph A14, clarifies that the Statement does not specify a preference for a particular valuation technique or model. As stated in Statement 123R, paragraph A8, in order to meet the fair value measurement objective, a company should select a valuation technique or model that (a) Is applied in a manner consistent with the fair value measurement objective and other requirements of Statement 123R, (b) is based on established principles of financial economic theory and generally applied in that field and (c) reflects all substantive characteristics of the instrument.

The chosen valuation technique or model must meet all three of the requirements stated above. In valuing a particular instrument, certain techniques or models may meet the first and second criteria but may not meet the third criterion because the techniques or models are not designed to reflect certain characteristics contained in the instrument. For example, for a share option in which the exercisability is conditional on a specified increase in the price of the underlying shares, the Black-Scholes-Merton closed-form model would not generally be an appropriate valuation model because, while it meets both the first and second criteria, it is not designed to take into account that type of market condition.[25]

Further, the staff understands that a company may consider multiple techniques or models that meet the fair value measurement objective before making its selection as to the appropriate technique or model. The staff would not object to a company's choice of a technique or model as long as the technique or model meets the fair value measurement objective. For example, a company is not required to use a lattice model simply because that

[25] *See* Statement 123R, paragraphs A13–17.

model was the most complex of the models the company considered.

Question 3: In subsequent periods, may a company change the valuation technique or model chosen to value instruments with similar characteristics? [26]

Interpretive Response: As long as the new technique or model meets the fair value measurement objective in Statement 123R as described in Question 2 above, the staff would not object to a company changing its valuation technique or model.[27] A change in the valuation technique or model used to meet the fair value measurement objective would not be considered a change in accounting principle. As such, a company would not be required to file a preferability letter from its independent accountants as described in Rule 10–01(b)(6) of Regulation S–X when it changes valuation techniques or models.[28] However, the staff would not expect that a company would frequently switch between valuation techniques or models, particularly in circumstances where there was no significant variation in the form of share-based payments being valued. Disclosure in the footnotes of the basis for any change in technique or model would be appropriate.[29]

Question 4: Must every company that issues share options or similar instruments hire an outside third party to assist in determining the fair value of the share options?

Interpretive Response: No. However, the valuation of a company's share options or similar instruments should be performed by a person with the requisite expertise.

D. Certain Assumptions Used in Valuation Methods

Statement 123R's fair value measurement objective for equity instruments awarded to employees is to estimate the grant-date fair value of the equity instruments that the entity is obligated to issue when employees have rendered the requisite service and satisfied any other conditions necessary to earn the right to benefit from the instruments.[30] In order to meet this fair value measurement objective, management will be required to develop estimates regarding the expected volatility of its company's share price and the exercise behavior of its employees. The staff is providing guidance in the following sections related to the expected volatility and expected term assumptions to assist public entities in applying those requirements.

The staff understands that companies may refine their estimates of expected volatility and expected term as a result of the guidance provided in Statement 123R and in sections (1) and (2) below. Changes in assumptions during the periods presented in the financial statements should be disclosed in the footnotes.[31]

1. Expected Volatility

Statement 123R, paragraph A31, states, ''Volatility is a measure of the amount by which a financial variable, such as share price, has fluctuated (historical volatility) or is expected to fluctuate (expected volatility) during a period. Option-pricing models require an estimate of expected volatility as an assumption because an option's value is dependent on potential share returns over the option's term. The higher the volatility, the more the returns on the share can be expected to vary—up or down. Because an option's value is unaffected by expected negative returns on the shares, other things [being] equal, an option on a share with higher volatility is worth more than an option on a share with lower volatility.''

Facts: Company B is a public entity whose common shares have been publicly traded for over twenty years. Company B also has multiple options on its shares outstanding that are traded on an exchange (''traded options''). Company B grants share options on January 2, 20X6.

Question 1: What should Company B consider when estimating expected volatility for purposes of measuring the fair value of its share options?

Interpretive Response: Statement 123R does not specify a particular method of estimating expected volatility. However, the Statement does clarify that the objective in estimating expected volatility is to ascertain the assumption about expected volatility that marketplace participants would likely use in determining an exchange price for an option.[32] Statement 123R provides a list of factors entities should consider in estimating expected volatility.[33] Company B may begin its process of estimating expected volatility by considering its historical volatility.[34] However, Company B should also then consider, based on available information, how the expected volatility of its share price may differ from historical volatility.[35] Implied volatility [36] can be useful in estimating expected volatility because it is generally reflective of both historical volatility and expectations of how future volatility will differ from historical volatility.

The staff believes that companies should make good faith efforts to identify and use sufficient information in determining whether taking historical volatility, implied volatility or a combination of both into account will result in the best estimate of expected volatility. The staff believes companies that have appropriate traded financial instruments from which they can derive an implied volatility should generally consider this measure. The extent of the ultimate reliance on implied volatility will depend on a company's facts and circumstances; however, the staff believes that a company with actively traded options or other financial instruments with embedded options [37] generally could place greater (or even exclusive) reliance on implied volatility. (*See* the Interpretive Responses to Questions 3 and 4 below.)

The process used to gather and review available information to estimate expected volatility should be applied consistently from period to period. When circumstances indicate the availability of new or different information that would be useful in estimating expected volatility, a

[26] Statement 123R, paragraph A14 and footnote 49, indicate that an entity may use different valuation techniques or models for instruments with different characteristics.

[27] The staff believes that a company should take into account the reason for the change in technique or model in determining whether the new technique or model meets the fair value measurement objective. For example, changing a technique or model from period to period for the sole purpose of lowering the fair value estimate of a share option would not meet the fair value measurement objective of the Statement.

[28] Statement 123R, paragraph A23.

[29] *See* generally Statement 123R, paragraph 64c.

[30] Statement 123R, paragraph A2.

[31] Statement 123R, paragraph A240(e).

[32] Statement 123R, paragraph B86.

[33] Statement 123R, paragraph A32.

[34] Statement 123R, paragraph A34.

[35] *Ibid.*

[36] Implied volatility is the volatility assumption inherent in the market prices of a company's traded options or other financial instruments that have option-like features. Implied volatility is derived by entering the market price of the traded financial instrument, along with assumptions specific to the financial options being valued, into a model based on a constant volatility estimate (*e.g.*, the Black-Scholes-Merton closed-form model) and solving for the unknown assumption of volatility.

[37] The staff believes implied volatility derived from embedded options can be utilized in determining expected volatility if, in deriving the implied volatility, the company considers all relevant features of the instruments (*e.g.*, value of the host instrument, value of the option, etc.). The staff believes the derivation of implied volatility from other than simple instruments (*e.g.*, a simple convertible bond) can, in some cases, be impracticable due to the complexity of multiple features.

company should incorporate that information.

Question 2: What should Company B consider if computing historical volatility?[38]

Interpretive Response: The following should be considered in the computation of historical volatility:

1. Method of Computing Historical Volatility—The staff believes the method selected by Company B to compute its historical volatility should produce an estimate that is representative of Company B's expectations about its future volatility over the expected (if using a Black-Scholes-Merton closed-form model) or contractual (if using a lattice model) term [39] of its employee share options. Certain methods may not be appropriate for longer term employee share options if they weight the most recent periods of Company B's historical volatility much more heavily than earlier periods.[40] For example, a method that applies a factor to certain historical price intervals to reflect a decay or loss of relevance of that historical information emphasizes the most recent historical periods and thus would likely bias the estimate to this recent history.[41]

2. Amount of Historical Data—Statement 123R, paragraph A32(a), indicates entities should consider historical volatility over a period generally commensurate with the expected or contractual term, as applicable, of the share option. The staff believes Company B could utilize a period of historical data longer than the expected or contractual term, as applicable, if it reasonably believes the additional historical information will improve the estimate. For example, assume Company B decided to utilize a Black-Scholes-Merton closed-form model to estimate the value of the share options granted on January 2, 20X6 and determined that the expected term was six years. Company B would not be precluded from using historical data longer than six years if it concludes that data would be relevant.

3. *Frequency of Price Observations*—Statement 123R, paragraph A32(d), indicates an entity should use appropriate and regular intervals for price observations based on facts and circumstances that provide the basis for a reasonable fair value estimate. Accordingly, the staff believes Company B should consider the frequency of the trading of its shares and the length of its trading history in determining the appropriate frequency of price observations. The staff believes using daily, weekly or monthly price observations may provide a sufficient basis to estimate expected volatility if the history provides enough data points on which to base the estimate.[42] Company B should select a consistent point in time within each interval when selecting data points.[43]

4. *Consideration of Future Events*—The objective in estimating expected volatility is to ascertain the assumptions that marketplace participants would likely use in determining an exchange price for an option.[44] Accordingly, the staff believes that Company B should consider those future events that it reasonably concludes a marketplace participant would also consider in making the estimation. For example, if Company B has recently announced a merger with a company that would change its business risk in the future, then it should consider the impact of the merger in estimating the expected volatility if it reasonably believes a marketplace participant would also consider this event.

5. *Exclusion of Periods of Historical Data*—In some instances, due to a company's particular business situations, a period of historical volatility data may not be relevant in evaluating expected volatility.[45] In these instances, that period should be disregarded. The staff believes that if Company B disregards a period of historical volatility, it should be prepared to support its conclusion that its historical share price during that previous period is not relevant to estimating expected volatility due to one or more discrete and specific historical events and that similar events are not expected to occur during the expected term of the share option. The staff believes these situations would be rare.

Question 3: What should Company B consider when evaluating the extent of its reliance on the implied volatility derived from its traded options?

Interpretive Response: To achieve the objective of estimating expected volatility as stated in paragraph B86 of Statement 123R, the staff believes Company B generally should consider the following in its evaluation: (1) The volume of market activity of the underlying shares and traded options; (2) the ability to synchronize the variables used to derive implied volatility; (3) the similarity of the exercise prices of the traded options to the exercise price of the employee share options; and (4) the similarity of the length of the term of the traded and employee share options.[46]

1. *Volume of Market Activity*—The staff believes Company B should consider the volume of trading in its underlying shares as well as the traded options. For example, prices for instruments in actively traded markets are more likely to reflect a marketplace participant's expectations regarding expected volatility.

2. *Synchronization of the Variables*—Company B should synchronize the variables used to derive implied volatility. For example, to the extent reasonably practicable, Company B should use market prices (either traded prices or the average of bid and asked quotes) of the traded options and its shares measured at the same point in time. This measurement should also be synchronized with the grant of the employee share options; however, when this is not reasonably practicable, the staff believes Company B should derive implied volatility as of a point in time as close to the grant of the employee share options as reasonably practicable.

3. *Similarity of the Exercise Prices*—The staff believes that when valuing an at-the-money employee share option, the implied volatility derived from at- or near-the-money traded options generally would be most relevant.[47] If, however,

[38] *See* Statement 123R, paragraph A32.

[39] For purposes of this staff accounting bulletin, the phrase ''expected or contractual term, as applicable'' has the same meaning as the phrase ''expected (if using a Black-Scholes-Merton closed-form model) or contractual (if using a lattice model) term of an employee share option.''

[40] Statement 123R, paragraph A32(a), states that entities should consider historical volatility over a period generally commensurate with the expected or contractual term, as applicable, of the share option. Accordingly, the staff believes methods that place extreme emphasis on the most recent periods may be inconsistent with this guidance.

[41] Generalized Autoregressive Conditional Heteroskedasticity (''GARCH'') is an example of a method that demonstrates this characteristic.

[42] Further, if shares of a company are thinly traded the staff believes the use of weekly or monthly price observations would generally be more appropriate than the use of daily price observations. The volatility calculation using daily observations for such shares could be artificially inflated due to a larger spread between the bid and asked quotes and lack of consistent trading in the market.

[43] Statement 123R, paragraph A34, states that a company should establish a process for estimating expected volatility and apply that process consistently from period to period. In addition, Statement 123R, paragraph A23, indicates that assumptions used to estimate the fair value of instruments granted to employees should be determined in a consistent manner from period to period.

[44] Statement 123R, paragraph B86.

[45] Statement 123R, paragraph A32(a).

[46] *See* generally *Options, Futures, and Other Derivatives* by John C. Hull (Prentice Hall, 5th Edition, 2003).

[47] Implied volatilities of options differ systematically over the ''moneyness'' of the option. This pattern of implied volatilities across exercise prices is known as the ''volatility smile'' or ''volatility skew.'' Studies such as ''Implied

it is not possible to find at- or near-the-money traded options, Company B should select multiple traded options with an average exercise price close to the exercise price of the employee share option.[48]

4. *Similarity of Length of Terms*—The staff believes that when valuing an employee share option with a given expected or contractual term, as applicable, the implied volatility derived from a traded option with a similar term would be the most relevant. However, if there are no traded options with maturities that are similar to the share option's contractual or expected term, as applicable, then the staff believes Company B could consider traded options with a remaining maturity of six months or greater.[49] However, when using traded options with a term of less than one year,[50] the staff would expect the company to also consider other relevant information in estimating expected volatility. In general, the staff believes more reliance on the implied volatility derived from a traded option would be expected the closer the remaining term of the traded option is to the expected or contractual term, as applicable, of the employee share option.

The staff believes Company B's evaluation of the factors above should assist in determining whether the implied volatility appropriately reflects the market's expectations of future volatility and thus the extent of reliance that Company B reasonably places on the implied volatility.

Question 4: Are there situations in which it is acceptable for Company B to rely exclusively on either implied volatility or historical volatility in its estimate of expected volatility?

Interpretive Response: As stated above, Statement 123R does not specify a method of estimating expected volatility; rather, it provides a list of factors that should be considered and requires that an entity's estimate of expected volatility be reasonable and supportable.[51] Many of the factors listed in Statement 123R are discussed in Questions 2 and 3 above. The objective of estimating volatility, as stated in Statement 123R, is to ascertain the assumption about expected volatility that marketplace participants would likely use in determining a price for an option.[52] The staff believes that a company, after considering the factors listed in Statement 123R, could, in certain situations, reasonably conclude that exclusive reliance on either historical or implied volatility would provide an estimate of expected volatility that meets this stated objective.

The staff would not object to Company B placing exclusive reliance on implied volatility when the following factors are present, as long as the methodology is consistently applied:

- Company B utilizes a valuation model that is based upon a constant volatility assumption to value its employee share options;[53]
- The implied volatility is derived from options that are actively traded;
- The market prices (trades or quotes) of both the traded options and underlying shares are measured at a similar point in time to each other and on a date reasonably close to the grant date of the employee share options;
- The traded options have exercise prices that are both (a) near-the-money and (b) close to the exercise price of the employee share options;[54] and
- The remaining maturities of the traded options on which the estimate is based are at least one year.

The staff would not object to Company B placing exclusive reliance on historical volatility when the following factors are present, so long as the methodology is consistently applied:

- Company B has no reason to believe that its future volatility over the expected or contractual term, as applicable, is likely to differ from its past;[55]
- The computation of historical volatility uses a simple average calculation method;
- A sequential period of historical data at least equal to the expected or contractual term of the share option, as applicable, is used; and
- A reasonably sufficient number of price observations are used, measured at a consistent point throughout the applicable historical period.[56]

Question 5: What disclosures would the staff expect Company B to include in its financial statements and MD&A regarding its assumption of expected volatility?

Interpretive Response: Statement 123R, paragraph A240, prescribes the minimum information needed to achieve the Statement's disclosure objectives.[57] Under that guidance, Company B is required to disclose the expected volatility and the method used to estimate it.[58] Accordingly, the staff expects that at a minimum Company B would disclose in a footnote to its financial statements how it determined the expected volatility assumption for purposes of determining the fair value of its share options in accordance with Statement 123R. For example, at a minimum, the staff would expect Company B to disclose whether it used only implied volatility, historical volatility, or a combination of both.

In addition, Company B should consider the applicability of SEC Release No. FR–60 and Section V,

Volatility'' by Stewart Mayhew, *Financial Analysts Journal*, July–August 1995, have found that implied volatilities based on near-the-money options do as well as sophisticated weighted implied volatilities in estimating expected volatility. In addition, the staff believes that because near-the-money options are generally more actively traded, they may provide a better basis for deriving implied volatility.

[48] The staff believes a company could use a weighted-average implied volatility based on traded options that are either in-the-money or out-of-the-money. For example, if the employee share option has an exercise price of $52, but the only traded options available have exercise prices of $50 and $55, then the staff believes that it is appropriate to use a weighted average based on the implied volatilities from the two traded options; for this example, a 40% weight on the implied volatility calculated from the option with an exercise price of $55 and a 60% weight on the option with an exercise price of $50.

[49] The staff believes it may also be appropriate to consider the entire term structure of volatility provided by traded options with a variety of remaining maturities. If a company considers the entire term structure in deriving implied volatility, the staff would expect a company to include some options in the term structure with a remaining maturity of six months or greater.

[50] The staff believes the implied volatility derived from a traded option with a term of one year or greater would typically not be significantly different from the implied volatility that would be derived from a traded option with a significantly longer term.

[51] Statement 123R, paragraphs A31–A32.

[52] Statement 123R, paragraph B86.

[53] Statement 123R, paragraphs A15 and A33, discuss the incorporation of a range of expected volatilities into option pricing models. The staff believes that a company that utilizes an option pricing model that incorporates a range of expected volatilities over the option's contractual term should consider the factors listed in Statement 123R, and those discussed in the Interpretive Responses to Questions 2 and 3 above, to determine the extent of its reliance (including exclusive reliance) on the derived implied volatility.

[54] When near-the-money options are not available, the staff believes the use of a weighted-average approach, as noted in a previous footnote, may be appropriate.

[55] *See* Statement 123R, paragraph B87. A change in a company's business model that results in a material alteration to the company's risk profile is an example of a circumstance in which the company's future volatility would be expected to differ from its past volatility. Other examples may include, but are not limited to, the introduction of a new product that is central to a company's business model or the receipt of U.S. Food and Drug Administration approval for the sale of a new prescription drug.

[56] If the expected or contractual term, as applicable, of the employee share option is less than three years, the staff believes monthly price observations would not provide a sufficient amount of data.

[57] Statement 123R disclosure requirements are included in paragraphs 64, 65, A240, A241, and A242.

[58] Statement 123R, paragraph A240(e)(2)(b).

''Critical Accounting Estimates,'' in SEC Release No. FR–72 regarding critical accounting policies and estimates in MD&A. The staff would expect such disclosures to include an explanation of the method used to estimate the expected volatility of its share price. This explanation generally should include a discussion of the basis for the company's conclusions regarding the extent to which it used historical volatility, implied volatility or a combination of both. A company could consider summarizing its evaluation of the factors listed in Questions 2 and 3 of this section as part of these disclosures in MD&A.

Facts: Company C is a newly public entity with limited historical data on the price of its publicly traded shares and no other traded financial instruments. Company C believes that it does not have sufficient company specific information regarding the volatility of its share price on which to base an estimate of expected volatility.

Question 6: What other sources of information should Company C consider in order to estimate the expected volatility of its share price?

Interpretive Response: Statement 123R provides guidance on estimating expected volatility for newly public and nonpublic entities that do not have company specific historical or implied volatility information available.[59] Company C may base its estimate of expected volatility on the historical, expected or implied volatility of similar entities whose share or option prices are publicly available. In making its determination as to similarity, Company C would likely consider the industry, stage of life cycle, size and financial leverage of such other entities.[60]

The staff would not object to Company C looking to an industry sector index (*e.g.*, NASDAQ Computer Index) that is representative of Company C's industry, and possibly its size, to identify one or more similar entities.[61] Once Company C has identified similar entities, it would substitute a measure of the individual volatilities of the similar entities for the expected volatility of its share price as an assumption in its valuation model.[62] Because of the effects of diversification that are present in an industry sector index, Company C should not substitute the volatility of an index for the expected volatility of its share price as an assumption in its valuation model.[63]

After similar entities have been identified, Company C should continue to consider the volatilities of those entities unless circumstances change such that the identified entities are no longer similar to Company C. Until Company C has sufficient information available, the staff would not object to Company C basing its estimate of expected volatility on the volatility of similar entities for those periods for which it does not have sufficient information available.[64] Until Company C has either a sufficient amount of historical information regarding the volatility of its share price or other traded financial instruments are available to derive an implied volatility to support an estimate of expected volatility, it should consistently apply a process as described above to estimate expected volatility based on the volatilities of similar entities.[65]

2. Expected Term

Statement 123R, paragraph A26, states ''The fair value of a traded (or transferable) share option is based on its contractual term because rarely is it economically advantageous to the holder to exercise, rather than sell, a transferable share option before the end of its contractual term. Employee share options generally differ from transferable [or tradable] share options in that employees cannot sell (or hedge) their share options—they can only exercise them; because of this, employees generally exercise their options before the end of the options' contractual term. Thus, the inability to sell or hedge an employee share option effectively reduces the option's value [compared to a transferable option] because exercise prior to the option's expiration terminates its remaining life and thus its remaining time value.'' Accordingly, Statement 123R requires that when valuing an employee share option under the Black-Scholes-Merton framework the fair value of employee share options be based on the share options' expected term rather than the contractual term.

The staff believes the estimate of expected term should be based on the facts and circumstances available in each particular case. Consistent with our guidance regarding reasonableness immediately preceding Topic 14.A, the fact that other possible estimates are later determined to have more accurately reflected the term does not necessarily mean that the particular choice was unreasonable. The staff reminds registrants of the expected term disclosure requirements described in Statement 123R, paragraph A240(e)(2)(a).

Facts: Company D utilizes the Black-Scholes-Merton closed-form model to value its share options for the purposes of determining the fair value of the options under Statement 123R. Company D recently granted share options to its employees. Based on its review of various factors, Company D determines that the expected term of the options is six years, which is less than the contractual term of ten years.

Question 1: When determining the fair value of the share options in accordance with Statement 123R, should Company D consider an additional discount for nonhedgability and nontransferability?

Interpretive Response: No. Statement 123R, paragraphs A26 and B82, indicates that nonhedgability and nontransferability have the effect of increasing the likelihood that an employee share option will be exercised before the end of its contractual term. Nonhedgability and nontransferability therefore factor into the expected term assumption (in this case reducing the term assumption from ten years to six years), and the expected term reasonably adjusts for the effect of these factors. Accordingly, the staff believes that no additional reduction in the term assumption or other discount to the estimated fair value is appropriate for these particular factors.[66]

Question 2: Should forfeitures or terms that stem from forfeitability be

[59] Statement 123R, paragraphs A22 and A43.

[60] Statement 123R, paragraph A22.

[61] If a company operates in a number of different industries, it could look to several industry indices. However, when considering the volatilities of multiple companies, each operating only in a single industry, the staff believes a company should take into account its own leverage, the leverages of each of the entities, and the correlation of the entities' stock returns.

[62] Statement 123R, paragraph A45.

[63] Statement 123R, paragraph A22.

[64] Statement 123R, paragraph A32(c). The staff believes that at least two years of daily or weekly historical data could provide a reasonable basis on which to base an estimate of expected volatility if a company has no reason to believe that its future volatility will differ materially during the expected or contractual term, as applicable, from the volatility calculated from this past information. If the expected or contractual term, as applicable, of a share option is shorter than two years, the staff believes a company should use daily or weekly historical data for at least the length of that applicable term.

[65] Statement 123R, paragraph A34.

[66] The staff notes the existence of academic literature that supports the assertion that the Black-Scholes-Merton closed-form model, with expected term as an input, can produce reasonable estimates of fair value. Such literature includes J. Carpenter, ''The exercise and valuation of executive stock options,'' *Journal of Financial Economics,* May 1998, pp.127–158; C. Marquardt, ''The Cost of Employee Stock Option Grants: An Empirical Analysis,'' *Journal of Accounting Research,* September 2002, p. 1191–1217); and J. Bettis, J. Bizjak and M. Lemmon, ''Exercise behavior, valuation, and the incentive effect of employee stock options,'' *Journal of Financial Economics,* forthcoming, 2005.

factored into the determination of expected term?

Interpretive Response: No. Statement 123R indicates that the expected term that is utilized as an assumption in a closed-form option-pricing model or a resulting output of a lattice option pricing model when determining the fair value of the share options should not incorporate restrictions or other terms that stem from the pre-vesting forfeitability of the instruments. Under Statement 123R, these pre-vesting restrictions or other terms are taken into account by ultimately recognizing compensation cost only for awards for which employees render the requisite service.[67]

Question 3: Can a company's estimate of expected term ever be shorter than the vesting period?

Interpretive Response: No. The vesting period forms the lower bound of the estimate of expected term.[68]

Question 4: Statement 123R, paragraph A30, indicates that an entity shall aggregate individual awards into relatively homogenous groups with respect to exercise and post-vesting employment termination behaviors for the purpose of determining expected term, regardless of the valuation technique or model used to estimate the fair value. How many groupings are typically considered sufficient?

Interpretive Response: As it relates to employee groupings, the staff believes that an entity may generally make a reasonable fair value estimate with as few as one or two groupings.[69]

Question 5: What approaches could a company use to estimate the expected term of its employee share options?

Interpretive Response: A company should use an approach that is reasonable and supportable under Statement 123R's fair value measurement objective, which establishes that assumptions and measurement techniques should be consistent with those that marketplace participants would be likely to use in determining an exchange price for the share options.[70] If, in developing its estimate of expected term, a company determines that its historical share option exercise experience is the best estimate of future exercise patterns, the staff will not object to the use of the historical share option exercise experience to estimate expected term.[71]

A company may also conclude that its historical share option exercise experience does not provide a reasonable basis upon which to estimate expected term. This may be the case for a variety of reasons, including, but not limited to, the life of the company and its relative stage of development, past or expected structural changes in the business, differences in terms of past equity-based share option grants,[72] or a lack of variety of price paths that the company may have experienced.[73]

Statement 123R describes other alternative sources of information that might be used in those cases when a company determines that its historical share option exercise experience does not provide a reasonable basis upon which to estimate expected term. For example, a lattice model (which by definition incorporates multiple price paths) can be used to estimate expected term as an input into a Black-Scholes-Merton closed-form model.[74] In addition, Statement 123R, paragraph A29, states ''* * * expected term might be estimated in some other manner, taking into account whatever relevant and supportable information is available, including industry averages and other pertinent evidence such as published academic research.'' For example, data about exercise patterns of employees in similar industries and/or situations as the company's might be used. While such comparative information may not be widely available at present, the staff understands that various parties, including actuaries, valuation professionals and others are gathering such data.

Facts: Company E grants equity share options to its employees that have the following basic characteristics:[75]

- The share options are granted at-the-money;
- Exercisability is conditional only on performing service through the vesting date;[76]
- If an employee terminates service prior to vesting, the employee would forfeit the share options;
- If an employee terminates service after vesting, the employee would have a limited time to exercise the share options (typically 30–90 days); and
- The share options are nontransferable and nonhedgeable.

Company E utilizes the Black-Scholes-Merton closed-form model for valuing its employee share options.

Question 6: As share options with these ''plain-vanilla'' characteristics have been granted in significant quantities by many companies in the past, is the staff aware of any ''simple'' methodologies that can be used to estimate expected term?

Interpretive Response: As noted above, the staff understands that an entity that chooses not to rely on its historical exercise data may find that certain alternative information, such as exercise data relating to employees of other companies, is not easily obtainable. As such, in the short term, some companies may encounter difficulties in making a refined estimate of expected term. Accordingly, the staff will accept the following ''simplified'' method for ''plain vanilla'' options consistent with those in the fact set above: expected term = ((vesting term + original contractual term) / 2). Assuming a ten year original contractual term and graded vesting over four years (25% of the options in each grant vest annually) for the share options in the fact set described above, the resultant expected term would be 6.25 years.[77]

Academic research on the exercise of options issued to executives provides some general support for outcomes that would be produced by the application of this method.[78] If a company elects to

[67] Statement 123R, paragraph 18.

[68] Statement 123R, paragraph A28a.

[69] The staff believes the focus should be on groups of employees with significantly different expected exercise behavior. Academic research suggests two such groups might be executives and non-executives. A study by S. Huddart found executives and other senior managers to be significantly more patient in their exercise behavior than more junior employees. (Employee rank was proxied for by the number of options issued to that employee.) See S. Huddart, ''Patterns of stock option exercise in the United States,'' in: J. Carpenter and D. Yermack, eds., *Executive Compensation and Shareholder Value: Theory and Evidence* (Kluwer, Boston, MA, 1999), pp. 115–142. *See* also S. Huddart and M. Lang, ''Employee stock option exercises: An empirical analysis,'' *Journal of Accounting and Economics,* 1996, pp. 5–43.

[70] Statement 123R, paragraph A10.

[71] Historical share option exercise experience encompasses data related to share option exercise, post-vesting termination, and share option contractual term expiration.

[72] For example, if a company had historically granted share options that were always in-the-money, and will grant at-the-money options prospectively, the exercise behavior related to the in-the-money options may not be sufficient as the sole basis to form the estimate of expected term for the at-the-money grants.

[73] For example, if a company had a history of previous equity-based share option grants and exercises only in periods in which the company's share price was rising, the exercise behavior related to those options may not be sufficient as the sole basis to form the estimate of expected term for current option grants.

[74] Statement 123R, paragraph A27.

[75] Employee share options with these features are sometimes referred to as ''plain-vanilla'' options.

[76] In this fact pattern the requisite service period equals the vesting period.

[77] Calculated as [[[1 year vesting term (for the first 25% vested) plus 2 year vesting term (for the second 25% vested) plus 3 year vesting term (for the third 25% vested) plus 4 year vesting term (for the last 25% vested)] divided by 4 total years of vesting] plus 10 year contractual life] divided by 2; that is, (((1+2+3+4)/4) + 10) /2 = 6.25 years.

[78] J.N. Carpenter, ''The exercise and valuation of executive stock options,'' *Journal of Financial*

Continued

use this method, it should be applied consistently to all ''plain vanilla'' employee share options, and the company should disclose the use of the method in the notes to its financial statements. Companies that have the information (from whatever source) to make more refined estimates of expected term may choose not to apply this simplified method. In addition, this simplified method is not intended to be applied as a benchmark in evaluating the appropriateness of more refined estimates of expected term.

Also, as noted above, the staff believes that more detailed information about exercise behavior will, over time, become readily available to companies. As such, the staff does not expect that such a simplified method would be used for share option grants after December 31, 2007, as more detailed information should be widely available by then.

E. Statement 123R and Certain Redeemable Financial Instruments

Certain financial instruments awarded in conjunction with share-based payment arrangements have redemption features that require settlement by cash or other assets upon the occurrence of events that are outside the control of the issuer.[79] Statement 123R provides guidance for determining whether instruments granted in conjunction with share-based payment arrangements should be classified as liability or equity instruments. Under that guidance, most instruments with redemption features that are outside the control of the issuer are required to be classified as liabilities; however, some redeemable instruments will qualify for equity classification.[80] SEC Accounting Series Release No. 268, *Presentation in Financial Statements of ''Redeemable Preferred Stocks,''*[81] (''ASR 268'') and related guidance[82] address the classification and measurement of certain redeemable equity instruments.

Facts: Under a share-based payment arrangement, Company F grants to an employee shares (or share options) that all vest at the end of four years (cliff vest).

The shares (or shares underlying the share options) are redeemable for cash at fair value at the holder's option, but only after six months from the date of share issuance (as defined in Statement 123R). Company F has determined that the shares (or share options) would be classified as equity instruments under the guidance of Statement 123R. However, under ASR 268 and related guidance, the instruments would be considered to be redeemable for cash or other assets upon the occurrence of events (*e.g.*, redemption at the option of the holder) that are outside the control of the issuer.

Question 1: While the instruments are subject to Statement 123R,[83] is ASR 268 and related guidance applicable to instruments issued under share-based payment arrangements that are classified as equity instruments under Statements 123R?

Interpretive Response: Yes. The staff believes that registrants must evaluate whether the terms of instruments granted in conjunction with share-based payment arrangements with employees that are not classified as liabilities under Statement 123R result in the need to present certain amounts outside of permanent equity (also referred to as being presented in ''temporary equity'') in accordance with ASR 268 and related guidance.[84]

When an instrument ceases to be subject to Statement 123R and becomes subject to the recognition and measurement requirements of other applicable GAAP, the staff believes that the company should reassess the classification of the instrument as a liability or equity at that time and consequently may need to reconsider the applicability of ASR 268.

Question 2: How should Company F apply ASR 268 and related guidance to the shares (or share options) granted under the share-based payment arrangements with employees that may be unvested at the date of grant?

Interpretive Response: Under Statement 123R, when compensation cost is recognized for instruments classified as equity instruments, additional paid-in-capital[85] is increased. If the award is not fully vested at the grant date, compensation cost is recognized and additional paid-in-capital is increased over time as services are rendered over the requisite service period. A similar pattern of recognition should be used to reflect the amount presented as temporary equity for share-based payment awards that have redemption features that are outside the issuer's control but are classified as equity instruments under Statement 123R.

The staff believes Company F should present as temporary equity at each balance sheet date an amount that is based on the redemption amount of the instrument, but takes into account the proportion of consideration received in the form of employee services. Thus, for example, if a nonvested share that qualifies for equity classification under Statement 123R is redeemable at fair value more than six months after vesting, and that nonvested share is 75% vested at the balance sheet date, an amount equal to 75% of the fair value of the share should be presented as temporary equity at that date. Similarly, if an option on a share of redeemable

Economics, 1998, pp.127–158 studies a sample of 40 NYSE and AMEX firms over the period 1979–1994 with share option terms reasonably consistent to the terms presented in the fact set and example. The mean time to exercise after grant was 5.83 years and the median was 6.08 years. The ''mean time to exercise'' is shorter than expected term since the study's sample included only exercised options. Other research on executive options includes (but is not limited to) J. Carr Bettis; John M. Bizjak; and Michael L. Lemmon, ''Exercise behavior, valuation, and the incentive effects of employee stock options,'' forthcoming in the *Journal of Financial Economics*. One of the few studies on nonexecutive employee options the staff is aware of is S. Huddart, ''Patterns of stock option exercise in the United States,'' in: J. Carpenter and D. Yermack, eds., *Executive Compensation and Shareholder Value: Theory and Evidence* (Kluwer, Boston, MA, 1999), pp. 115–142.

[79] The terminology ''outside the control of the issuer'' is used to refer to any of the three redemption conditions described in Rule 5–02.28 of Regulation S–X that would require classification outside permanent equity. That rule requires preferred securities that are redeemable for cash or other assets to be classified outside of permanent equity if they are redeemable (1) at a fixed or determinable price on a fixed or determinable date, (2) at the option of the holder, or (3) upon the occurrence of an event that is not solely within the control of the issuer.

[80] Statement 123R, paragraphs 28–35 and A225-A232.

[81] ASR 268, July 27, 1979, Rule 5–02.28 of Regulation S–X.

[82] Related guidance includes EITF Abstracts Topic No. D–98, *Classification and Measurement of Redeemable Securities* (''Topic D–98'').

[83] Statement 123R, paragraph A231, states that an instrument ceases to be subject to Statement 123R when ''the rights conveyed by the instrument to the holder are no longer dependent on the holder being an employee of the entity (that is, no longer dependent on providing service).''

[84] Instruments granted in conjunction with share-based payment arrangements with employees that do not by their terms require redemption for cash or other assets (at a fixed or determinable price on a fixed or determinable date, at the option of the holder, or upon the occurrence of an event that is not solely within the control of the issuer) would not be assumed by the staff to require net cash settlement for purposes of applying ASR 268 in circumstances in which paragraphs 14–18 of EITF Issue 00–19, *Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock,* would otherwise require the assumption of net cash settlement. *See* Statement 123R, footnote 152 to paragraph B121, which states, in part: ''* * *Issue 00–19 specifies that events or actions necessary to deliver registered shares are not controlled by a company and, therefore, except under limited circumstances, such provisions would require a company to assume that the contract would be net-cash settled. * * * Thus, employee share options might be classified as substantive liabilities if they were subject to Issue 00–19; however, for purposes of this Statement, the Board does not believe that employee share options should be classified as liabilities based solely on that notion.'' *See* also Statement 123R, footnote 20.

[85] Depending on the fact pattern, this may be recorded as common stock and additional paid in capital.

stock that qualifies for equity classification under Statement 123R is 75% vested at the balance sheet date, an amount equal to 75% of the intrinsic [86] value of the option should be presented as temporary equity at that date.

Question 3: Would the methodology described for employee awards in the Interpretive Response to Question 2 above apply to nonemployee awards to be issued in exchange for goods or services with similar terms to those described above?

Interpretive Response: See Topic 14.A for a discussion of the application of the principles in Statement 123R to nonemployee awards. The staff believes it would generally be appropriate to apply the methodology described in the Interpretive Response to Question 2 above to nonemployee awards.

F. Classification of Compensation Expense Associated With Share-Based Payment Arrangements

Facts: Company G utilizes both cash and share-based payment arrangements to compensate its employees and nonemployee service providers. Company G would like to emphasize in its income statement the amount of its compensation that did not involve a cash outlay.

Question: How should Company G present in its income statement the non-cash nature of its expense related to share-based payment arrangements?

Interpretive Response: The staff believes Company G should present the expense related to share-based payment arrangements in the same line or lines as cash compensation paid to the same employees.[87] The staff believes a company could consider disclosing the amount of expense related to share-based payment arrangements included in specific line items in the financial statements. Disclosure of this information might be appropriate in a parenthetical note to the appropriate income statement line items, on the cash flow statement, in the footnotes to the financial statements, or within MD&A.

G. Non-GAAP Financial Measures

Facts: Company H, a calendar year company, adopts Statement 123R as of July 1, 2005. Company H has issued share options to its employees each year since issuing publicly traded stock twenty years ago. In the MD&A section of its 2005 Form 10–K, Company H believes it would be useful to investors to disclose what net income would be before considering the effect of accounting for share-based payment transactions in accordance with Statement 123R.

Question 1: Does the resulting measure, ''Net Income Before Share-Based Payment Charge,'' or an equivalent measure, meet the definition of a non-GAAP measure in Regulation G and Item 10(e) of Regulation S–K? [88]

Interpretive Response: Yes. Because the financial measure Company H is considering excludes an amount (share-based payment expense) that is included in the most directly comparable measure calculated and presented in accordance with GAAP (net income), it would be considered a non-GAAP financial measure pursuant to the provisions of Regulation G and Item 10(e) of Regulation S–K.

Question 2: Is the measure ''Net Income Before Share-Based Payment Charge,'' or an equivalent measure, a prohibited non-GAAP measure pursuant to Item 10(e) of Regulation S–K?

Interpretive Response: Item 10(e) prohibits the inclusion of certain non-GAAP financial measures and also mandates specific disclosures for registrants that include permitted non-GAAP financial measures in filings. Generally, under Item 10(e) of Regulation S–K, a company may not present a non-GAAP performance measure that removes an expense from net income by identifying that expense as non-recurring, infrequent, or unusual if it is reasonably likely that the expense will recur within two years or if the company had a similar expense within the prior two years. The staff issued Frequently Asked Questions Regarding the Use of Non-GAAP Measures in June of 2003. Question 8 discusses whether it is appropriate to eliminate or smooth an item that is identified as recurring. The staff answered the question in part by stating ''Companies should never use a non-GAAP financial measure in an attempt to smooth earnings. Further, while there is no per se prohibition against removing a recurring item, companies must meet the burden of demonstrating the usefulness of any measure that excludes recurring items, especially if the non-GAAP financial measure is used to evaluate performance.''

The staff believes that a measure used by the management of Company H that excludes share-based payments internally to evaluate performance may be relevant disclosure for investors. In these cases, if Company H determines that the non-GAAP financial measure ''Net Income Before Share-Based Payment Charge'' does not violate any of the prohibitions from inclusion in filings with the Commission outlined in Item 10(e) of Regulation S–K, Company H's management would be required to disclose, among other items, the following:

- The reasons that the company's management believes that presentation of the non-GAAP financial measure provides useful information to investors regarding the company's financial condition and results of operations; and
- To the extent material, the additional purposes, if any, for which the company's management uses the non-GAAP financial measure that are not otherwise disclosed.[89]

In addition, the staff's response to Question 8 included in Frequently Asked Questions Regarding the Use of Non-GAAP Measures in June of 2003 notes that the inclusion of a non-GAAP financial measure may be misleading absent the following disclosures:

- The manner in which management uses the non-GAAP measure to conduct or evaluate its business;
- The economic substance behind management's decision to use such a measure;
- The material limitations associated with use of the non-GAAP financial measure as compared to the use of the most directly comparable GAAP financial measure;
- The manner in which management compensates for these limitations when using the non-GAAP financial measure; and
- The substantive reasons why management believes the non-GAAP financial measure provides useful information to investors.

Question 3: How could Company H demonstrate the effect of accounting for share-based payment transactions in accordance with Statement 123R and Regulation G and Item 10(e) of Regulation S–K in its Form 10–K?

[86] The potential redemption amount of the share option in this illustration is its intrinsic value because the holder would pay the exercise price upon exercise of the option and then, upon redemption of the underlying shares, the company would pay the holder the fair value of those shares. Thus, the net cash outflow from the arrangement would be equal to the intrinsic value of the share option. In situations where there would be no cash inflows from the share option holder, the cash required to be paid to redeem the underlying shares upon the exercise of the put option would be the redemption value.

[87] Statement 123R does not identify a specific line item in the income statement for presentation of the expense related to share-based payment arrangements.

[88] 17 CFR 229.10(e). All references to Item 10(e) of Regulation S–K also includes corresponding provisions of Item 10(h) of Regulation S–B with respect to small business issuers as well as U.S. GAAP information of foreign private issuers under General Instruction C(e) of Form 20–F.

[89] 17 CFR 229.10(e)(1).

Interpretive Response: The staff believes that including a discussion in MD&A addressing significant trends and variability of a company's earnings and changes in the significant components of certain line items is important to assist an investor in understanding the company's performance. The staff also understands that expenses from share-based payments might vary in different ways and for different reasons than would other expenses. In particular, the staff believes Company H's investors would be well served by disclosure in MD&A that explains the components of the company's expenses, including, if material, identification of the amount of expense associated with share-based payment transactions and discussion of the reasons why such amounts have fluctuated from period to period.

Question 4: Would the staff object to Company H including a pro-forma income statement in its SEC filings that removes from net income the effects of accounting for share-based payment arrangements in accordance with Statement 123R?

Interpretive Response: Yes. Removal of the effects of accounting for share-based payment arrangements in accordance with Statement 123R would not meet any of the conditions in Rule 11–01(a) of Regulation S–X for presentation of pro forma financial information. Further, the removal of the effects of accounting for share-based payment arrangements in accordance with Statement 123R would not meet any of the conditions in Rule 11–02(b)(6) of Regulation S–X to be reflected as a pro forma adjustment in circumstances where pro forma financial information is required under Rule 11–01(a) of Regulation S–X for other transactions such as recent or probable business combinations.

In addition, Item 10(e) of Regulation S–X prohibits presenting non-GAAP financial measures on the face of any pro forma financial information required to be disclosed by Article 11 of Regulation S–X. Further, a company may not present non-GAAP financial measures on the face of the company's financial statements prepared in accordance with GAAP or in the accompanying notes.

H. First Time Adoption of Statement 123R in an Interim Period

Facts: Company I's fiscal year begins on January 1, 2005. Company I plans to adopt Statement 123R on July 1, 2005, which is the beginning of its first interim period following the effective date. Company I previously recognized share-based payment compensation in accordance with Opinion 25.

Question 1: What disclosures are required in Company I's Form 10–Q for the third quarter of 2005?

Interpretive Response: The disclosures required by paragraphs 64–65, 84, and A240–242 of Statement 123R should be included in the Form 10–Q for the interim period when Statement 123R is first adopted. If Company I applies the modified retrospective method [90] in other than the first interim period of a fiscal year, the staff believes that the Form 10–Q for the period of adoption should include disclosure of the effects of the adoption of Statement 123R on previously reported interim periods.[91] If Company I applies the modified prospective method,[92] the financial statements for Company I's prior interim periods and fiscal years will not reflect any restated amounts. The staff believes that Company I should disclose this fact. Regardless of the transition method chosen, Company I should also provide the disclosures required by SAB Topic 11M, *Disclosure Of The Impact That Recently Issued Accounting Standards Will Have On The Financial Statements Of The Registrant When Adopted In A Future Period*, in interim and annual financial statements preceding the adoption of Statement 123R.

Facts: Company J plans to adopt Statement 123R by applying the modified retrospective method only to the preceding interim periods of its current fiscal year. Company J anticipates recording an adjustment upon the adoption of Statement 123R to reflect the cumulative effect of reclassifying certain share-based payment arrangements as liabilities.

Question 2: Would Company J be required to apply the cumulative effect adjustment to the beginning of the fiscal year and to reflect the change in classification from liabilities to equity to its interim periods preceding adoption in accordance with Statement 3,[93] paragraph 10?

Interpretive Response: No. Statement 123R, paragraph 76, limits retrospective application to recording compensation cost for unvested awards based on the amounts previously determined under Statement 123 for pro forma footnote disclosure. Any adjustments to be recorded as a cumulative effect of a change in accounting principle should be recorded as of the date of adoption of Statement 123R, which may occur after the beginning of the fiscal year. Therefore, based on the guidance in Statement 123R, paragraphs 79–82, registrants are not required to apply the provisions of Statement 3, paragraph 10.

I. Capitalization of Compensation Cost Related to Share-Based Payment Arrangements

Facts: Company K is a manufacturing company that grants share options to its production employees. Company K has determined that the cost of the production employees' service is an inventoriable cost. As such, Company K is required to initially capitalize the cost of the share option grants to these production employees as inventory and later recognize the cost in the income statement when the inventory is consumed.[94]

Question: If Company K elects to adjust its period end inventory balance for the allocable amount of share-option cost through a period end adjustment to its financial statements, instead of incorporating the share-option cost through its inventory costing system, would this be considered a deficiency in internal controls?

Interpretive Response: No. Statement 123R does not prescribe the mechanism a company should use to incorporate a portion of share-option costs in an inventory-costing system. The staff believes Company K may accomplish this through a period end adjustment to its financial statements. Company K should establish appropriate controls surrounding the calculation and recording of this period end adjustment, as it would any other period end adjustment. The fact that the entry is recorded as a period end adjustment, by itself, should not impact management's ability to determine that the internal control over financial reporting, as defined by the SEC's rules implementing Section 404 of the Sarbanes-Oxley Act of 2002,[95] is effective.

J. Accounting for Income Tax Effects of Share-Based Payment Arrangements Upon Adoption of Statement 123R

Facts: In accordance with Statement 123R, reporting entities will need to determine whether deductions reported on tax returns for share-based payment awards exceed or are less than the cumulative compensation cost recognized for financial reporting. If the deductions exceed the cumulative compensation cost recognized for

[90] Statement 123R, paragraph 76.

[91] *See* Statement 123R, paragraph 77.

[92] Statement 123R, paragraph 74.

[93] Statement of Financial Accounting Standards No. 3, *Reporting Accounting Changes in Interim Financial Statements* (''Statement 3'').

[94] Statement 123R, paragraph 5.

[95] Release No. 34–47986, June 5, 2003, *Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Period Reports.*

financial reporting, the entity generally should record any resulting excess tax benefits as additional paid-in capital. If deductions are less than the cumulative compensation cost recognized for financial reporting, the entity should record the write-off of the deferred tax asset, net of the related valuation allowance, against any remaining additional paid-in capital from previous awards accounted for in accordance with the fair value method of Statement 123 or Statement 123R, as applicable. The remaining balance, if any, of the write-off of the deferred tax asset shall be recognized in the income statement.[96]

Company L is an entity that previously recognized employee share-based payment costs under the intrinsic value method of Opinion 25. In this situation, Statement 123R states that Company L ''shall calculate the amount available for offset [in additional paid-in capital] as the net amount of excess tax benefits that would have qualified as such had it instead adopted Statement 123 for recognition purposes pursuant to Statement 123's original effective date and transition method.'' [97]

Question: When is Company L required to calculate the additional paid-in capital from previous share-based payment awards that is available for offset against the write-off of a deferred tax asset?

Interpretive Response: Statement 123R will necessitate the tracking of tax attributes relating to share-based payment transactions with employees for a number of reasons, including the requirements related to any required write-off of excess deferred tax assets upon settlement of a share option. While it is important that appropriate detailed information be available when needed for consideration, the timing as to when such information actually affects financial reporting will vary from company to company. In preparation for the adoption of Statement 123R, Company L should evaluate the level of detail which may be required considering its particular facts and circumstances.

Statement 123R is silent as to when the additional paid-in capital available for offset should be calculated. However, the staff notes that Company L would not be required to calculate the additional paid-in capital available for offset by the date it adopts Statement 123R. In addition, the staff notes that Statement 123R does not require disclosure of the additional paid-in capital available for offset.[98] The staff believes that Company L need only calculate the additional paid-in capital available for offset if and when Company L faces a situation in which deductions reported on its tax return are less than the relevant deferred tax asset. In addition, Company L need only perform the calculations periodically to the extent necessary to conclude that sufficient paid-in capital is available for the offset of the deduction shortfall.

K. Modification of Employee Share Options Prior to Adoption of Statement 123R

Facts: Company M is a public entity that historically applied the recognition provisions of Opinion 25 and intends to transition to Statement 123R under the modified prospective method of application.[99] In prior periods, Company M granted at-the-money share options to its employees in which the exercisability of the options is conditional only on performing service through the vesting date.[100] Since the time of grant, Company M's share price has fallen such that the share options are out-of-the-money. Prior to adoption of Statement 123R the share options are still unvested, and Company M intends to modify these unvested share options to accelerate the vesting. Company M has determined that the modification to accelerate vesting will not require recognition of compensation cost in its financial statements in the period of the modification under the provisions of Opinion 25.[101] However, Company M intends to reflect the compensation cost related to the modification in its fair value pro forma disclosures under Statement 123,[102] in the period the modification is made.

Question: Would the staff object to Company M reflecting the remaining compensation cost related to these share options in the fair value pro forma disclosures required under Statement 123 as a result of the modification in the period in which the modification was enacted?

Interpretive Response: No. The staff believes that an acceptable interpretation of Statement 123 is that the modification to accelerate the vesting of such share options would result in the recognition of the remaining amount of compensation cost in the period the modification is made, so long as the acceleration of vesting permits employees to exercise the share options in a circumstance when they would not otherwise have been able to do so absent the modification. The staff notes that the service period definition in Statement 123 [103] indicates, ''If the service period is not defined as an earlier or shorter period, it shall be presumed to be the vesting period.'' After the modification, Company M's share options will be vested pursuant to the awards' terms. Accordingly, under this interpretation, there is no remaining service period and any remaining unrecognized service cost for those share options should be recognized at the date of the modification. The staff believes that since the remaining unrecognized compensation cost is accelerated and recognized at the date of modification, no compensation cost would be recognized for these modified share options in the income statement in the periods after adoption of Statement 123R, absent any further modifications.

The staff reminds public entities that Statement 123, paragraph 47, indicates that for each year an income statement is provided, the terms of significant modifications of outstanding awards shall be disclosed. In order to inform investors about modification transactions and management's reasons for entering into those transactions, the staff believes that public entities should specifically disclose any modifications to accelerate the vesting of out-of-the-money share options in anticipation of adopting Statement 123R, including the reasons for modifying the option terms.

L. Application of the Measurement Provisions of Statement 123R to Foreign Private Issuers [104]

Question: Does the staff believe there are differences in the measurement provisions for share-based payment arrangements with employees under International Accounting Standards Board International Financial Reporting Standard 2, *Share-based Payment* (''IFRS 2'') and Statement 123R that would result in a reconciling item under Item 17 or 18 of Form 20–F?

[96] Statement 123R, paragraph 63.

[97] Ibid.

[98] Statement 123R's disclosure requirements are described in paragraphs 64, 65, A240, A241 and A242.

[99] Statement 123R, paragraph 74.

[100] The terms of these share options do not define the service period as being other than the vesting period.

[101] *See* FASB Interpretation No. 44, *Accounting for Certain Transactions Involving Stock Compensation,* paragraph 36, which requires the recognition of compensation expense under Opinion 25 due to a modification of a share-based payment award only if, absent the acceleration of vesting, the award would have otherwise been forfeited during the vesting period pursuant to its original terms.

[102] Statement 123, paragraph 45, as amended by Statement 148, *Accounting for Stock-Based Compensation—Transition and Disclosure (''Statement 148'').*

[103] Statement 123, Appendix E.

[104] As defined in Regulation C § 230.405.

Interpretive Response: The staff believes that application of the guidance provided by IFRS 2 regarding the measurement of employee share options would generally result in a fair value measurement that is consistent with the fair value objective stated in Statement 123R.[105] Accordingly, the staff believes that application of Statement 123R's measurement guidance would not generally result in a reconciling item required to be reported under Item 17 or 18 of Form 20–F for a foreign private issuer that has complied with the provisions of IFRS 2 for share-based payment transactions with employees. However, the staff reminds foreign private issuers that there are certain differences between the guidance in IFRS 2 and Statement 123R that may result in reconciling items.[106]

M. Disclosures in MD&A Subsequent to Adoption of Statement 123R

Question: What disclosures should companies consider including in MD&A to highlight the effects of (1) Differences between the accounting for share-based payment arrangements before and after the adoption of Statement 123R and (2) changes to share-based payment arrangements?

Interpretive Response: As stated in SEC Release FR–72, the principal objectives of MD&A are to give readers a view of a company through the eyes of management, to provide the context within which financial information should be analyzed and to provide information about the quality of, and potential variability of, a company's earnings and cash flow, so that investors can ascertain the likelihood that past performance is indicative of future performance. The adoption of Statement 123R may result in significant differences between the financial statements of periods before and after the adoption, especially for companies with significant share-based compensation programs that have followed the recognition provisions of Opinion 25 or that adopted the fair-value-based method for financial statement recognition in accordance with Statement 123 using the prospective method permitted by Statement 148. Furthermore, the staff understands that companies may refine their estimates of assumptions as a result of implementing Statement 123R and the interpretive guidance provided in this SAB. In addition, the staff understands that many companies are evaluating their share-based payment arrangements and making changes to those arrangements.

Each of these situations may affect the comparability of financial statements. Accordingly, to assist investors and other users of financial statements in understanding the financial results of a company that has adopted Statement 123R, the staff believes that companies should consider including in MD&A material qualitative and quantitative information about any of the following, as well as other information that could affect comparability of financial statements from period to period:

- Transition method selected (*e.g.*, modified prospective application or modified retrospective application) and the resulting financial statement impact in current and future reporting periods;
- Method utilized by the company to account for share-based payment arrangements in periods prior to the adoption of Statement 123R and the impact, or lack thereof, on the prior period financial statements;
- Modifications made to outstanding share options prior to the adoption of Statement 123R and the reason(s) for the modification;
- Differences in valuation methodologies or assumptions compared to those that were used in estimating the fair value of share options under Statement 123;
- Changes in the quantity or type of instruments used in share-based payment programs, such as a shift from share options to restricted shares;
- Changes in the terms of share-based payment arrangements, such as the addition of performance conditions;
- A discussion of the one-time effect, if any, of the adoption of Statement 123R, such as any cumulative adjustments recorded in the financial statements; and
- Total compensation cost related to nonvested awards not yet recognized and the weighted average period over which it is expected to be recognized.

End Topic 14

* * * * *

Amendments to Codification of Staff Accounting Bulletins

The Codification of Staff Accounting Bulletins is amended to revise Question 2 and the related interpretive response in Topic 4.D., all of Topic 4.E., and all of Topic 5.T. as follows:

Topic 4: Equity Accounts

* * * * *

D. Earnings Per Share Computations in an Initial Public Offering

* * * * *

Question 2: Does reflecting nominal issuances as outstanding for all historical periods in the computation of earnings per share alter the registrant's responsibility to determine whether compensation expense must be recognized for such issuances to employees?

Interpretive Response: No. Registrants must follow GAAP in determining whether the recognition of compensation expense for any issuances of equity instruments to employees is necessary.[107] Reflecting nominal issuances as outstanding for all historical periods in the computation of earnings per share does not alter that existing responsibility under GAAP.

* * * * *

E. Receivables From Sale of Stock

Facts: Capital stock is sometimes issued to officers or other employees before the cash payment is received.

Question: How should the receivables from the officers or other employees be presented in the balance sheet?

Interpretive Response: The amount recorded as a receivable should be presented in the balance sheet as a deduction from stockholders' equity. This is generally consistent with Rule 5–02.30 of Regulation S–X which states that accounts or notes receivable arising from transactions involving the registrant's capital stock should be presented as deductions from stockholders' equity and not as assets.

It should be noted generally that all amounts receivable from officers and directors resulting from sales of stock or from other transactions (other than expense advances or sales on normal trade terms) should be separately stated in the balance sheet irrespective of whether such amounts may be shown as assets or are required to be reported as deductions from stockholders' equity.

The staff will not suggest that a receivable from an officer or director be deducted from stockholders' equity if the receivable was paid in cash prior to the publication of the financial statements and the payment date is stated in a note to the financial statements. However, the staff would consider the subsequent return of such cash payment to the officer or director to be part of a scheme or plan to evade the registration or reporting requirements of the securities laws.

* * * * *

Topic 5: Miscellaneous Accounting

* * * * *

[105] Statement 123R, paragraph A2.

[106] Statement 123R, paragraphs B258–B269, identify the more significant differences between IFRS 2 and Statement 123R.

[107] As prescribed by Statement 123R.

T. Accounting for Expenses or Liabilities Paid by Principal Stockholder(s)

Facts: Company X was a defendant in litigation for which the company had not recorded a liability in accordance with Statement 5. A principal stockholder [108] of the company transfers a portion of his shares to the plaintiff to settle such litigation. If the company had settled the litigation directly, the company would have recorded the settlement as an expense.

Question: Must the settlement be reflected as an expense in the company's financial statements, and if so, how?

Interpretive Response: Yes. The value of the shares transferred should be reflected as an expense in the company's financial statements with a corresponding credit to contributed (paid-in) capital.

The staff believes that such a transaction is similar to those described in paragraph 11 of Statement of Financial Accounting Standards Statement No. 123 (revised 2004), *Share-Based Payment* (Statement 123R), which states that ''share-based payments awarded to an employee of the reporting entity by a related party or other holder of an economic interest [109] in the entity as compensation for services provided to the entity are share-based payment transactions to be accounted for under this Statement unless the transfer is clearly for a purpose other than compensation for services to the reporting entity.'' As explained in paragraph 11 of Statement 123R, the substance of such a transaction is that the economic interest holder makes a capital contribution to the reporting entity, and the reporting entity makes a share-based payment to its employee in exchange for services rendered.

The staff believes that the problem of separating the benefit to the principal stockholder from the benefit to the company cited in Statement 123R is not limited to transactions involving stock compensation. Therefore, similar accounting is required in this and other [110] transactions where a principal stockholder pays an expense for the company, unless the stockholder's action is caused by a relationship or obligation completely unrelated to his position as a stockholder or such action clearly does not benefit the company.

Some registrants and their accountants have taken the position that since Statement 57 applies to these transactions and requires only the disclosure of material related party transactions, the staff should not analogize to the accounting called for by Statement 123R, paragraph 11 for transactions other than those specifically covered by it. The staff notes, however, that Statement 57 does not address the measurement of related party transactions and that, as a result, such transactions are generally recorded at the amounts indicated by their terms.[111] However, the staff believes that transactions of the type described above differ from the typical related party transactions.

The transactions for which Statement 57 requires disclosure generally are those in which a company receives goods or services directly from, or provides goods or services directly to, a related party, and the form and terms of such transactions may be structured to produce either a direct or indirect benefit to the related party. The participation of a related party in such a transaction negates the presumption that transactions reflected in the financial statements have been consummated at arm's length. Disclosure is therefore required to compensate for the fact that, due to the related party's involvement, the terms of the transaction may produce an accounting measurement for which a more faithful measurement may not be determinable.

However, transactions of the type discussed in the facts given do not have such problems of measurement and appear to be transacted to provide a benefit to the stockholder through the enhancement or maintenance of the value of the stockholder's investment. The staff believes that the substance of such transactions is the payment of an expense of the company through contributions by the stockholder. Therefore, the staff believes it would be inappropriate to account for such transactions according to the form of the transaction.

[FR Doc. 05–6457 Filed 3–31–05; 8:45 am]

BILLING CODE 8010–01–P

[108] Statement 57, paragraph 24e, defines principal owners as ''owners of record or known beneficial owners of more than 10 percent of the voting interests of the enterprise.''

[109] Statement 123R defines an economic interest in an entity as ''any type or form of pecuniary interest or arrangement that an entity could issue or be a party to, including equity securities; financial instruments with characteristics of equity, liabilities or both; long-term debt and other debt-financing arrangements; leases; and contractual arrangements such as management contracts, service contracts, or intellectual property licenses.'' Accordingly, a principal stockholder would be considered a holder of an economic interest in an entity.

[110] For example, SAB Topic 1.B indicates that the separate financial statements of a subsidiary should reflect any costs of its operations which are incurred by the parent on its behalf. Additionally, the staff notes that AICPA Technical Practice Aids § 4160 also indicates that the payment by principal stockholders of a company's debt should be accounted for as a capital contribution.

[111] However, in some circumstances it is necessary to reflect, either in the historical financial statements or a pro forma presentation (depending on the circumstances), related party transactions at amounts other than those indicated by their terms. Two such circumstances are addressed in Staff Accounting Bulletin Topic 1.B.1, Questions 3 and 4. Another example is where the terms of a material contract with a related party are expected to change upon the completion of an offering (*i.e.*, the principal shareholder requires payment for services which had previously been contributed by the shareholder to the company).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 772

[FHWA Docket No. FHWA–2004–18309]

RIN 2125–AF03

Procedures for Abatement of Highway Traffic Noise and Construction Noise

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the FHWA regulation that specifies the traffic noise prediction method to be used in highway traffic noise analyses. The final rule requires the use of the FHWA Traffic Noise Model (FHWA TNM) or any other model determined by the FHWA to be consistent with the methodology of the FHWA TNM. It also updates the specific reference to acceptable highway traffic noise prediction methodology and removes references to a noise measurement report and vehicle noise emission levels that no longer need to be included in the regulation. Finally, it makes four ministerial corrections to the section on Federal participation.

DATES: *Effective Date(s):* May 2, 2005. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of May 2, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Ferroni, Office of Natural and Human Environment, HEPN, (202) 366–3233, or Mr. Robert Black, Office of the Chief Counsel, HCC–30, (202) 366–1359, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

This document and all comments received by the U.S. DOT Docket Facility, Room PL–401, may be viewed

through the Docket Management System (DMS) at *http://dms.dot.gov.* The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of this Web site.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.archives.gov/* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

The FHWA noise regulations (23 CFR 772) were developed as a result of the Federal-Aid Highway Act of 1970 (Pub. L. 91–605, 84 Sat. 1713) and applied to Federal-aid highway construction projects. This regulation requires a State DOT to determine if there will be traffic noise impacts in areas adjacent to federally-aided highways when a project is proposed for the construction of a highway on a new location or the reconstruction of an existing highway to either significantly change the horizontal or vertical alignment or increase the number of through-traffic lanes.

Analysts must use a highway traffic noise prediction model to calculate future traffic noise levels and determine traffic noise impacts. The FHWA developed its first prediction model described in ''FHWA Highway Traffic Noise Prediction Model'' (Report No. FHWA–RD–77–108), December 1978.[1]

To incorporate over two decades of improvements in predicting highway traffic noise, as well as continued advancements in computer technology, the FHWA, with assistance from the Volpe National Transportation Systems Center in Cambridge, Massachusetts (Volpe Center) developed a new state of the art highway traffic noise prediction model in 1998, ''FHWA Traffic Noise Model,'' Version 1.0 (FHWA TNM).[2] This model bases its calculations on totally new acoustical prediction algorithms as well as newly measured vehicle emission levels for automobiles, medium trucks, heavy trucks, buses and motorcycles.

The Volpe Center, using funds from the FHWA and 25 State departments of transportation, directed and assisted the development of the FHWA TNM to accurately analyze the extremely wide range of frequencies found in highway traffic noise. The FHWA TNM also allows noise analysts to predict noise for both constant-flow and interrupted-flow traffic and enables them to accurately predict the results of multiple noise barriers, as well as the effects of vegetation and rows of buildings along highways.

As part of the initial establishment of the FHWA technical procedures for the analysis of highway traffic noise, e.g., traffic noise measurement and prediction methodologies, the FHWA's noise regulation included references to ''Sound Procedures for Measuring Highway Noise: Final Report''[3] and to vehicle emission levels. This was done to aid in everyone's knowledge and understanding of the new technology of highway traffic noise prediction. However, since this technology has now been well established and documented for more than two decades, the FHWA noise regulation no longer needs to include any reference to a measurement report or to vehicle emission levels.

With the development of the FHWA TNM, a new state of the art highway traffic noise prediction model, the FHWA has proposed to update 23 CFR part 772 to include this new model and remove reference to vehicle emission levels. Therefore, the FHWA published a notice of proposed rulemaking (NPRM) on August 20, 2004, (69 FR 51620) proposing to require the use of the FHWA TNM or any other noise model determined by the FHWA to be consistent with the FHWA TNM methodology.

Discussion of Comments

The agency received comments from five State Departments of Transportation (Arizona, Colorado, Minnesota, New York and Pennsylvania), one State environmental agency (Minnesota Pollution Control Agency), a noise consultant from the URS Corporation, and one private citizen.

The New York and Pennsylvania State DOTs commented that they are currently using the FHWA TNM and have no objections amending the regulation to require the use of this methodology.

The Arizona State DOT commented it was in the process of implementing the use of the FHWA TNM and, thus, had no comment on the practical effects of the change in prediction models. The Arizona State DOT also offered an additional comment regarding the use of pavement types in the FHWA TNM. This comment is beyond the scope of this rule.

The Colorado State DOT commented that it generally supports the use of the FHWA TNM, and appreciated the FHWA's efforts to address the model's over predictions. This comment acknowledged the FHWA and Volpe Center's determination to correct the general over-predictions that FHWA TNM was making on vehicle emission levels. The FHWA TNM Version 2.5 is the result of these efforts, which essentially eliminates the vehicle emission level over-predictions.

The Colorado State DOT expressed its concern on using national vehicle noise emission levels (REMELs). The FHWA has determined that differences in vehicle noise emission levels are not the result of a State-specific vehicle fleet and that further studies of the effects of pavement (type, surface texture, and temperature) and atmospherics on traffic noise levels need to be completed to determine their influence on vehicle noise emission levels. Until the effects of pavement and atmospherics are researched in greater depth, the FHWA strongly recommends the use of the FHWA TNM's national vehicle noise emission levels and strongly discourages the development of State-specific vehicle noise emission levels.

The Colorado State DOT commented that it discovered several anomalies with the performance of the FHWA TNM related to pavement width, ground zones, and terrain lines. The FHWA and the Volpe Center have worked with the Colorado State DOT to resolve these issues. It was found that the anomalies stated by the Colorado State DOT were based on inappropriate comparisons. The sound level results, including trends, predicted with the FHWA TNM Version 2.5 were compared to expectations that were too generalized. The stated expectations did not always consider the specifics of each geometry and corresponding acoustical effects, and therefore were not location-dependent. A response has been sent to the Colorado State DOT on this matter offering detailed information on how to analyze highway sites to accurately identify location-dependent expectations. The FHWA and the Volpe Center will continue to offer the Colorado State DOT assistance in resolving their issues and providing guidance for those using the FHWA TNM in Colorado.

[1] A printed copy of ''FHWA Highway Traffic Noise Prediction Model'' (Report No. FHWA–RD–77–108), December 1978, is available on the docket.

[2] A printed copy of ''FHWA Traffic Noise Model Technical Manual'' (Report No. FHWA–RD–96–010), February 1998, is available on the docket.

[3] A printed copy of ''Sound Procedures for Measuring Highway Noise: Final Report'' (Report No. FHWA–DP–45–1R), August 1981, is available on the docket.

Lastly, the Colorado State DOT commented that it believes the FHWA TNM predicts greater noise reductions than the old prediction model, which may result in noise barrier with shorter heights. The FHWA disagrees because the validation data taken to date [see Validation of FHWAs Traffic Noise Model (TNM): Phase 1, August 2002 and Preview of Validation of FHWA's Traffic Noise Model (TNM): Phase 1 (TNM v2.5 Addendum), April 9, 2004 [4]] indicates that the FHWA TNM performs accurately when predicting noise barrier performance, and there are no inherent biases leading to the design of shorter noise barriers.

The Minnesota State DOT and the Minnesota Pollution Control Agency provided virtually the same two comments, one related to the FHWA TNM's methodology and the uncertainty in its ability to accurately predict noise levels, and the other related to the FHWA TNM's inability to calculate L_{10} to L_{50} noise levels.

The Minnesota State DOT and the Minnesota Pollution Control Agency commented that the Stamina 2.0 based MINNOISE Version 0.2 generally proved more accurate than the FHWA TNM. This is a concern for Minnesota since Minnesota State law requiring that public health and welfare be addressed using the most accurate methods reasonable available. The Minnesota DOT is basing this comment on a report they generated entitled ''Mn/DOT Noise Model Comparison Summary'' which compared the FHWA TNM and the measured data at several locations. A copy of ''Mn/DOT Noise Model Comparison Summary,'' August 26, 2004 was provided as an attachment with Mn/DOTs comments and is available on the docket. After a thorough review and analysis of this comparison report and of additional information requested and received from the Minnesota State DOT, the FHWA and the Volpe Center found no indication that the discrepancies presented in the comparison report are due to problems associated with the FHWA TNM program. In fact, the review revealed that the discrepancies between the FHWA TNM and the measured data presented in the report are the result of an inaccurate measurement technique and three inaccurate modeling techniques.

The inaccurate measurement technique relates to the accounting for wind speeds. The wind speeds presented in the comparison report exceeded the FHWA-prescribed limit of 12 miles per hour and should have been discoounted. The wind effects on sound propagation were also not considered when comparing measured data to predicted data. When wind is accurately accounted for in the model, comparative results improve between FHWA TNM and the measured data.

The three inaccurate modeling techniques include the inaccurate use of parallel barrier configurations, ground types, and pavement types. Although the effects of parallel barrier were accounted for in the Minnesota State DOT's noise model, the effects were not accounted for in the FHWA TNM predictions. When the parallel barrier module in the FHWA TNM was used, the results again showed a more favorable comparison between FHWA TNM and the measured data. The Minnesota State DOT applied the ''field grass'' ground type to all FHWA TNM predicitons. This ground type is often misused, and the use of a more appropriate ground type, such as lawn, loose soil, or hard soil, again improves comparative results for FHWA TNM and measured data. Lastly, the use of ''average'' pavement type of roadways was applied to all FHWA TNM calculations. The use of ''average'' pavement type is required for federally funded projects, but can be modified if substantiated and approved by hte FHWA. Pavements that are typically considered to be ''loud,'' i.e., transverse-tined concrete pavements, were present for at least two of the four measurement sites. Since the comment is claiming lack of accuracy in the FHWA TNM, the actual pavement type was used despite the required use of ''average'' pavement type in the model. When actual pavement type is considered in the model, comparative results again improve for FHWA TNM versus the measured data.

The second comment from the Minnesota State DOT and the Minnesota Pollution Control Agency indicated that Minnesota State law requires the use of L_{10} and L_{50} descriptors, which are not provided by the FHWA TNM. The Minnesota State DOT, due to its State law, will be provided the capabilities to calculate L_{10} and L_{50} in connection with the FHWA TNM. The FHWA and the Volpe Center are currently developing these capabilities, and will provide them to the Minnesota State DOT once completed. It is estimated that the L_{10} and L_{50} capabilities will be provided to Minnesota State DOT in late Spring 2005. The Minnesota State DOT will be the only State DOT to receive this capability, and will not be required to use the FHWA TNM until this capability is provided to them.

A noise consultant of the URS Corporation indicated that he agreed with the proposal to require the use of the FHWA TNM. Additionally, the consultant recommended updating, rather than removing, the reference to the FHWA noise measurement report, indicating that local regulations using the report reference would become moot if the report reference were removed. The FHWA notes that FHWA reports may be referenced in local regulations, regardless of their inclusion in or exclusion from the FHWA noise regulations. Lastly, the consultant offered an additional comment that was beyond the scope of the NPRM.

Finally, a private citizen offered a comment stating that the regulations from 1970 are outdated and obsolete, and should be updated.

After considering all the submitted comments, the FHWA has decided to go final with the proposed rule with no changes.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal, since the final rule simply revises requirements for traffic noise prediction on Federal-aid highway projects to be consistent with the current state of the art technology for traffic noise prediction.

This final rule will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 5 U.S.C. 60 1–612) the FHWA has evaluated the effects of this action on small entities and has determined that the action will not have a significant economic impact on a substantial number of small entities. This final rule addresses traffic noise prediction on certain State highway projects. As such, it affects only States, and States are not

[4] A printed copy of the ''Validation of FHWA's Traffic Noise Model (TNM): Phase 1'' (Report no. FHWA–EP–02–031), August 2002, and ''Preview of Validation of FHWA's Traffic Noise Model (TNM): Phase 1'' (TNM v2.5 Addendum), April 9, 2004 are available on the docket.

included in the definition of small entities.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120.7 million or more in any one year (2 U.S.C. 1532). The definition of ''Federal Mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal government. the Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the FHWA has determined that this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this final rule directly preempts any State law or regulation or affects the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This final rule contains no collection of information requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the human and natural environment because it will update the specific reference to acceptable highway traffic noise prediction methodology and remove unneeded references to a specific noise measurement report and vehicle noise emission levels.

Executive Order 12630 (Taking of Private Property)

This action will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and interface with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this final rule under Executive Order 13175, dated November 6, 2000, and believes that this action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the Spring and Fall of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 772

Highways and roads, Incorporation by reference, Noise control.

Issued on: March 23, 2005.

Mary E. Peters,

Federal Highway Administrator.

■ In consideration of the foregoing, the FHWA is amending part 772 of title 23, Code of Federal Regulations, as follows:

PART 772—PROCEDURES FOR ABATEMENT OF HIGHWAY TRAFFIC NOISE AND CONSTRUCTION NOISE

■ 1. the authority citation for part 772 continues to read as follows:

Authority: 23 U.S.C. 109(h) and (i); 42 U.S.C. 4331, 4332; sec. 339(b), Pub. L. 104–59, 109 Stat. 568, 605; 49 CFR 1.48(b)

■ 2. In § 772.13 revise paragraphs (c) introductory text, (c)(1), (c)(4), and (d) to read as follows:

§ 772.113 Federal participation.

* * * * *

(c) The noise abatement measures listed below may be incorporated in Type I and Type II projects to reduce traffic noise impacts. The costs of such measures may be included in Federal-aid participating project costs with the Federal share being the same as that for the system on which the project is located.

(1) Traffic management measures (e.g., traffic control devices and signing for prohibition of certain vehicle types, time-use restrictions for certain vehicle types, modified speed limits, and exclusive lane designations).

* * * * *

(4) Construction of noise barriers (including landscaping for aesthetic purposes) whether within or outside the highway right-of-way.

* * * * *

(d) There may be situations where severe traffic noise impacts exist or are expected, and the abatement measures listed above are physically infeasible or economically unreasonable. In these instances, noise abatement measures other than those listed in paragraph (c) of this section may be proposed for Types I and II projects by the highway agency and approved by the FHWA on a case-by-case basis when the conditions of paragraph (a) of this section have been met.

■ 3. Revise § 772.17(a) to read as follows:

§ 772.17 Traffic noise prediction.

(a) Any analysis required by this subpart must use the FHWA Traffic Noise Model (FHWA TNM), which is

described in ''FHWA Traffic Noise Model'' Report No. FHWA–PD–96–010, including Revision No. 1, dated April 14, 2004, or any other model determined by the FHWA to be consistent with the methodology of the FHWA TNM. These publications are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and are on file at the National Archives and Record Administration (NARA). For information on the availability of this material at NARA call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. These documents are available for copying and inspection at the Federal Highway Administration, 400 Seventh Street, SW., Room 3240, Washington, DC 20590, as provided in 49 CFR part 7. These documents are also available on the FHWA's Traffic Noise Model Web site at the following URL: *http://www.trafficnoisemodel.org/main.html*.

* * * * *

[FR Doc. 05–6514 Filed 3–31–05; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9195]

RIN 1545–BA89

Designated IRS Officer or Employee Under Section 7602(a)(2) of the Internal Revenue Code

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to administrative summonses under section 7602(a) of the Internal Revenue Code. The regulations adopt the rules of the temporary regulations, which confirm that officers and employees of the Office of Chief Counsel may be included as persons designated to receive summoned books, papers, records, or other data and to take summoned testimony under oath.

DATES: *Effective Dates:* These regulations are effective April 1, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Rawlins at (202) 622–3630 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending 26 CFR part 301 under section 7602 of the Internal Revenue Code of 1986. The final regulations define officers or employees of the Office of Chief Counsel as persons who may be designated to receive summoned books, papers, records, or other data or to take testimony under oath. The final regulations also provide that more than one person may be designated to receive summoned information and testimony. Additionally, the final regulations clarify that a summons need not show the designation of the specific officer or employee who is authorized to take testimony and receive summoned materials.

On September 10, 2002, temporary regulations (TD 9015; 67 FR 57330) and a notice of proposed rulemaking (REG–134026–02; 67 FR 57354) containing these regulatory provisions were published in the **Federal Register**. No written comments were received on the temporary and proposed regulations; no public hearing was requested, and none was scheduled or held. Accordingly, the final regulations adopt the rules of the temporary regulations without change.

Explanation of Provisions

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 7602 of the Internal Revenue Code of 1986. The final regulations make permanent three changes established in the temporary regulations regarding the persons who may be designated to receive summoned books, papers, records, or other data or to take testimony under oath. Although IRS examiners will continue to be responsible for developing and conducting examinations, these changes will allow, among other things, officers and employees of the Office of Chief Counsel to participate fully along with an IRS employee or officer in a summoned interview.

For purposes of identifying persons who may receive summoned information or take testimony under oath, the final regulations define an officer or employee of the IRS to include all persons who administer and enforce the internal revenue laws or any other laws administered by the IRS and who are appointed or employed by, or subject to the directions, instructions, or orders of the Secretary of the Treasury or the Secretary's delegate. This amendment clarifies that officers and employees of the Office of Chief Counsel may be designated as persons authorized to take testimony under oath and to receive summoned books, papers, records, or other data.

The final regulations also expressly provide that more than one person may be designated to receive summoned information or to take testimony under oath during a summoned interview. Finally, the final regulations clarify the existing regulations by providing that a summons document need not designate the specific officer or employee who is authorized to take testimony under oath and to receive and examine books, papers, records, or other data.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f), the preceding temporary regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of this regulation is Elizabeth Rawlins of the Office of the Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy and Summonses Division.

List of Subjects in 26 CFR Part 301

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

Adoption of Amendments to the Regulations

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

PART 301—PROCEDURE AND ADMINISTRATION

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

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

■ **Par. 2.** In § 301.7602–1, paragraphs (b) and (d) are revised to read as follows:

§ 301.7602–1 Examination of books and witnesses.

* * * * *

(b) *Summons*—(1) *In general.* For the purposes described in § 301.7602–1(a), the Commissioner is authorized to summon the person liable for tax or required to perform the act, or any officer or employee of such person or any person having possession, custody, or care of books of accounts containing entries relating to the business of the person liable for tax or required to perform the act, or any other person deemed proper, to appear before one or more officers or employees of the Internal Revenue Service at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry. This summons power may be used in an investigation of either civil or criminal tax-related liability. The Commissioner may designate one or more officers or employees of the IRS as the individuals before whom a person summoned pursuant to section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 shall appear. Any such officer or employee is authorized to take testimony under oath of the person summoned and to receive and examine books, papers, records, or other data produced in compliance with the summons.

(2) *Officer or employee of the IRS.* For purposes of this paragraph (b), officer or employee of the IRS means all officers and employees of the United States, who are engaged in the administration and enforcement of the internal revenue laws or any other laws administered by the IRS, and who are appointed or employed by, or subject to the directions, instructions, or orders of the Secretary of the Treasury or the Secretary's delegate. An officer or employee of the IRS, for purposes of this paragraph (b), shall include an officer or employee of the Office of Chief Counsel.

* * * * *

(d) *Effective dates.* This section is applicable after September 3, 1982, except for paragraph (b), which is applicable on and after April 1, 2005. For rules under paragraph (b) that are applicable to summonses issued on or after September 10, 2002, see 26 CFR 301.7602–1T. For rules applicable on or before September 3, 1982, see 26 CFR 301.7602–1 (revised as of April 1, 1984).

§ 301.7602–1T [Removed]

■ **Par. 3.** Section 301.7602–1T is removed.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: February 15, 2005.

Eric Solomon,

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

[FR Doc. 05–6407 Filed 3–31–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD26

Apostle Islands National Lakeshore; Designation of Snowmobile and Off-Road Motor Vehicle Areas, and Use of Portable Ice Augers or Power Engines

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is adopting this final rule to designate areas on Lake Superior and the mainland unit for use by snowmobiles, off-road motor vehicles, and ice augers or power engines within Apostle Islands National Lakeshore. Unless otherwise provided for by special regulation, the operation of snowmobiles and off-road motor vehicles within areas of the National Park System is prohibited under existing regulations. The intended effect of the special regulations is to designate the routes, areas and frozen water surfaces identified herein and remove the requirement for a permit to operate an ice auger or power engine. All other portions of the existing regulations, governing use, safety, and operating requirements would remain in effect.

DATES: Effective April 1, 2005.

ADDRESSES: Mail inquiries to Superintendent, Apostle Islands National Seashore, Route 1, Box 4, Bayfield, Wisconsin 54814. Telephone: (715) 779–3398. E-mail: *APIS_Winter_Use@nps.gov*.

FOR FURTHER INFORMATION CONTACT: Jerry Case, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 7241, Washington, DC 20240. Phone: (202) 208–4206. E-mail: *Jerry_Case@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

This rule designates areas on the frozen surface of Lake Superior and a route on the mainland unit for use by snowmobiles, off-road motor vehicles, and ice augers or power engines within the established boundaries of Apostle Islands National Lakeshore. The areas designated are the frozen surface of Lake Superior surrounding every island from the shoreline out to the Lakeshore's ¼ mile boundary, and the frozen surface of Lake Superior from Sand Point to the mainland unit's eastern boundary. Motorized access will end at the shoreline of the islands. The route designated is the ¼ mile section of the Big Sand Bay Road that passes through the mainland unit to non-NPS property.

The enabling legislation for Apostle Islands National Lakeshore (16 U.S.C.; 460w–460w–7), specifically authorizes recreational use of the Lakeshore by the public. It further includes provisions for hunting, fishing, and trapping on the lands and waters within the boundaries, with certain limitations allowed for public safety administration, fish or wildlife management, or public use and enjoyment.

The Lakeshore comprises 21 islands and a 12-mile strip of mainland shoreline lying at the northern end of the Bayfield peninsula in Northern Wisconsin. Jurisdiction by the National Park Service extends for a distance of one-quarter mile offshore on the waters of Lake Superior surrounding each island and along the mainland coast. During the winter months, safe access up to shoreline areas and traditional hunting, fishing, and trapping areas frequently requires over ice travel by snowmobile and various forms of off-road motor vehicle transportation within the quarter-mile jurisdiction.

The Apostle Islands archipelago is roughly 287,000 acres in size, including all of the water between the islands. Of this 287,000 acres, less than 40,000 acres are contained within the park's islands, and an additional 27,500 acres are water, leaving over 210,000 acres of water within the archipelago that lie outside the jurisdiction of the NPS. In other words, the NPS has jurisdiction over only 15% of the waters between all of the islands.

The use of snowmobiles, off-road motor vehicles, and ice augers or power engines was common prior to the establishment of the Lakeshore and continues through the present day. The use of ice augers or power engines is necessary to provide access to the water through the ice for authorized fishing activities. Ice augers are typically operated only once a day at the

beginning of ice fishing activities. The length of operation is chiefly dependent on the thickness of the ice, which can vary from four inches to more than three feet. Most ice augers can cut through the ice surface in less than a few minutes. The exclusive purpose of operation is to cut or bore small holes in the frozen surface of Lake Superior to allow fishing equipment to pass freely.

These uses continue as a safe, common, and necessary method of access up to shorelines and other locations inside Lakeshore boundaries and corridors to areas outside the Lakeshore boundaries for gaining access to fishing and recreational areas during winter.

This designation of water surfaces and routes within the Lakeshore provides the public with the means to safely navigate around rough ice, cracks, pressure ridges and other dangerous ice conditions on frozen Lake Superior. It facilitates traditional and legislatively authorized uses such as hunting, fishing and trapping while also providing shoreline access for winter camping, hiking, snowshoeing, skiing, and other non-motorized recreational activities within the Lakeshore.

Under current NPS regulations, 36 CFR 2.18 and 4.10, the use of snowmobiles and off-road motor vehicles within areas of the National Park System is prohibited, except on water surfaces and designated routes that are used by motorboats or motor vehicles during other seasons. These water surfaces and routes must be designated and promulgated as special regulations. The use of portable engines associated with a power ice auger is allowed by permit only under 36 CFR 2.12(a)(3).

National Park Service Management Policies Section 8.2.2.1 states that any restriction of appropriate recreational uses will be limited to what is necessary to protect park resources and values, to promote visitor safety and enjoyment, or to meet park management needs. It also states the Superintendent will develop and implement visitor use management plans and take management actions, as appropriate, to ensure that recreational uses and activities within the park are consistent with authorizing legislation and do not cause unacceptable impacts to park resources or values.

After reviewing the issues surrounding the use of snowmobiles, off-road motor vehicles, and ice augers or power engines, NPS determined that the uses authorized in the rule are consistent with the enabling legislation and will not result in impairment of resources, values, or purposes for which the Lakeshore was established.

Snowmobiles and off-road motor vehicles are used as a means of transportation to a specific park location, where the user participates in a non-motorized recreational activity. When the snowmobile or off-road motor vehicle user reaches his or her destination, the snowmobile or off-road motor vehicle is stopped with the engine off, minimizing noise, pollution, and other associated impacts. By contrast, recreational touring, which is not allowed under this rule, would involve continuous or prolonged operation of a snowmobile or off-road motor vehicle which would increase noise, pollution, and other associated impacts.

The designation of areas and routes on the frozen surface of Lake Superior and the mainland road is consistent with water surfaces and routes used by powerboats and motor vehicles during other times of year. These regulations limit the designation of specific areas, and further restrict designation of routes to surfaces used by motor vehicles during other times of year. Because of these limitations, no additional snowmobile or off-road motor vehicle areas will be established. Hunting, fishing, trapping and non-motorized recreational opportunities on the islands will continue to be permitted as in the past. Operation of power engines in other areas or for other purposes will continue to be subject to authorization by permit only.

Less than 15 percent of the ice on Lake Superior that surrounds the islands is located within the Lakeshore's ¼-mile boundary. Exterior areas are owned by the State of Wisconsin and allow snowmobile and off-road motor vehicle operation pursuant to State regulations. With virtually unlimited snowmobile and off-road motor vehicle use in State areas, which are directly adjacent to park boundaries, the most significant factor for noise and emissions in island and mainland locations inside the Lakeshore boundary is wind speed and direction rather than where snowmobiles and off-road motor vehicles are operated. Sound and emissions can travel long distances over the hard frozen surface of Lake Superior.

The conditions that allow for reasonably safe snowmobile and off-road motor vehicle access on the frozen surface of Lake Superior are generally limited to late December through mid-March. During this time period, a majority of the wildlife has either migrated from the area or is in hibernation. Since snowmobiles and off-road motor vehicles are not permitted to operate outside of designated roads on the mainland or on the islands themselves, no impact is expected on the wintering white-tailed deer population, other wildlife, or the snow-covered vegetation. Therefore, it is anticipated that adoption of this regulation will not adversely affect the resources of the Lakeshore.

Allowing the use of snowmobiles, off-road motor vehicles, and ice augers or power engines on the frozen surface of Lake Superior is not expected to dramatically increase visitation to the area. Traditional users include fishermen and recreational users that engage in winter hunting, trapping, camping, hiking, snowshoeing, skiing, and other non-motorized recreational activities.

Designated state and county trails for snowmobile and off-road motor vehicle use are abundant outside the Lakeshore throughout Ashland and Bayfield Counties. Bayfield County contains more than 430 miles of maintained snowmobile trails and in excess of 108 miles of all-terrain vehicle routes. Ashland County has more than 205 miles and 132 miles respectively. There is little demand for recreational touring on the ice of Lake Superior.

Due to the short duration of accessibility, instability of the ice at many times and limited need for access to non-NPS property outside the Lakeshore boundary, it is not anticipated that a large increase in snowmobiles or off-road motor vehicles will result from adopting these special regulations. With current use limited and no significant increase expected, no measurable economic impact is anticipated.

The NPS considers that local residents, area businesses, and park visitors are best served by allowing for the use of snowmobiles, off-road motor vehicles, and portable ice augers/engines in the designated areas and routes.

A proposed regulation was published in the **Federal Register** on August 12, 2004 (69 FR 49841). Public comment was invited. The comment period closed October 12, 2004.

Summary of Comments Received

During the public comment period, the NPS received 408 comments via U.S. Mail and electronic mail (e-mail).

Comments Received in Support of the Rule:

All comments received from neighboring city, county, and State governments, agencies, and officials were in support of the proposed rule. The letters of support expressed concern for the safety of fishermen and park

users. Of the comments received from individuals who support the proposed rulemaking, 94 percent are residents in the Apostle Islands (Chequamegon Bay) area and 76 percent are residents of the State of Wisconsin.

Comment: The operation of snowmobiles, off-road motor vehicles, ice augers or power engines on the frozen surface of Lake Superior is necessary to avoid hazardous ice, pressure ridges, and cracks, and provide reasonable and safe access to fishing areas and island shoreline locations.

Response: NPS agrees with respondents and supports efforts to maintain visitor access and safety.

No comments were received in support of snowmobiles or off-road vehicles for the purpose of recreational touring.

Comments Received in Opposition to the Rule

Of the comments received from individuals who wrote to oppose the proposed rulemaking, 5 percent are from residents from the State of Wisconsin. Over 98 percent of the comments in opposition to the proposed rule were received from the Bluewater Network internet Web site.

The Bluewater Network Web site offered internet users prepared text that could not be modified and the option for individuals to add comments about personal experiences relating to snowmobiles, off-road vehicles, and other issues. Fifty-eight respondents expressed concern about noise, pollution, and the negative impacts on wildlife and their outdoor experience. The prepared text from the Bluewater Network addressed five comments that are listed below. The NPS response follows each comment.

Comment: The Bluewater Network (and 340 form letter comments initiated from its Web site) commented that the current prohibition on ORV/snowmobiles should be maintained.

Response: NPS recognizes that snowmobile and off-road vehicle (ORVs) operation around the Apostle Islands on frozen Lake Superior is a historic and traditional use that was in existence prior the establishment of the Apostle Islands National Lakeshore in 1970. NPS has determined that the continuation of these uses for access on designated areas and routes will enhance public safety and facilitate authorized uses without causing unacceptable impacts on the resources, values or purposes of the Lakeshore.

Comment: The Bluewater Network (and 340 form letter comments initiated from its Web site) commented that the proposed rule does not distinguish between ice fishing and recreational use, or how the regulations would be enforced.

Response: Snowmobiles and off-road motor vehicles are used as a means of transportation to a specific park location, where the user participates in a non-motorized recreational activity. When the snowmobile or off-road motor vehicle user reaches his or her destination, the snowmobile or off-road motor vehicle is stopped with the engine off. Recreational touring, which is not allowed under this rule, involves continuous or prolonged operation of a snowmobile or off-road motor vehicle. Park rangers will enforce this rule by monitoring visitor use and ice conditions. It is reasonable to expect users to travel around hazards on the ice and follow safe routes to access shoreline locations. Park rangers will verify that visitors are fishing, camping, snowshoeing, skiing, hiking or participating in other non-motorized activities based on their observed travel within the park, clothing, equipment, tools, and other accessories in their possession.

Comment: The Bluewater Network (and 340 form letter comments initiated from its Web site) commented that NPS should mark access corridors to prime fishing spots.

Response: The number of possible fishing spots (locations) around the Apostle Islands on Lake Superior is virtually unlimited. Fishermen choose areas primarily by existing ice conditions with safety as the paramount issue. Ice must be of adequate thickness to support people, fishing equipment, and methods of transport. Unfortunately, the frozen surface of Lake Superior can change on a daily basis due to variable winds, waves, currents, and temperature conditions. It is typical for winter ice to form between some of the inner islands in the Apostle Islands archipelago, but ice around all of the islands is unusual due to the variety of weather conditions listed above. It is a rare occurrence for all of Lake Superior to freeze over. Ice that forms over a period of days or weeks can be destroyed in hours by high winds, shifting ice, and/or the forces of wave action. The pressure of moving ice can create cracks, fissures, and areas of open water without warning. Hence, there is no practical way to mark or maintain the unlimited number of corridors or routes to fishing locations.

Comment: The Bluewater Network (and 340 form letter comments initiated from its Web site) commented that the Rule should prohibit snowmobile/ORV use on waters around those islands that are recommended for wilderness protection under alternative C in the 2004 Apostle Islands National Lakeshore Wilderness Suitability Study.

Response: The mainland unit, all of Sand, Basswood, and Long Islands, the lighthouses, and other existing developed areas of the Lakeshore, and all waters and frozen areas of Lake Superior were excluded from wilderness protection with the designation of the Gaylord A. Nelson National Wilderness (Pub. L. 108–447) on December 8, 2004. The wilderness boundary begins at the high water mark for each island having lands designated as wilderness, and proceeds inland. Operation of boats, snowmobiles, and off-road vehicles is limited to the waters and frozen surface of Lake Superior, which was not included in the wilderness designation. The use of motorized vessels and vehicles allow visitors safe access to island shorelines and other locations on Lake Superior both inside and outside of Lakeshore boundaries for fishing and non-motorized recreational activities. Regardless of what the NPS does, snowmobiles and ORVs will be legal ¼ mile from shore. Prohibiting them within the Lakeshore's ¼ mile boundary will not create quiet zones because of the long distances that sound travels over water and ice. Limiting or restricting access to shorelines would effectively prevent many park users from accessing proposed wilderness trailheads.

Comment: The Bluewater Network (and 340 form letter comments initiated from its Web site) commented that the NPS rule should require the use of advanced technologies, such as four stroke engines, for snowmobiles used at Apostle Islands National Lakeshore.

Response: Advanced technologies that reduce possible pollution are preferable, but it is impractical to require them now at the Apostle Islands for several reasons.

First, snowmobiles and off-road motor vehicles are used as a means of transportation to a specific park location, where the user participates in a non-motorized recreational activity. When the snowmobile or off-road motor vehicle user reaches his or her destination, the snowmobile or off-road motor vehicle is stopped with the engine off, minimizing noise, pollution, and other associated impacts. By contrast, recreational touring, which is not allowed under this rule, would involve continuous or prolonged operation of a snowmobile or off-road motor vehicle which would increase noise, pollution, and other associated impacts.

Second, Apostle Islands National Lakeshore has no ''gate'' or entrance through which all snowmobiles must pass before entering the park. The Lakeshore contains over 154 miles of shoreline on Lake Superior with virtually unlimited access points. Hence there is no practical way to stop non-complying machines from entering the park or assure compliance with technological criteria.

The Apostle Islands archipelago is roughly 287,000 acres in size, including all of the water between the islands. Of this 287,000 acres, less than 40,000 acres are contained within the park's islands, and an additional 27,500 acres are water, leaving over 210,000 acres of water or approximately 85% of the area, within the archipelago, outside of NPS jurisdiction. Requiring visitors to use only advanced technologies in an area that has so little NPS jurisdiction is not practical.

Lastly, there is no snowmobile rental industry in the park area, nor any fleets of snowmobiles owned by companies. Virtually all use in the park is by individuals, and virtually all machines are individually-owned. Imposing a technology requirement in the Lakeshore that exceeds other state and federal legal requirements would impose a high burden on individual users of the park which would not be justified here given the issues discussed above.

Additional Comments

Comment: The National Parks Conservation Association (NPCA) commented on the National Park Service's ''lack of compliance with the National Environmental Policy Act'' (NEPA). While supporting the implementation of the rule, NPCA urges that it be conditioned upon a future finding of no significant impact consistent with a more detailed NEPA analysis.

Response: The National Park Service has prepared an Environmental Assessment and Finding of No Significant Impact for the rule, in compliance with NEPA. Copies are available from Apostle Islands National Lakeshore at the address listed above.

The 27,500 acres of water within NPS jurisdiction is fragmented into 24 separate units (21 islands and 3 sections on mainland unit). Only 15% of the waters between all of the islands is located within park boundaries. Regardless of what the NPS decides with respect to these issues, snowmobiles, ORVs, and power augers will still be legal on more than 210,000 acres or 85% of the waters outside of park boundaries within the Apostle Islands archipelago.

Although snowmobile and ORV use within the Apostle Islands archipelago is not without any environmental impacts, the proposed rule is expected to have less than significant impacts on the human environment in the Apostle Islands National Lakeshore for the following reasons:

—Preventing snowmobile use within the park's ¼-mile water boundary would not affect the amount of snowmobile use in the larger Apostle Islands archipelago, and therefore it would not decrease any associated environmental impacts.
—The proposed rule authorizes snowmobiles/ORV use for transportation only, not long-distance touring. Hence the machines' engines will be turned off for the majority of time that they are on the lake, minimizing associated environmental impacts.
—Use is not concentrated, but generally dispersed.
—Wildlife are extremely scarce on the frozen surface of the lake, greatly decreasing potential impacts.

Comment: The Red Cliff and Bad River Bands of Lake Superior Chippewa Indians both stated that they wanted written assurance that the proposed rule would not be applied to regulate the Tribes' treaty-reserved rights either within or outside of their reservations and requested that such assurance be included in either the notice of the final rule or in the rule itself.

Response: Nothing in this rule modifies, alters, or affects any treaty rights.

Compliance With Other Laws

Need for an Immediate Effective Date

This rule relieves restrictions on snowmobile, off-road vehicle, ice auger and power engine use that would ordinarily exist under NPS regulations. For this reason, the Department has determined that good cause exists to waive the normal 30-day delay and make this rule effective upon publication as allowed by 5 U.S.C. 553(d)(1).

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Snowmobiles and off-road motor vehicles (all terrain vehicles) are not available for sale, rental, or lease through local businesses or tour companies within the Apostle Islands (Chequamegon Bay) area. Snowmobiles and off-road motor vehicles are almost exclusively privately owned or transported to the region from sources outside of the local geographic area.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies or controls. This rule supports local government and community plans for winter recreation that already exists.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does not raise novel legal or policy issues. This rule codifies long-existing uses at Apostle Islands National Lakeshore.

Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Snowmobiles and off-road motor vehicles (all terrain vehicles) are not available for sale, rental, or lease through local businesses or tour companies within the Apostle Islands (Chequamegon Bay) area. Snowmobiles and off-road motor vehicles are almost exclusively privately owned or transported to the region from sources outside of the local geographic area.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment,

investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and does not impose any other requirements on other agencies, governments, or the private sector. The use of snowmobiles, off-road vehicles, and ice augers or power engines on the frozen surface of Lake Superior and the mainland unit is a voluntary activity.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule codifies existing snowmobile, off-road vehicle, ice auger or power engine use on the frozen surface of Lake Superior and mainland unit. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule codifies existing snowmobile, off-road vehicle, ice auger or power engine use on the frozen surface of Lake Superior and mainland unit and does not place any requirements on State or local governments.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB Form 83–I is not required.

National Environmental Policy Act

As discussed above, the National Park Service has prepared an Environmental Assessment and Finding of No Significant Impact for this rule in compliance with NEPA. Copies are available from Apostle Islands National Lakeshore at the address listed above.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government to Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2 have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. Park staff consulted with the Red Cliff and Bad River Band of Lake Superior Chippewa and the Great Lakes Indian Fish and Wildlife Commission. In return the park received letters generally supporting the proposed regulations from the Red Cliff and Bad River Bands and verbal support from the Fish and Wildlife Commission.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

■ 2. In § 7.82 the existing paragraph is designated as (a), and paragraphs (b),(c), and (d) are added to read as follows:

§ 7.82 Apostle Islands National Lakeshore.

* * * * *

(b) *Snowmobiles.* (1) Snowmobiles may be operated for authorized purposes in the following designated areas within the Lakeshore:

(i) The frozen surface of Lake Superior that surrounds every island from the shoreline out to the authorized boundary;

(ii) The frozen surface of Lake Superior from Sand Point to the mainland unit's eastern boundary;

(iii) The ¼ mile section of the Big Sand Bay Road that passes through the park mainland unit to non-NPS property.

(2) Snowmobile use is authorized solely for the purpose of providing access for legal forms of:

(i) Ice fishing;

(ii) Hunting and trapping;

(iii) Winter camping;

(iv) Other non-motorized recreational activities; and

(v) Access to non-NPS property by owners, and to NPS properties by ''use and occupancy'' lessees and their guests.

(3) Snowmobiles may be used for administrative, law enforcement, and emergency services as determined by the Superintendent.

(4) Snowmobile use in areas and for purposes other than those stated in paragraphs (b)(1) and (b)(2) of this section is prohibited.

(5) Maps showing designated use areas are available at park headquarters.

(c) *Off-road vehicles.* (1) Off-road motor vehicles may be operated for authorized purposes in the following designated areas within the Lakeshore:

(i) The frozen surface of Lake Superior that surrounds every island from the shoreline out to the authorized boundary; and

(ii) The frozen surface of Lake Superior from Sand Point to the mainland unit's eastern boundary.

(2) Off-road motor vehicle use is authorized solely for the purpose of providing access for legal forms of:

(i) Ice fishing;

(ii) Hunting and trapping;

(iii) Winter camping;

(iv) Other non-motorized recreational activities; and

(v) Access to non-NPS property by owners, and to NPS properties by ''use and occupancy'' lessees and their guests.

(3) Off-road motor vehicles may be used for administrative, law enforcement, and emergency services as determined by the Superintendent.

(4) Off-road motor vehicle use in areas and for purposes other than those stated in paragraphs (c)(1) and (c)(2) is prohibited.

(5) Maps showing designated use areas are available at park headquarters.

(d) *Ice augers and power engines.* (1) *Ice auger* means a portable gasoline or electric powered engine connected to a rotating helical shaft for boring through the frozen surface of a lake.

(2) *Power engine* means a mobile gasoline or electric powered engine or device that is connected to a rotating saw blade or teeth linked in an endless chain for cutting through the frozen ice surface of a lake.

(3) Notwithstanding the requirements of 36 CFR 2.12(a)(3), operation of an ice auger or power engine is authorized on designated portions of Lake Superior for the specific purpose of cutting through the ice surface to provide access for legal ice fishing activity.

(4) Areas designated for use of an ice auger or power engine include:

(i) The frozen surface of Lake Superior that surrounds every island from the shoreline out to the authorized boundary; and

(ii) The frozen surface of Lake Superior from Sand Point to the mainland unit's eastern boundary.

(5) Maps showing designated use areas are available at park headquarters.

(6) Use of an ice auger or power engine on any land surface or frozen water surface outside of designated use areas is prohibited without a permit.

Dated: March 18, 2005.

Paul Hoffman,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–6385 Filed 3–31–05; 8:45 am]

BILLING CODE 4312–97–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1270

RIN 3095–AB40

Presidential Records Act Procedures

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: In response to a petition for rulemaking, NARA is amending our rules concerning Presidential records to lengthen the time from 10 working days to 35 calendar days to appeal denial of access. This proposed rule will affect the public.

DATES: Effective May 2, 2005.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis Heaps at (301) 837–1801.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the October 1, 2004, **Federal Register** (69 FR 58875) for a 60-day public comment period. NARA notified several researcher organizations about the proposed rule. A copy of the proposed rule was also posted on the NARA Web site. NARA received three responses to the proposed rule from the public.

NARA proposed, in response to a petition for proposed rulemaking, to extend the timeframe in which a person may appeal the denial of a request for access to Presidential records made under the Presidential Records Act (PRA) (44 U.S.C. 2201–2207). Two public commenters agreed with the proposed regulation changes. One member of the public objected to NARA's proposed length of appeal time. The commenter said that a requester should be able to appeal NARA's letter of denial ''within 35 working days after the requester receives written notification,'' not ''within 35 calendar days of the date of NARA's denial letter'' as NARA proposed.

We did not adopt that recommendation. The commenter argued that the proposed length in timeframe was unfair because the delivery of NARA's denial letter could be considerably delayed. The commenter said that the appeal timeframe should continue to be based on when the requester receives the denial, not the date of NARA's denial letter.

NARA proposed the timeframe requested by the petitioners, which was based on the timeframe for appeals NARA permits under the provisions of the Freedom of Information Act (FOIA) (*see* 36 CFR 1250.72(a)) and the Privacy Act (PA) (*see* 36 CFR 1202.56(a)). The petition cited the following compelling reasons for requesting an extension to the length of time to file an appeal under the PRA:

- NARA's longer appeal timeframes for FOIA and PA denials;
- The disparity with the lengthy waits requesters have, only to learn of a denial of access; and,
- Extenuating circumstances that make it difficult for requesters to appeal in 10 days after receipt of NARA's denial. Among the latter are requesters being on vacation, business trips, and academic absences like visiting professorships and sabbaticals.

The petitioners' request is based on well-recognized and widely accepted practices in implementing the FOIA. NARA believes that this rule will be of assistance to requesters of Presidential records.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB). As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small entities because this rule applies to the public. This rule does not have any federalism implications. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

List of Subjects in 36 CFR Part 1270

Archives and records.

■ For the reasons set forth in the preamble, NARA amends part 1270 of title 36, Code of Federal Regulations, as follows:

PART 1270—PRESIDENTIAL RECORDS

■ 1. The authority citation for part 1270 is revised to read as follows:

Authority: 44 U.S.C. 2201–2207.

■ 2. Amend § 1270.42 by revising paragraphs (a), (b), and (d) to read as follows:

Subpart D—Access to Presidential Records

§ 1270.42 Denial of access to public; right to appeal.

(a) Any person denied access to a Presidential record (hereinafter *the requester*) because of a determination that the record or a reasonable segregable portion of the record was properly restricted under 44 U.S.C. 2204(a), and not placed in the public domain by the former President or his agent, may file an administrative appeal with the appropriate Presidential library director at the address cited in part 1253 of this chapter.

(b) All appeals must be received by NARA within 35 calendar days of the date of NARA's denial letter.

* * * * *

(d) Upon receipt of an appeal, the appropriate Presidential library director has 30 working days from the date an appeal is received to consider the appeal and respond in writing to the requester. The director's response must state whether or not the Presidential records requested are to be released and the basis for this determination. The director's decision to withhold release of Presidential records is final and not subject to judicial review.

Dated: March 25, 2005.

Allen Weinstein,

Archivist of the United States.

[FR Doc. 05–6410 Filed 3–31–05; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–PA–0006; FRL–7893–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC RACT Determinations for Three Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for three major sources of volatile organic compounds (VOC). These sources are located in Pennsylvania. EPA is

approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on May 31, 2005 without further notice, unless EPA receives adverse written comment by May 2, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–PA–0006 by one of the following methods:

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

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

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

D. *Mail:* R03–OAR–2005–PA–0006, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to RME ID No. R03–OAR–2005–PA–0006. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: LaKeshia Robertson, (215) 814–2113, or by e-mail at *robertson.lakeshia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and NO_X sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

State implementation plan revisions imposing RACT for three classes of VOC sources are required under section 182(b)(2). The categories are:

(1) All sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of attainment;

(2) All sources covered by a CTG issued prior to November 15, 1990; and

(3) All major non-CTG sources.

The Pennsylvania SIP already has approved RACT regulations and requirements for all sources and source categories covered by the CTGs. The Pennsylvania SIP also has approved regulations to require major sources of NO_X and additional major sources of VOC emissions (not covered by a CTG) to implement RACT. These regulations are commonly termed the ''generic RACT regulations''. A generic RACT regulation is one that does not, itself, specifically define RACT for a source or source categories but instead establishes procedures for imposing case-by-case RACT determinations. The Commonwealth's SIP-approved generic RACT regulations consist of the procedures PADEP uses to establish and impose RACT for subject sources of VOC and NO_X. Pursuant to the SIP-approved generic RACT rules, PADEP imposes RACT on each subject source in an enforceable document, usually a Plan Approval (PA) or Operating Permit (OP). The Commonwealth then submits these PAs and OPs to EPA for approval as source-specific SIP revisions.

On August 30, 2004, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for three sources of VOC. The Commonwealth's submittals consist of PAs and OPs which impose VOC RACT requirements for each source.

II. Summary of the SIP Revisions

Copies of the actual PAs and OPs imposing RACT and PADEP's evaluation memoranda are included in the electronic and hard copy docket for this final rule. As previously stated, all documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105. The table below identifies the sources and the individual PAs and OPs which are the subject of this rulemaking.

PENNSYLVANIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source	County	Plan approval (PA #) operating permit (OP #)	Source type	''Major source'' pollutant
Salem Tube, Inc	Mercer	OP 43–142	Five Reheat Furnaces and Trichloroethylene Dipping Tank.	VOC
SGL Carbon Corporation	Elk	OP 24–131	Flame Grids, Furnaces, and Special Impregnation (resin).	VOC
Dominion Trans, Inc.	Clinton	18–00006	Four Salt Heaters, Natural Gas Boiler, Two Hot Water Heaters, Two Space Heaters, and Three Superior Boilers.	VOC

EPA is approving these RACT SIP submittals because PADEP established and imposed these RACT requirements in accordance with the criteria set forth in its SIP-approved generic RACT regulations applicable to these sources. The Commonwealth has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC RACT for three major of sources. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on May 31, 2005 without further notice unless EPA receives adverse comment by May 2, 2005. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for three named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 31, 2005. Filing a petition for reconsideration by the Administrator of this final rule approving source-specific RACT requirements for three sources in the Commonwealth of Pennsylvania does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 24, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (d)(1) is amended by adding the entries for Salem Tube, Inc., SGL Carbon Corporation, and Dominion Trans, Inc. at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(d) * * *

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
*	*	*	*	*	*
SGL Carbon Corporation	OP 24–131	Elk	5/12/95; 5/31/95	4/1/05, [Insert page number where the document begins].	52.2020(d)(1)(e).
Salem Tube, Inc.	OP 43–142	Mercer	2/16/99	[4/1/05, [Insert page number where the document begins].	52.2020(d)(1)(e).
Dominion Trans, Inc	18–0006	Clinton	6/15/99; 9/29/03	4/1/05, [Insert page number where the document begins].	52.2020(d)(1)(e).

* * * * *

[FR Doc. 05–6378 Filed 3–31–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 403, 405, 410, 411, 414, 418, 424, 484, and 486

[CMS–1429–F2]

RIN 0938–AM90

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2005: Correcting Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correcting amendment.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on November 15, 2004 entitled ''Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2005.''

DATES: *Effective Date:* This rule is effective January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Diane Milstead, (410) 786–3355.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 04–24758 of November 15, 2004 (69 FR 66236), there were a number of technical errors that we are identifying and correcting in the ''Correction of Errors'' section of this correcting amendment. Additionally, there are various revisions to Addenda B, C and F.

Discussion of Addenda B, C and F

In Addenda B and C, we assigned incorrect status indicators to the following CPT and HCPCS codes: Page 66429 for CPT codes 0066T and 0074T, page 66502 for CPT code 36415, page 66504 for CPT code 37195, pages 66682 and 66688 for HCPCS code G0363. We also assigned incorrect global periods for the following CPT and HCPCS codes: Page 66539 for CPT code 54150; pages 66638 and 66687 for CPT codes 91034, 91034–26, 91034–TC, 91035, 91035–26, 91035–TC, 91037, 91037–26, 91037–TC, 91038 91038–26, 91038–TC, 91040, 91040–26, 91040–TC; and pages 66682 and 66688 for G0350, G0354 and G0358. These corrections are reflected in section II.C.1 of this correcting amendment.

The short descriptors for the following HCPCS codes were listed incorrectly on page 66681: G0324, G0325, G0326 and G0327. The corrected descriptors are shown in section II.C.1 of this correcting amendment.

Incorrect practice expense relative value units (RVUs) were shown for the following CPT codes: Pages 66546 and 66685 for CPT code 58356; page 66557 for CPT codes 62367 and 62368; page 66614 for CPT code 77418; pages 66627 and 66686 for CPT codes 78811–26, 78812–26, 78813–26, 78814–26, 78815–26 and 78816–26; page 66629 for CPT code 88125 and 88125–TC; pages 66633 and 66687 for CPT codes 88367, 88367–TC, 88368, 88368–TC and 89220; and page 66665 for CPT code 96567. The corrected RVUS are shown in section II.C.2 of this correcting amendment.

On page 66666, we inadvertently included work and malpractice RVUs for acupuncture services, CPT codes 97810, 97811, 97813 and 97814 and there services are not covered by Medicare. We typically do not publish RVUs for services that Medicare does not cover. Instead, we list these services with ''0.00's'' in the RVU columns. This correction is reflected in section II.C.2 of this correcting amendment.

The following HCPCS codes were discussed on page 66308 of the rule but were inadvertently omitted from page

66683 of Addendum B: G9021, G9022, G9023, G9024, G0925, G9026, G9027, G9028, G9029, G9030, G09031 and G9032. The HCPCS codes are shown in section II.C.3 of this correcting amendment.

On page 66900, the title should be corrected to read ''Addendum L.''

Discussion of Regulation Text Errors

In the regulation text we made technical omissions that should have been included in §§ 403.766, 414.39, and 424.80. The corrections are reflected in section II.B. of this correcting amendment.

II. Correction of Errors

In FR Doc. 02–37639 of November 15, 2004 (69 FR 66236), make the following corrections—

A. Correction of Preamble Errors

1. Under ''For Further Information Contact'' on page 66236, third column and on page 66237 in the first column make the following corrections:

Bill Larson (410) 786–4639 or Tiffany Sanders (410) 786–1948 for issues related to coverage of an initial preventive physical exam.

Joyce Eng (410) 786–4619 for issues related to coverage of cardiovascular screening tests.

Betty Shaw (410) 786–4165 for issues related to coverage of diabetes screening tests.

Steve Berkowitz (410) 786–0277 for issues related to coverage of routine costs associated with certain clinical trials.

Karen Daily (410) 786–0189 for issues related to clinical conditions for payment of covered items of durable medical equipment.

2. On page 66237, third column, start a new line after ''Section VI. Five-Year Refinement of Relative Value Units'' and before ''Section VII. Update to the Codes for Physician Self-Referral Prohibition''.

3. In Table 2, ''Equipment Items Needing Specialty Input for Pricing and Proposed Deletions'', on page 66252 under the column labeled ''Commenter response'', the price referenced for neurobehavioral status instrument-average was listed incorrectly. This should be corrected to read ''Submitted price of $13,635''.

4. In table 5 and table 7 on pages 66268 and 66270, we incorrectly used the specialty description ''Osteopathic Manipulative Therapy.'' This should be revised to read ''Osteopathic Manipulative Medicine.''

5. On page 66306, first column, last sentence, in the response, we erroneously stated ''Physicians should use HCPCS code G0352 for injections previously billed under CPT code 90783.'' This is incorrect. This sentence should be corrected to read ''Physicians should continue using CPT code 90783 when billing for an intra-arterial therapeutic or diagnostic injection.

6. On page 66369, in the first column, first paragraph, third sentence, ''CRP codes'' should be corrected to read ''CPT codes'' and in the first line of the second column, ''work PVUs'' should be corrected to read ''work RVUs.''

7. On page 66385, the statutory formula that follows the first sentence in the third column did not print legibly. The referenced formula and information should read as follows:

$$\text{UAF} = \frac{\text{Target}_{04} - \text{Actual}_{04}}{\text{Actual}_{04}} \times .75 + \frac{\text{Target}_{4/96-12/04} - \text{Actual}_{4/96-12/04}}{\text{Actual}_{04} \times \text{SGR}_{05}} \times .33$$

UAF = Update Adjustment Factor.

Target_{04} = Allowed Expenditures for 2004 or $77.1 billion.

Actual_{04} = Estimated Actual Expenditures for 2004 = $84.9 billion.

$\text{Target}_{4/96-12/04}$ = Allowed Expenditures from 4/1/1996–12/31/2004 = $531.8 billion.

$\text{Actual}_{4/96-12/04}$ = Estimated Actual Expenditures from 4/1/1996–12/31/2003 = $545.5 billion.

SGR_{05} = 4.3 percent (1.043).

$$\frac{\$77.1 - \$84.9}{\$84.9} \times .75 + \frac{\$531.8 - \$545.5}{\$84.9 \times 1.043} \times .33 = -0.120$$

8. In the first column, second paragraph, second sentence on page 66404 we state ''Payment in 2005 for G0351 (the comparable code) will be $125.69.'' This should be corrected to read as follows ''Payment in 2005 for G0357 (the comparable code) will be $125.69.''

9. On page 66408, the second column, the last sentence in the first full paragraph, the referenced estimate related to utilization growth for rheumatology is incorrectly stated as 9 percent. This should be corrected to read ''would increase by 16 percent.''

10. On page 66412, third column, following table 46, line 4, the discussion concerning sections 303–304, the first complete sentence beginning ''In addition, we are also paying a supplying fee * * *'' is corrected to read as follows: ''In addition, we are also paying a supplying fee of $50 for the initial immunosuppressive prescription in the first month after a beneficiary has a transplant and a per prescription supplying fee of $24 for each supplied immunosuppressive prescription thereafter and for each supplied oral anti-cancer and oral anti-emetic prescription.''

B. Correction of Regulation Text Errors

■ Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendments to parts 403, 414, and 424:

PART 403—[CORRECTED]

■ 1. The authority citation for part 403 continues to read as follows:

Authority: 42 U.S.C. 1359b–3 and secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 403.766 [Corrected]

■ 2. Section 403.766 is amended by revising paragraph (a) introductory text to read as follows:

§ 403.766 Requirements for coverage and payment of RNHCI home services.

(a) Medicare Part A pays for RNHCI home services if the RNHCI provider does the following:

* * * * *

PART 414—[CORRECTED]

■ 3. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1).

§ 414.39 [Corrected]

■ 4. Section 414.39 is amended by revising paragraph (c)(1) to read as follows:

§ 414.39 Special rules for payment of care plan oversight.

* * * * *

(c) * * *

(1) An NPP can furnish physician care plan oversight (but may not certify a patient as needing home health services) only if the physician who signs the plan of care provides regular ongoing care under the same plan of care as does the NPP billing for care plan oversight and either—

* * * * *

PART 424—[CORRECTED]

■ 5. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 424.80 [Corrected]

■ 6. Section 424.80 is amended by revising paragraph (a) to read as follows:

§ 424.80 Prohibition of reassignment of claims by suppliers.

(a) *Basic prohibition.* Except as specified in paragraph (b) of this section, Medicare does not pay amounts that are due a supplier under an assignment to any other person under reassignment, power of attorney, or any other direct arrangement. Nothing in this section alters a party's obligations under the anti-kickback statute (section 1128B(b) of the Act), the physician self-referral prohibition (section 1877 of the Act), the rules regarding physician billing for purchased diagnostic tests (§ 414.50 of this chapter), the rules regarding payment for services and supplies incident to a physician's professional services (§ 410.26 of this chapter), or any other applicable Medicare laws, rules, or regulations.

* * * * *

C. Correction of Errors in the Addendum

1. In Addenda B and C, the following CPT and HCPCS codes are corrected to read as follows:

[BILLING CODE 4120–01–P]

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs	Non-facility PE RVUs	Facility PE RVUs	Malpractice RVUs	Non-facility Total	Facility Total	Global
0066T		N	Ct colonography; screen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0074T		N	Online physician e/m	0.00	0.00	0.00	0.00	0.00	0.00	XXX
36415		X	Routine venipuncture	0.00	0.00	0.00	0.00	0.00	0.00	XXX
37195		C	Thrombolytic therapy, stroke	0.00	0.00	NA	0.00	0.00	NA	XXX
54150		A	Circumcision	1.81	4.35	0.70	0.16	6.32	2.67	000
91034		A	Gastroesophogeal reflux test	0.97	5.24	NA	0.12	6.33	NA	000
91034	26	A	Gastroesophogeal reflux test	0.97	0.34	0.34	0.06	1.37	1.37	000
91034	TC	A	Gastroesophogeal reflux test	0.00	4.90	NA	0.06	4.96	NA	000
91035		A	G-esoph reflx tst w/electrod	1.59	10.80	NA	0.12	12.51	NA	000
91035	26	A	G-esoph reflx tst w/electrod	1.59	0.56	0.56	0.06	2.21	2.21	000
91035	TC	A	G-esoph reflx tst w/electrod	0.00	10.24	NA	0.06	10.30	NA	000
91037		A	Esoph imped function test	0.97	2.93	NA	0.12	4.02	NA	000
91037	26	A	Esoph imped function test	0.97	0.34	0.34	0.06	1.37	1.37	000
91037	TC	A	Esoph imped function test	0.00	2.59	NA	0.06	2.65	NA	000
91038		A	Esoph imped funct test > 1h	1.10	2.22	NA	0.12	3.44	NA	000
91038	26	A	Esoph imped funct test > 1h	1.10	0.39	0.39	0.06	1.55	1.55	000
91038	TC	A	Esoph imped funct test > 1h	0.00	1.83	NA	0.06	1.89	NA	000
91040		A	Esoph balloon distension tst	0.97	11.13	NA	0.12	12.22	NA	000
91040	26	A	Esoph balloon distension tst	0.97	0.34	0.34	0.06	1.37	1.37	000
91040	TC	A	Esoph balloon distension tst	0.00	10.79	NA	0.06	10.85	NA	000
G0324		A	ESRD related serv /dy, 2y	0.35	0.24	0.24	0.01	0.60	0.60	XXX
G0325		A	ESRD related serv / dy 2-11yr	0.23	0.12	0.12	0.01	0.36	0.36	XXX
G0326		A	ESRD related serv / dy 12-19y	0.27	0.13	0.13	0.01	0.41	0.41	XXX
G0327		A	ESRD related serv / dy 20+yrs	0.14	0.08	0.08	0.01	0.23	0.23	XXX
G0350		A	Concurrent infusion	0.17	0.44	NA	0.04	0.65	NA	ZZZ
G0354		A	Each addition sequential IV	0.10	0.57	NA	0.04	0.71	NA	ZZZ
G0358		A	IV push each additional drug	0.20	1.61	NA	0.06	1.87	NA	ZZZ
G0363		T	Irrigate implanted venous de	0.04	0.69	NA	0.01	0.74	NA	ZZZ

1 All CPT codes copyright 2005 American Medical Association

2. In Addenda B and C, the following CPT and HCPCS codes are corrected to read as follows:

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs	Non-facility PE RVUs	Facility PE RVUs	Malpractice RVUs	Nonfacility Total	Facility Total	Global
58356		A	Endometrial cryoablation	6.36	61.43	2.69	0.82	68.61	9.87	010
62367		A	Analyze spine infusion pump	0.48	0.61	0.10	0.03	1.12	0.61	XXX
62368		A	Analyze spine infusion pump	0.75	0.69	0.17	0.06	1.50	0.98	XXX
77418		A	Radiation tx delivery, imrt	0.00	18.02	NA	0.13	18.15	NA	XXX
78811	26	I	Tumor imaging (pet), limited	1.54	0.53	0.53	0.11	2.18	2.18	XXX
78812	26	I	Tumor imaging (pet),skul-thigh	1.93	0.66	0.66	0.11	2.70	2.70	XXX
78813	26	I	Tumor imaging (pet),full body	2.00	0.69	0.69	0.11	2.80	2.80	XXX
78814	26	I	Tumor imaging pet/ct, limited	2.20	0.76	0.76	0.11	3.07	3.07	XXX
78815	26	I	Tumor imaging pet/ct, skul-thigh	2.44	0.84	0.84	0.11	3.39	3.39	XXX
78816	26	I	Tumor imaging pet/ct, full body	2.50	0.86	0.86	0.11	3.47	3.47	XXX
88125		A	Forensic cytopathology	0.26	0.27	NA	0.02	0.55	NA	XXX
88125	TC	A	Forensic cytopathology	0.00	0.16	NA	0.01	0.17	NA	XXX
88367		A	Insitu hybridization, auto	1.30	4.03	NA	0.12	5.45	NA	XXX
88367	TC	A	Insitu hybridization, auto	0.00	3.49	NA	0.06	3.55	NA	XXX
88368		A	Insitu hybridization, manual	1.40	2.39	NA	0.12	3.91	NA	XXX
88368	TC	A	Insitu hybridization, manual	0.00	1.79	NA	0.06	1.85	NA	XXX
89220		A	Sputum specimenm collection	0.00	0.43	NA	0.02	0.45	NA	XXX
96567		A	Photodynamic tx, skin	0.00	1.95	NA	0.04	1.99	NA	XXX
97810		N	Acupunct w/o stimul 15 min	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97811		N	Acupunct w/o stimul addl 15 min	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
97813		N	Acupunct w/ stimul 15 min	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97814		N	Acupunct w/o stimul addl 15 min	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ

1 All CPT codes copyright 2005 American Medical Association

3. In Addendum B, the following HCPCS codes are included to read as follows:

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs	Non-facility PE RVUs	Facility PE RVUs	Malpractice RVUs	Nonfacility Total	Facility Total	Global
G9021		X	Chemo assess nausea vomit L1	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9022		X	Chemo assess nausea vomit L2	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9023		X	Chemo assess nausea vomit L3	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9024		X	Chemo assess nausea vomit L4	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9025		X	Chemo assessment pain L1	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9026		X	Chemo assessment pain L2	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9027		X	Chemo assessment pain L3	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9028		X	Chemo assessment pain L4	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9029		X	Chemo assess for fatigue L1	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9030		X	Chemo assess for fatigue L2	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9031		X	Chemo assess for fatigue L3	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9032		X	Chemo assess for fatigue L4	0.00	0.00	0.00	0.00	0.00	0.00	XXX

1 All CPT codes copyright 2005 American Medical Association

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment prior to publication of a final notice. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the notice issued. In accordance with section 903 of the MMA, failure to retroactively apply the corrections would be contrary to the public interest.

We find it unnecessary to undertake notice and comment rulemaking because this notice merely provides technical corrections to the regulations. Therefore, we find good cause to waive notice and comment procedures.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 16, 2005.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 05–6131 Filed 3–25–05; 8:45 am]

BILLING CODE 4120–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 413

[CMS–1213–CN]

RIN 0938–AL50

Medicare Program; Prospective Payment System for Inpatient Psychiatric Facilities; Final Rule; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects errors that appeared in the final rule published in the **Federal Register** on November 15, 2004, entitled ''Medicare Program; Prospective Payment System for Inpatient Psychiatric Facilities.'' This document also supplements the November 15, 2004 final rule.

DATES: Effective January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Janet Samen, (410) 786–9161.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 04–24787 of November 15, 2004 (69 FR 66922), there were several errors that are identified in the ''Summary of Errors'' section and corrected in the ''Correction of Errors'' section below. In addition to clarifying ambiguities and correcting typographical errors and incorrect references, this document is a supplement to the document published on November 15, 2004, entitled ''Medicare Program; Prospective Payment System for Inpatient Psychiatric Facilities'' (hereinafter referred to as the IPF PPS final rule or final rule) because it includes a timely submitted comment and our response that we inadvertently failed to include in the final rule. The provisions of this correction notice are effective as if they had been included in the final rule. Accordingly, the corrections are effective January 1, 2005.

II. Summary of Errors

In the November 15, 2004 final rule, in payment calculation examples, we stated that we computed a wage adjustment factor for each case by multiplying the Medicare 2005 hospital wage index for each facility by the labor-related share and adding the non-labor share. We used the correct labor share value of 72.247 percent on page 66953 in Table 8 of the final rule. However, we inadvertently did not use the correct labor-related and non-labor share values in other portions of the final rule. Instead of using 72.247 percent for the labor share and 27.753 percent for the non-labor share, we used a value of 72.528 percent for the labor share and 27.472 percent for the non-labor share. This error only affected the values in the payment calculation examples on pages 66942, 66943, 66960, and 66961 of the final rule (See sections III.A.9, III.A.10 and the values in the outlier calculation example in section III.A.25 of this correction notice). These errors did not have any effect on actual payments. The table in Addendum A on page 66982 of the final rule that contains the labor and non-labor portion of the Per Diem Rate is also corrected in section III.C of this correction notice.

The table reflects the incorrect percentages for the labor- and non-labor-related shares, and therefore the dollar amounts are incorrect. However, as with the above examples, this error does not represent a change in policy from the final rule, and it did not affect any actual Medicare payments. In addition, we issued Change Request 3541 (CR3541), Transmittal 384, on December 1, 2004 that clarified the correct labor and non-labor portions of the Federal per diem base rate.

One of the patient-level adjustments we proposed was a comorbidity adjustment. We provided a comorbidity list in the preamble of the proposed rule (68 FR 66930 and 66931). In the final rule, we made changes to the proposed IPF PPS comorbidity category list. We revised the list by: (1) Adding a new category entitled ''Developmental Disabilities''; (2) deleting the HIV category and moving it into the ''Infectious Diseases'' category; and (3) changing the titles of two categories, ''Malignant Neoplasms'' to ''Oncology Treatment,'' and ''Atherosclerosis of the extremity with Gangrene'' to ''Gangrene.'' However, we inadvertently published several inconsistencies in the list of comorbidities. In order to receive the comorbidity adjustment for malignant neoplasms, we reported that IPFs will be required to code the ICD–9–CM code for the specific malignant neoplasm from ICD–9–CM chapter 2 codes (140 through 239) and one of the two ICD–9–CM procedures codes (chemotherapy (V58.0) or radiation treatment (V58.1)) to indicate the treatment modality the patient received. The ICD–9–CM chapter 2 codes for Neoplasm actually includes both benign and malignant neoplasm codes. Therefore, in order to be consistent with our policy, we are clarifying in section III.A.7.c of this correction notice that we are including all of the codes in ICD–9–CM chapter 2 for Neoplasm. We are also deleting the word ''malignant'' in the three places it appears on page 66939 in the final rule. In addition, we inadvertently reported V codes instead of the ICD–9–CM radiation and chemotherapy procedure codes. In order to be consistent with our policy, we deleted the V codes and reported the correct ICD–9–CM procedure codes. We are clarifying the policy in sections III.A.7 through III.A.13 of this correction notice.

Several ICD–9–CM codes were inadvertently omitted or reported incorrectly in the preamble of the final rule. These mistakes include: Chronic Obstructive Pulmonary Disease (for which we incorrectly reported code V461 instead of V4611, and neglected to report code V4612); Infectious Diseases category (for which we incorrectly reported code 0100 instead of code 01000); Oncology Treatment category (for which we incorrectly reported code 140 instead of code 1400); and Renal Failure, Acute category (for which we incorrectly reported codes 6363 and 6373, and neglected to report several codes). In addition, we inadvertently omitted one code from under the Drug and/or Alcohol Induced Mental Disorders. We are also revising the Diabetes category to include both Type I and Type II Diabetes because this comorbidity category contains diagnosis codes for both types of Diabetes and we neglected to include Type II in the final rule. We are correcting these mistakes in sections III.A.8.a through III.A.8.g and section III.A.11 of this correction notice.

On page 66945 of the preamble, we included a claims processing description that we believe is operational and therefore inappropriate for inclusion in the final rule. In the preamble of the final rule on page 66966, we indicate that we will issue operational instructions to address specific billing issues. Therefore, we are deleting the paragraph on page 66945 that explains the processing of claims for the IPF PPS (see section III.A.12.f of this correction). The coding logic that identifies the primary diagnosis code as non-psychiatric and searches the secondary codes for a psychiatric code to assign a DRG code for an adjustment will be provided in the claims processing instructions. In the event that the coding logic is changed in the future, we need only make changes to the claims processing instructions rather than to the regulations.

In the Code First example we provided in the final rule on page 66945, we made a typographic error and listed the ICD–9–CM code for Dementia as ''33.82'' instead of ''331.82.'' In addition, we inadvertently omitted two 5-digit ICD–9–CM codes (294.10 and 294.11) that fall under 294.1. Finally, the website we provided for the Official Guidelines for Coding and Reporting was incorrect. We are making these corrections in section III.A.12 of this correction notice.

In the preamble of the final rule, we indicate in several places that IPFs must indicate on their claims the revenue code and procedure code for Electroconvulsive Therapy (ECT) (Rev code 901 and procedure code 90870) and the number of units of ECT, that is, the number of ECT treatments the patient received during the IPF stay. We explain that providing these data will ensure that facilities are appropriately reimbursed for the treatments they provided. We inadvertently referred to the Current Procedural Terminology (CPT) procedure code 90870 for ECT treatments rather than using the ICD–9–CM procedure code 94.27. Therefore, sections III.A.15.b and c of this correction notice replace the CPT procedure code 90870 with the ICD–9–CM procedure code.

In the preamble of the final rule on page 66951, we state that the ECT rate is adjusted by the facility characteristics, but we neglected to mention that the Cost of Living Adjustment (COLA) is one of these characteristics. The COLA is described elsewhere in the final rule on pages 66957 and 66958 and the correction of this omission does not represent a change in our policy. We are making this correction in section III.A.15.d of this correction notice.

In section III.A.17.b of this notice, we correct a typographical error in Table 8 on page 66953. Each of the values listed in the second column is correct, including the final total. However, we incorrectly reported the sum of the first four values (the subtotal) as 68.818 instead of 68.878. The incorrect value was not factored into any payment calculations, so no Medicare payments were affected by this error.

In sections III.A.19 through III.A.21 and in section III.B (under § 412.422) of this correction notice, we describe the teaching status adjustments. Beginning on page 66954 of the final rule, we presented the public comments and our responses to the proposed changes. However, we inadvertently omitted one comment that was timely submitted regarding our proposed teaching adjustment. The commenter asked if the IPF PPS would compensate for a school of nursing and a pastoral care teaching program. We indicate that we will pay for such programs, and that these payments are ''pass-through'' paid outside the PPS. We insert that comment and our response in section III.A.21. We also amend the preamble and the regulation text to correct the range of approved medical education programs that are treated as pass-through costs. The range listed in the final rule inadvertently did not cover all approved programs. This correction clarifies that the list of programs includes direct graduate medical education and nursing and allied health education activities. The correction of this list of programs is consistent with our policy as published in the final rule and does not reflect a change in policy.

We neglected to state in the final rule that we will be obtaining the total Medicare inpatient routine charges from the Provider Statistical &

Reimbursement Reconciliation Reports (PS&R) associated with the applicable cost report for IPFs that are distinct part units. This is how we routinely obtain charges, but we neglected to include this statement in our final rule. The clarification is made in section III.A.26 of this correction notice.

Throughout the final rule, we explain that the IPF PPS is effective for cost reporting periods beginning on or after January 1, 2005. However, on page 66970 of the preamble to the final rule, we mistakenly stated that the methodology used for determining the Federal per diem base rate for cost reporting periods beginning on or after ''January 5, 2005'' includes certain factors. We correct this typographical error, changing January 5, to January 1, in section III.A.27 of this correction notice.

The Federal per diem base rate is $575.95, as indicated in the final rule, including in Table 8 on page 66982. However, on page 66972, in the Regulatory Impact Analysis, we mistakenly noted that the Federal per diem base rate is $572.00. In section III.A.28 of this notice, we correct the value of the Federal per diem base rate to be consistent with the rest of the final rule. This error had no payment implications as the incorrect number was not used in any calculations or payments.

In addition to correcting errors in the preamble, we also corrected several sections of the regulation text (see section III.B. of this correction notice). In discussing the Federal per diem base rate (§ 412.424), we incorrectly described the rate as ''unadjusted'' in § 412.424(c)(1). In order to be consistent with the actual policy, as described on pages 66931 through 66933 of the final rule, we changed ''unadjusted'' to ''adjusted'' to reflect that the Federal per diem base rate is the rate that has been adjusted for budget neutrality, behavioral offset, and outlier and stop-loss payments.

We inadvertently created a paragraph for high-cost adjustment cases that virtually duplicates § 412.424(d)(3)(i), the provision on outlier payments. Therefore, we deleted the paragraph titled ''Adjustment for high-cost cases.''

In the final rule, we included § 412.424(d)(3), which sets forth our specific outliers policy for discharges occurring in cost reporting periods beginning on or after January 1, 2005. However, we meant to set forth our general outliers policy as reflected in the preamble of the final rule on page 66960, not the specific policy for the IPF PPS implementation period. Therefore, we corrected the section on outlier payments to describe our general outliers methodology that is not specific to the IPF PPS implementation period.

In § 412.426 of the regulation text, we inadvertently used incorrect dates for the cost reporting periods for the transition period from a blended PPS payment to a full PPS payment. Our policy is clear from the discussion in the preamble on pages 66964 through 66966 that the transition period dates correlate to the cost reporting year. However, in § 412.426, we inadvertently inserted the dates that reflect the IPF PPS update cycle instead of cost reporting years. This correction does not reflect a change in policy, rather, it conforms the regulation text to the actual policy. The errors did not affect payments in any way. In fact, no claims are being processed under the new bill processing system for the IPF PPS until its implementation on April 4, 2005.

In the final rule, on page 66952, we indicated that the wage indexes we are using are the pre-classified FY 2005 hospital wage indexes, as set forth in Addenda B1 and B2. In Addendum A, we incorrectly identified the wage index we are using as the ''IPPS'' wage index. Therefore, in this correction notice, we correct the reference to the wage index from ''IPPS'' to the pre-reclassified FY 2005 hospital wage index.

In Addendum B1, an incorrect wage index value was reported and an MSA designation was incorrectly reported. The errors, however, are only in the Addendum. The correct wage index value and MSA designation were reflected in PRICER at the time of the effective date of the final rule. The errors had no effect on payment, and the correction is being made to conform the wage index value and MSA designation to the actual policy that was in place at the time the final rule was effective.

In the preamble of the final rule, on pages 66959 and 66960, we set forth our policy of providing a facility-level adjustment for IPFs for both psychiatric hospitals and acute care hospitals with a distinct part psychiatric unit that maintain a qualifying emergency department (ED). We intended that the adjustment only be provided to hospitals with EDs that are staffed and equipped to furnish a comprehensive array of emergency services and that meet the definition of a ''dedicated emergency department'' as specified in § 489.24 and the definition of ''provider-based status'' (as corrected, from ''provider-based entity'' to ''provider-based status'' in section III.A.24.a, below) as specified in § 413.65. We defined a full-service ED in order to avoid providing an ED adjustment to an intake unit that is not comparable to a full-service ED with respect to the array of emergency services available. We provided that the ED adjustment will be incorporated into the variable per diem adjustment for the first day of each stay. That is, IPFs with qualifying EDs will receive a higher variable per diem adjustment for the first day of each stay than will other IPFs. (See page 66960 of the final rule.) However, in Addendum A, under the Variable Per Diem Adjustments chart, for Day 1 (on both lines), we erroneously indicated an adjustment factor for a facility with and without a ''24/7'' full-service ED. Our definition of full-service ED does not include any reference to ''24/7.'' Therefore, the reference may be confusing and could raise questions. In order to be consistent with our definition of a full-service ED, we are deleting the references to ''24/7'' in section III.C of this correction notice. In addition, although we believe that describing a full-service ED as providing a ''comprehensive array of emergency services'' was clear, we are further clarifying that full-service EDs furnish medical as well as psychiatric treatment.

In the final rule, on page 66937, we stated that our policy is that we will provide the Federal per diem base rate payment under the IPF PPS for claims with a principal diagnosis included in Chapter Five of the ICD–9–CM or the DSM–IV–TR. In the final rule, on pages 67014 through 67015, we provided a chart, Addendum C—Code First, which lists the ICD–9–CM Disease Code First instructions as of 2005 (effective October 1, 2004). These codes are the mental disorder codes 290 through 319, included in Chapter Five of ICD–9–CM. We inadvertently included code 320.7, Bacterial Meningitis. Because code 320.7 is not a mental disorder code, we are removing it in section III.C of this correction notice.

In addition to the preamble corrections described above, we made incorrect cross-references and other typographical errors in the final rule that we are correcting in this document.

III. Correction of Errors

A. Preamble Corrections

In the final rule published on November 15, 2004 (69 FR 66922), make the following corrections:

1. On page 66922, in column 3 of the Table of Contents, lines 37 through 38, ''Addendum A: Proposed Inpatient PPS Adjustments'' is corrected to ''Addendum A: Psychiatric Prospective Payment Rate and Adjustment Factors.''

2. On page 66923, in column 3, in line 16, remove the period after the word ''example.''

3. On page 66924, in column 1, in the second full paragraph, line 1, remove the parenthesis before the word ''We.''

4. On page 66932, in column 1, in line 19, the words ''Federal per diem base rate'' are corrected to ''average cost per day''.

5. On page 66934, in column 3, in line 1, the word ''conditions'' is corrected to ''condition categories.''

6. On page 66936,

a. In column 2, in the third full paragraph, in lines 6 and 7, the phrase ''labor-related share (.72528) and adding the non-labor share (.27472)'' is corrected to ''labor-related share (0.72247) and adding the non-labor share (0.27753).''

b. In column 3, in the second paragraph, in line 6, add the words ''all of'' before the word ''these.''

7. On page 66939,

a. In column 1, in line 1, the word ''constructive'' is corrected to ''obstructive.''

b. In column 2, in the first full paragraph, in lines 9, 18, and 21, the word ''malignant'' is removed.

c. In column 2, in the first full paragraph, in lines 13 through 16, the sentence ''As a result, we have added two ICD–9–CM codes, one for chemotherapy (V58.0) and one for radiation treatment (V58.1).'' is corrected to ''As a result, we have added ICD–9–CM procedure codes for radiation therapy (92.21 through 92.29) and for chemotherapy (99.25).''

d. In column 2, in the first full paragraph, in lines 22 through 26, the phrase ''one of the two ICD–9–CM procedures codes (chemotherapy ((V58.0)) or radiation treatment ((V58.1)) to indicate the treatment modality the patient received.'' Is corrected to ''an ICD–9–CM procedure code for radiation therapy codes (92.21 through 92.29) or for chemotherapy (99.25).''

8. On page 66940,

a. In column 1, in Table 4, in row 8, and on page 66944, in column 1, in Table 5, in row 7, ''Uncontrolled Type I Diabetes Mellitus, with or without complications'' is corrected to ''Uncontrolled Diabetes Mellitus''. We are also revising the chart on page 66984 in line 9 in the same manner.

b. In column 2, in Table 4, in row 11, ''0411'' is corrected to ''04110''.

c. In columns 2 and 3, in Table 4, in row 11, ''0100'' is corrected to ''01000''.

d. In column 2, in Table 4, in row 12, insert the code ''29212''.

e. In column 3, in Table 4, in row 5, remove the figures ''6363 and 6373'' and add in their place the figures ''63630, 63631, 63632, 63730, 63731, and 63732.''

f. In column 3, in Table 4, in row 7, ''Treatment 140 through 2399 WITH either V580 or V581'' is corrected to ''Treatment 1400 through 2399 WITH either 92.21 through 92.29 or 99.25''.

g. In column 3, in Table 4, in row 15, remove the code ''V461'' and add in its place the codes ''V4611 and V4612''.

9. On page 66942,

a. In column 2 of the chart, in row 25, the figure ''0.72528'' is corrected to ''0.72247''.

b. In column 2 of the chart in row 26, the figure ''0.27472'' is corrected to ''0.27753''.

c. In column 3 of the chart, in row 25, the figure ''417.73'' is corrected to ''416.11''.

d. In column 3 of the chart in row 26, the figure ''158.22'' is corrected to ''159.84''.

e. In column 1, in Step 1, in lines 5 and 6, the figures ''(0.7743 × 417.73 = $323.45) are corrected to ''(0.7743 × 416.11 = $322.19).''

f. In column 1, in Step 2, in lines 5 and 6, the figures ''($323.45 + 158.22 = $481.67)'' are corrected to ''(322.19 + 159.84 = $482.03).''

g. In column 3, in Step 3, in line 5, the figures ''($481.67 × 1.4181 = 683.06)'' are corrected to ''($482.03 × 1.4181 = $683.57).''

10. On page 66943, in column 1, in Step 3, the second numeric multiplier, 683.06, and the dollar amounts in each of the equations and in the Federal per diem payment amount, are revised as follows:

Day 1 (adjustment factor 1.31) × 683.57	=	$895.48
Day 2 (adjustment factor 1.12) × 683.57	=	765.60
Day 3 (adjustment factor 1.08) × 683.57	=	738.26
Day 4 (adjustment factor 1.05) × 683.57	=	717.75
Day 5 (adjustment factor 1.04) × 683.57	=	710.91
Day 6 (adjustment factor 1.02) × 683.57	=	697.24
Day 7 (adjustment factor 1.01) × 683.57	=	690.41
Day 8 (adjustment factor 1.01) × 683.57	=	690.41
Day 9 (adjustment factor 1.00) × 683.57	=	683.57
Day 10 (adjustment factor 1.00) × 683.57	=	683.57
Federal per diem payment amount	=	7,273.20

11. On page 66944,

a. In column 1, in Table 5, in row 3, ''Tracheotomy'' is corrected to ''Tracheostomy''.

b. In column 2, in Table 5, in row 4, remove the figures ''6363 and 6373'' and add in their place the figures ''63630, 63631, 63632, 63730, 63731, and 63732''.

c. In column 2, in Table 5, in row 6, ''1400 through 2399 WITH either V58.0 OR V58.1'' is corrected to ''1400 through 2399 WITH either 92.21 through 92.29 or 99.25''.

d. In column 2, in Table 5, in row 11, insert the code ''29212''.

e. In column 2, in Table 5, in row 14, remove the words ''and V461'' and insert ''V4611 and V4612''.

12. On page 66945,

a. In column 1, in lines 10 through 11, *''www.cdc.gov/nchs/data/ics9/icdguide.pdf''* is corrected to *''www.cdc.gov/nchs/data/icd9/icdguide.pdf.''*

b. In column 3, in the first full paragraph, in line 1, the code ''294.1'' is corrected to ''294.11''.

c. In column 3, in the first full paragraph, in line three, the words ''With Behavioral Disturbance'' are added before the words ''is designated''.

d. In column 3, under the subheading for ''294.1 Dementia in Conditions Classified Elsewhere,'' in line 6, the code ''(33.82)'' is corrected to ''(331.82)''.

e. In column 3, under the subheading for *''294.1 Dementia in Conditions Classified Elsewhere''* and before the paragraph that begins with ''In accordance with the ICD–9–CM'' insert the following subheading: *''294.10 Dementia in Conditions Classified Elsewhere Without Behavioral Disturbances (not allowed as principal DX)''* and *294.11 Dementia in Conditions Classified Elsewhere With Behavioral Disturbances (not allowed as principal DX)''*.

f. In column 3, in the paragraph that begins with ''In accordance with'', in line 8, remove the words ''states ''code first any underlying physical condition as:'' and add in its place the words ''is designated as ''code first,'' indicating that all 5 digit diagnosis codes that fall under 294.1 (codes 294.10 and 294.11) must follow the code first rule. According to the code first requirements,''.

In the same paragraph, in lines 55 through 64, remove the sentences ''The submitted claim goes through the CMS processing system that will identify the primary diagnosis code as non-psychiatric and search the secondary codes for a psychiatric code to assign a DRG code for adjustment. The system will continue to search the secondary codes for those that are appropriate for comorbidity adjustment.''

13. On page 66946,

a. In column 1, in lines 7 through 9, the words ''appropriate treatment V

code V580 chemotherapy or V581 radiation.'' is corrected to ''appropriate procedure code from radiation therapy codes (92.21 through 92.29) or chemotherapy (99.25).''

b. In column 1, in line 10, the cross-reference ''VI.B.5.C.'' is corrected to ''VI.B.6.c''.

c. In column 1, in line 16, the phrase ''(code 90870)'' is corrected to ''(code 94.27).''

14. On page 66950, in column 2, in the third response to comment, in line 6, ''say'' is corrected to ''stay''.

15. On page 66951,

a. In column 1, in the first response to comment, in line 17, the cross-reference ''VI.B.5.b.'' is corrected to ''VI.C.4.d''.

b. In column 1, in the first comment under the heading c, in line 3, remove ''(procedure code 90870)'' and replace it with ''(ICD–9–CM procedure code 94.27)''.

c. In column 2, in the third full paragraph, in line 8, remove ''procedure code 90870'' and replace it with ''ICD–9–CM procedure code 94.27''.

d. In column 2, in the fifth full paragraph, in lines 11 through 13, the sentence ''We will adjust the ECT rate for wage differences in the same manner that we adjust the per diem rate.'' is corrected to ''We will adjust the ECT rate by the area wage index and any applicable cost of living adjustment (COLA), in the same manner that we adjust the per diem rate.''

e. In column 3, in line 16, the word ''ETC'' is corrected to ''ECT''.

16. On page 66952, in column 1, in line 1, the word ''my'' is corrected to ''may''.

17. On page 66953,

a. In column 2, in the second paragraph of the response to comment, in line 10, remove the number ''0'' before the word ''labor-related'' and add in its place ''The''.

b. In column 2, in the second paragraph of the response to comment, in line 14; in column 3, Table 8, row 6; and in column 3, line 5; the figure ''68.818'' is corrected to ''68.878''.

18. On page 66954,

a. In column 2, in the first full paragraph, in line 9, the cross-reference ''VIII'' is corrected to ''XII''.

b. In column 3, in the first full paragraph, in line 12, the cross-reference ''V.C.3.'' is corrected to ''V.D.2''.

19. On page 66955, in column 1, line 24, the reference ''§ 413.83'' is corrected to ''§ 413.85''.

20. On page 66956,

a. In column 3, in Step 2 of the response to comment under Step 2, in line 8, the figure ''5.1'' is corrected to ''5.0''.

b. In column 3, in Step 2 of the response to comment under Step 2, in line 11, the figure ''9.9'' is corrected to ''9.8''.

21. On page 66957, in column 1, before the sub-heading, ''Other Facility-Level Adjustments,'' the following comment and response are added:

Comment: One commenter asked if the IPF PPS would compensate for a school of nursing and a pastoral care teaching program.

Response: Under 42 CFR 413.85, hospitals that operate approved nursing or allied health education programs may receive Medicare payment on a reasonable cost basis for costs of these programs. The payment is a ''pass-through'' (that is, it is paid separately and distinctly from the IPF PPS; similarly, it was paid separately from the TEFRA target amounts). If a freestanding IPF operates an approved nursing or allied health program, we pay the IPF for Medicare's share of the reasonable costs of the program (for example, costs incurred for trainee stipends and compensation of teachers). If an IPPS hospital with a psychiatric unit has a nursing or allied health program, then we will pay the IPPS hospital for training costs incurred in the IPPS and the psychiatric unit parts of the hospital.

22. On page 66958, in column 3, in line 17, the number ''8'' is corrected to ''9''.

23. On page 66959, in column 3, in line 7, the word ''a'' is corrected to ''an''.

24. On page 66960,

a. In column 1, in line 18, the word ''entity'' is corrected to ''status''.

b. In column 1, at the end of the first paragraph, add the following sentence: ''We intend to pay the ED adjustment to IPFs with EDs that furnish medical as well as psychiatric emergency treatment.''

c. In column 1, in paragraph 4, in line 3, remove the word ''of'' before the word ''the''.

d. In column 3, in the third full paragraph, in line 4, the figure ''$7267.75'' is corrected to ''$7273.20''.

e. In column 3, in Step 1, in lines 3 and 4, the figure ''0.72528'' is corrected to ''0.72247'', and the figure ''$3201.03'' is corrected to ''$3188.63''.

f. In column 3, in Step 2, in lines 3 through 5, the figures ''$5700 × 0.27472 (non-labor share) = $1565.90 $1565.90 + $3201.03 = $4766.93'' are corrected to ''$5700 × 0.27753 (non-labor share) = $1581.92
$1581.92 + $3188.63 = $4770.55''.

g. In column 3, in Step 3, in line 3, the figure ''$4766.96'' is corrected to ''$4770.55'' and in line 4, the figure ''$5577.31'' is corrected to ''$5581.54''.

25. On page 66961,

a. In column 1, in line 1, the figures ''$5577.31 + $7267.75 = $12,845.06'' are corrected to ''$5581.54 + $7273.20 = $12,854.74''.

b. In column 1, in line 3, the figure ''$12,845.06'' is corrected to ''$12,854.74''.

c. In column 1, in Step 1, in line 4, the figures ''$12,845.06 = $3954.94'' are corrected to ''$12854.74 = $3945.26''.

d. In column 1, in Step 2, in line 3, the figures ''$3594.94/10 = $395.49'' are corrected to ''$3945.26/10 = $394.53''.

e. In column 1, in Step 3, in lines 3 and 4, the figures ''$395.49 × 0.80 = $316.40'' and the figures ''$316.40 × 9 days = $2847.60'' are corrected to ''$394.53 × 0.80 = $315.62'' and ''$315.62 × 9 days = $2840.58'', respectively.

f. In column 1, in Step 4, in line 3, the figures ''395 × 0.60 = $237.30'' are corrected to ''$394.53 × 0.60 = $236.72''.

g. In column 1, in the paragraph after Step 4, in line 3, the figure ''$3084.90'' is corrected to ''$3077.30'' and in line 4, the figures ''$2847.60 + $237.30'' are corrected to ''$2840.58 + $236.72''.

26. On page 66962, in column 3, in the second full paragraph, in line 4, remove the words ''estimated by dividing Medicare routine costs on'' and add in their place the words ''obtained from the PS&R report associated with the applicable cost report. (If PS&R data are not available, estimate Medicare routine charges.'' In line 11, add a close parenthesis after the word ''charges'' and in line 21, add the words ''or M'' before the words ''in the third position.''

27. On page 66970, in column 3, in line 20, the date ''January 5'' is corrected to ''January 1''.

28. On page 66972, in column 3, in the last paragraph, in line 7, the figure ''$572'' is corrected to ''$575.95''.

B. Corrections to the Regulations Text

■ Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendments to part 412:

PART 412—[CORRECTED]

■ 1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 412.402 [Corrected]

■ 2. In § 412.402 under the definition of ''Qualifying emergency department,'' the word ''meting'' is corrected to ''meeting''.

§ 412.422 [Corrected]

■ 3. In § 412.422(b)(1) ''§ 413.79 through § 413.75'' is corrected to ''§ 413.75 through § 413.85''.

§ 412.424 [Corrected]

■ 4. In § 412.424,
■ a. In paragraph (c)(1), in the second and third sentences, the word ''unadjusted'' is corrected to ''adjusted''.
■ b. In paragraph (d) introductory text, the words ''and the patient-level adjustments applicable'' are corrected to ''patient-level adjustments and other policy adjustments applicable to the case.''
■ c. In paragraph (d)(3)(i), the words ''per diem'' before the words ''payment amount'' are removed.
■ d. Paragraph (d)(3)(v) is removed.
■ e. Paragraph (d)(3)(i)(B) is corrected to read as follows:

§ 412.424 Methodology for calculating the Federal per diem payment amount.

* * * * *

(d) * * *
(3) * * *
(i) * * *

(B) The outlier payment equals a percentage of the difference between the IPF's estimated cost for the case and the adjusted threshold amount specified by CMS for each day of the inpatient stay.

* * * * *

§ 412.426 [Corrected]

■ 5. In § 412.426,
■ a. In paragraph (a) introductory text, ''June 30, 2008'' is corrected to ''January 1, 2008''.
■ b. In paragraph (a)(1), ''June 30, 2006'' is corrected to ''January 1, 2006''.
■ c. In paragraph (a)(2), ''July 1, 2006'' is corrected to ''January 1, 2006'' and ''June 30, 2007'' is corrected to ''January 1, 2007''.
■ d. In paragraph (a)(3), ''July 1, 2007'' is corrected to ''January 1, 2007'' and ''June 30, 2008'' is corrected to ''January 1, 2008''.
■ e. In paragraph (a)(4), ''July 1, 2008'' is corrected to ''January 1, 2008''.

C. Corrections of Addenda

Addendum A

1. On page 66982,

a. In column 2 of the Per Diem Rate chart, in rows 2 and 3, the figure ''$417.73'' is corrected to ''$416.11'' and the figure ''$158.22'' is corrected to ''$159.84''.

b. In column 2 of the Facility Adjustments chart, in row 2, the words ''Same as IPPS'' are corrected to ''See Addenda B1 and B2''.

c. In column 1 of the Variable Per Diem Adjustments chart, in rows 2 and 3, the figure ''24/7'' is removed.

Addendum B1

1. On page 66989, in column 2 of the Table, in row 10, remove the words ''Stanly, NC''.

2. On page 67012, in column 3 of the Table, in row 6, the figure ''0.9468'' is corrected to ''0.9486''.

Addendum C

1. On page 67015, in columns 1 and 2, the last row is removed.

IV. Waiver of Proposed Rulemaking and Waiver of 30-Day Delay in the Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive the notice and comment procedures if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

The policies and payment methodology expressed in the November 15, 2004 final rule have previously been subjected to notice and comment procedures. This correction notice makes changes to conform the regulation text to the policies described in the preamble of the November 15, 2004 final rule. This correction notice also revises the preamble of the November 15, 2004 final rule to make clarifications, correct references, include an inadvertently omitted comment and response, and correct typographical errors. This correction notice is intended to ensure that the November 15, 2004 final rule accurately reflects the policies expressed in the final rule. Therefore, we find it unnecessary to undertake further notice and comment procedures with respect to this correction notice.

We are also waiving the 30-day delay in effective date for this correction notice. We ordinarily provide a 30-day delay in the effective date of the provisions of a notice. Section 553(d) of the Administrative Procedure Act ordinarily requires a 30-day delay in the effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. In addition, section 1871(e)(1)(B) of the Social Security Act, as amended by section 903(b) of Pub. L. 108–173, provides that substantive changes may only take effect prior to the 30-day effective date if the waiver of the 30-day period is necessary to comply with statutory requirements or the application of the 30-day delay is contrary to the public interest. We believe that it is in the public interest to ensure that the November 15, 2004 final rule accurately represents our prospective payment methodology and payment rates and that a delay in the effective date of these corrections would be contrary to the public interest.

We also find that it is in the public interest to apply the changes in this correction notice retroactively to January 1, 2005, the effective date of the November 15, 2004 final rule. Section 1871(e)(1)(A) of the Social Security Act, as amended by section 903(a) of Pub. L. 108–173, provides that a substantive change in regulations shall not be applied retroactively to items and services furnished before the effective date of the change, unless the Secretary finds that such retroactive application is necessary to comply with statutory requirements or failure to apply the change retroactively would be contrary to the public interest. In section III.A, III.B, and III.C of this correction notice, we have made substantive corrections to errors in the preamble, regulatory impact analysis, regulation text, and the Addenda of the November 15, 2004 final rule to ensure that the final rule accurately reflects our policies and payment methodologies. Although the November 15, 2004 final rule contained errors, we implemented correct policies and payment methodologies as of January 1, 2005. Therefore, not applying these changes retroactively to January 1, 2005 would have a disruptive effect on IPF PPS. As a result, we are applying the changes in this correction notice retroactively to January 1, 2005 because we believe it would be contrary to the public interest to do otherwise.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 23, 2005.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 05–6379 Filed 3–31–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–B–7451]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Division Director for the Emergency Preparedness and Response Directorate reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E. Hazard Identification Section, Mitigation Division, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by the other Federal, State, or regional entities.

The changes BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director for the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa	City of Avondale (04–09–0552P).	January 6, 2005, January 13, 2005, *Arizona Republic*.	The Honorable Ronald J. Drake, Mayor, City of Avondale, 525 North Central Avenue, Avondale, Arizona 85323.	December 21, 2004 ...	040038
Maricopa	Town of Carefree (04–09–1301P).	December 23, 2004, December 30, 2004, *Arizona Business Gazette*.	The Honorable Edward C. Morgan, Mayor, Town of Carefree, P.O. Box 740, Carefree, Arizona 85377.	November 24, 2004 ..	040126
Maricopa	City of Goodyear (04–09–1512P).	December 2, 2004, December 9, 2004, *Arizona Business Gazette*.	The Honorable James M. Cavanaugh, Mayor, City of Goodyear, 190 North Litchfield Road, Goodyear, Arizona 85338.	March 10, 2005	040046

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Maricopa	City of Phoenix (03–09–0448P).	December 2, 2004, December 9, 2004, *Arizona Business Gazette*.	The Honorable Phil Gordon, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	March 10, 2005	040051
Maricopa	City of Phoenix (04–09–0381P).	December 23, 2004, December 30, 2004, *Arizona Business Gazette*.	The Honorable Phil Gordon, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	March 30, 2005	040051
Maricopa	City of Scottsdale (04–09–1301P).	December 23, 2004, December 30, 2004, *Arizona Business Gazette*.	The Honorable Mary Manross, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, Arizona 85251.	November 24, 2004 ...	045012
Maricopa	Unincorporated Areas (03–09–1190P).	October 21, 2004, October 28, 2004, *Arizona Business Gazette*.	The Honorable Andrew W. Kunasek, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, Arizona 85003.	October 12, 2004	040037
Maricopa	Unincorporated Areas (04–09–0552P).	January 6, 2005, January 13, 2005, *Arizona Republic*.	The Honorable Andrew W. Kunasek, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor Phoenix, Arizona 85003.	December 21, 2004 ..	040037
Pima	Town of Marana (03–09–1071P).	December 2, 2004, December 9, 2004, *Tucson Citizen*.	The Honorable Bobby Sutton, Jr., Mayor, Town of Marana, 13251 North Lon Adams Road, Marana, Arizona 85653.	March 10, 2005	040118
Pima	Town of Marana (04–09–0697P).	December 16, 2004, December 23, 2004, *Daily Territorial*.	The Honorable Bobby Sutton, Jr., Mayor, Town of Marana, 13251 North Lon Adams Road, Marana, Arizona 85653.	March 23, 2005	040118
Pima	Unincorporated Areas (03–09–1071P).	December 2, 2004, December 9, 2004, *Tucson Citizen*.	The Honorable Sharon Bronson, Chair, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, Arizona 85701.	March 10, 2005	040073
Pima	Unincorporated Areas (03–09–1300P).	November 10, 2004, November 18, 2004, *Daily Territorial*.	The Honorable Sharon Bronson, Chair, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, Arizona 85701.	October 26, 2004	040073
Pinal	Unincorporated Areas (03–09–1071P).	December 1, 2004, December 8, 2004, *Copper Basin News*.	The Honorable Lionel D. Ruiz, Chairman, Pinal County Board of Supervisors, P.O. Box 827, Florence, Arizona 85232.	March 10, 2005	040077
Yuma	Unincorporated Areas of (04–09–0557P).	December 23, 2004, December 30, 2004, *Yuma Sun*.	The Honorable Lucy Shipp, Chairman, Yuma County Board of Supervisors, 198 South Main Street, Yuma, Arizona 85364.	March 30, 2005	040099
California:					
Butte	City of Chico (04–09–0415P).	December 23, 2004, December 30, 2004, *Chico Enterprise-Record*.	The Honorable Maureen Kirk, Mayor, City of Chico, P.O. Box 3420, Chico, California 95927.	March 31, 2005	060746
Butte	Unincorporated Areas (04–09–0415P).	December 23, 2004, December 30, 2004, *Chico Enterprise-Record*.	The Honorable Robert J. Beeler, Chairman, Butte County Board of Supervisors, Butte County Administration Center, 25 County Center Drive, Oroville, California 95965.	March 31, 2005	060017
Los Angeles	City of Palmdale (04–09–1388P).	December 2, 2004, December 9, 2004, *Los Angeles Times*.	The Honorable James C. Ledford, Jr., Mayor, City of Palmdale, 38300 North Sierra Highway, Palmdale, California 93550–4798.	March 10, 2005, ...	060144
Los Angeles	Unincorporated Areas (04–09–1388P).	December 2, 2004, December 9, 2004, *Los Angeles Times*.	The Honorable Don Knabe, Chairman, Los Angeles County Board of Supervisors, 500 West Temple Street, Room 866, Los Angeles, California 90012.	March 10, 2005	065043

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
San Diego	City of Poway (03–09–1583P).	January 27, 2005, February 3, 2005, *Poway News Chieftain*.	The Honorable Mickey Cafagna, Mayor, City of Poway, P.O. Box 789, Poway, California 92074–0789.	May 5, 2005	060702
San Diego	City of San Diego (04–09–1311P).	November 4, 2004, November 11, 2004, *San Diego Daily Transcript*.	The Honorable Dick Murphy, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	February 10, 2005	060295
Colorado:					
Boulder	City of Boulder (04–08–0494P).	November 10, 2004, November 17, 2004, *Boulder Daily Camera*.	The Honorable William R. Toor, Mayor, City of Boulder, P.O. Box 791, Boulder, Colorado 80306.	November 1, 2004	080024
Boulder	Unincorporated Areas (04–08–0494P).	November 10, 2004, November 17, 2004, *Boulder Daily Camera*.	The Honorable Paul Danish, Chairman, Boulder County Board of Commissioners, P.O. Box 471, Boulder, Colorado 80306.	November 1, 2004	080023
El Paso	Unincorporated Areas (04–08–0587P).	November 10, 2004, November 17, 2004, *El Paso County News*.	The Honorable Chuck Brown, Chair, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903–2208.	February 16, 2005	080059
El Paso	Unincorporated Areas (04–08–0427P).	January 19, 2005, January 26, 2005, *El Paso County News*.	The Honorable Chuck Brown, Chair, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903–2208.	April 27, 2005	080059
Weld	Town of Windsor (04–08–0430P).	November 26, 2004, December 3, 2004, *Windsor Daily Tribune*.	The Honorable Edward Starck, Mayor, Town of Windsor, 301 Walnut Street, Windsor, Colorado 80550.	March 4, 2005	080264
Iowa:					
Linn	City of Cedar Rapids (04–07–A097P).	October 14, 2004, October 21, 2004, *Cedar Rapids Gazette*.	The Honorable Paul D. Pate, Mayor, City of Cedar Rapids, City Hall, Third Floor, 50 Second Avenue Bridge, Cedar Rapids, Iowa 52401.	September 21, 2004	190187
Linn	City of Marion (04–07–A097P).	October 14, 2004, October 21, 2004, *Cedar Rapids Gazette*.	The Honorable John Nieland, Mayor, City of Marion, 1100 Eighth Avenue, Marion, Iowa 52302.	September 21, 2004	190191
Nebraska:					
Hall	City of Grand Island (04–07–A319P).	November 4, 2004, November 11, 2004, *Grand Island Independent*.	The Honorable Jay Vavricek, Mayor, City of Grand Island, P.O. Box 1968, Grand Island, Nebraska 68802.	October 19, 2004	310103
Hall	Unincorporated Areas (04–07–A319P).	November 4, 2004, November 11, 2004, *Grand Island Independent*.	The Honorable Pamela E. Lancaster, Chair, Hall County Board of Supervisors, 2809 Apache Road, Grand Island, Nebraska 68801.	October 19, 2004	310100
Nevada: Nye	Unincorporated Areas (04–09–0133P).	November 4, 2004, November 11, 2004, *Tonopah Times Bonanza and Goldfield News*.	The Honorable Henry Neth, Chairman, Nye County Board of Commissioners, P.O. Box 153, Tonopah, Nevada 89049.	November 8, 2004	320018
Ohio: Fairfield	Unincorporated Areas (04–05–A672P).	December 9, 2004, December 16, 2004, *Lancaster Eagle-Gazette*.	The Honorable Judith K. Shupe, Fairfield County Commissioner, County Courthouse, 210 East Main Street, Lancaster, Ohio 43130.	March 17, 2005	390158
Texas:					
Midland	City of Midland (04–06–A290P).	January 20, 2005, January 27, 2005, *Midland Reporter Telegram*.	The Honorable Michael J. Canon, Mayor, City of Midland, 300 North Loraine, Midland, Texas 79701.	January 4, 2005	480477
Dallas	City of Richardson (04–06–A201P).	December 23, 2004, December 30, 2004, *Dallas Morning News*.	The Honorable Gary Slagel, Mayor, City of Richardson, 411 West Arapaho Road, Richardson, Texas 75083.	March 30, 2005	480184

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Washington: King	City of Issaquah (03–10–0465P).	November 17, 2004, November 24, 2004, *Issaquah Press*.	The Honorable Ava Frisinger, Mayor, City of Issaquah, P.O. Box 1307, Issaquah, Washington 98027.	February 23, 2005	530079
Wisconsin: Dodge	Unincorporated Areas (04–05–A339P).	December 2, 2004, December 9, 2004, *Dodge County Independent News*.	The Honorable Russell Kottke, Chairman, Dodge County Board of Supervisors, W8542 Laurel Hill Road, Fox Lake, Wisconsin 53933.	March 10, 2005	550094

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 5, 2005.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 05–6431 Filed 3–31–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–P–7642]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Division Director of the Emergency Preparedness and Response Directorate reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR,

1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Illinois:					
Kane (Case No.: 04–05–2895P).	City of Aurora	Nov. 10, 2004, Nov. 17, 2004, *Kane County Chronicle*.	The Honorable David L. Stover, mayor, city of Aurora, 44 East Downer Place, Aurora, IL 60507.	Feb. 16, 2005	170320
Will (Case No.: 04–05–3544P).	Village of Bolingbrook.	Jan. 28, 2005, Feb. 4, 2005, *The Bolingbrook Sun*.	The Honorable Roger C. Claar, mayor, village of Bolingbrook, 375 West Briarcliff Road, Bolingbrook, IL 60440.	Jan. 13, 2005	170812
Cook (Case No.: 03–05–3975P).	Unincorporated Areas.	Dec. 2, 2004, Dec. 9, 2004, *The Chicago Tribune*.	The Honorable John H. Stroger, Jr., president, Cook County Board of Commissioners, 118 N. Clark Street, Room 537, Chicago, IL 60602.	March 10, 2005	170054
Will (Case No.: 04–05–4065P).	City of Joliet	Feb. 3, 2005, Feb. 10, 2005, *Farmers Weekly Review*.	The Honorable Arthur Schultz, mayor, city of Joliet, 150 West Jefferson Street, Joliet, IL 60432.	Jan. 13, 2005	170702
Winnebago (Case No.: 04–05–2896P).	City of Love's Park.	Jan. 24, 2005, Jan. 31, 2005, *The Rockford Register Star*.	The Honorable Darryl F. Lindberg, mayor, city of Loves Park, 100 Heart Boulevard, Loves Park, IL 61111.	Jan. 14, 2005	170722
Will (Case No.: 04–05–3549P).	Village of Mokena.	Dec. 2, 2004, Dec. 9, 2004, *The Lincoln-Way Sun*.	The Honorable Robert Chiszar, mayor, village of Mokena, 11004 Carpenter Street, Mokena, IL 60448.	Mar. 10, 2005	170705
Cook (Case No.: 03–05–3975P).	Village of Orland Park.	Dec. 2, 2004, Dec. 9, 2004, *The Orland Township Messenger*.	The Honorable Dan McLaughlin, mayor, city of Orland Park, 14700 South Ravinia Avenue, Orland Park, IL 60462.	Mar. 10, 2005	170140
Cook (Case No.: 03–05–3975P).	Village of Tinley Park.	Dec. 2, 2004, Dec. 9, 2004, *The Star*.	The Honorable Edward J. Zabrocki, mayor, village of Tinley Park, 16250 S. Oak Park Avenue, Tinley Park, IL 60477.	Mar. 10, 2005	170169
Will (Case No.: 04–05–3560P).	Unincorporated Areas.	Jan. 5, 2005, Jan. 12, 2005, *The Herald News*.	The Honorable Lawrence A. Walsh, Will County Executive, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432.	Dec. 13, 2004	170695
Winnebago (Case No.: 04–05–2896P).	Unincorporated Areas.	Jan. 24, 2005, Jan. 31, 2005, *The Rockford Register Star*.	Mr. Scott Christiansen, Chairman, Winnebago County Board, 404 Elm Street, Rockford, IL 61101.	Jan. 14, 2005	170720
Michigan:					
Macomb (Case No.: 04–05–2345P).	Township of Shelby.	Jan. 24, 2005, Jan. 31, 2005, *The Macomb Daily*.	Mr. Ralph L. Maccarone, Township Supervisor, Township of Shelby, 52700 Vann Dyke Avenue, Shelby Township, MI 48316.	Jan. 11, 2005	260126
Macomb (Case No.: 04–05–2879P).	City of Sterling Heights.	Jan. 12, 2005, Jan. 19, 2005, *Sterling Heights Sentry*.	The Honorable Richard J. Nottle, mayor, city of Sterling Heights, 40555 Utica Road, Sterling Heights, MI 48311.	Dec. 21, 2004	260128
Minnesota: Dakota (Case No.: 04–05–2882P).	City of Burnsville	Dec. 2, 2004, Dec. 9, 2004, *Dakota County Tribune*.	The Honorable Elizabeth Kautz, mayor, city of Burnsville, 100 Civic Center Parkway, Burnsville, MN 55337.	Mar. 10, 2005	270102
Missouri:					
Clay (Case No.: 04–07–531P).	Village of Claycomo.	Dec. 15, 2004, Dec. 22, 2004, *Dispatch Tribune*.	The Honorable Lois Anderson, Claycomo Village Administrator and Floodplain Administrator, 115 East Highway 69, Claycomo, MO 64119.	Mar. 23, 2005	290089
St. Charles (Case No.: 03–07–886P).	City of O'Fallon ..	Dec. 29, 2004, Jan. 5, 2005, *The O'Fallon Journal*.	The Honorable Paul F. Renaud, mayor, city of O'Fallon, O'Fallon Municipal Centre, 100 North Main Street, O'Fallon, MO 63366.	Apr. 6, 2005	290316

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
New Mexico: Bernalillo (Case No.: 04–06–1904P).	City of Albuquerque.	Jan. 21, 2005, Jan. 28, 2005, *The Albuquerque Journal*.	The Honorable Martin Chavez, mayor, city of Albuquerque City/County Building 11th Floor, One Civic Plaza NW, Albuquerque, NM 87103.	Jan. 12, 2005	350002
Ohio: Shelby (Case No.: 04–05–3548P).	Unincorporated Areas.	Dec. 22, 2004, Dec. 29, 2004, *Sidney Daily News*.	The Honorable John D. Schmitt, Shelby County Judge, Shelby County Courthouse, P.O. Box 947, Sidney, OH 45365.	Mar. 30, 2005	390503
Oklahoma:					
Tulsa (Case No.: 03–06–1547P).	City of Owasso ..	Dec. 9, 2004, Dec. 16, 2004, *Owasso Reporter*.	The Honorable Susan Kimball, mayor, city of Owasso, P.O. Box 180, Owasso, OK 74055.	Nov. 23, 2004	400210
Tulsa (Case No.: 03–06–1547P).	Unincorporated Areas.	Dec. 9, 2004, Dec. 16, 2004, *Tulsa World*.	The Honorable Wilbert Collins, Sr., chairman, Tulsa County Board of Commissioners, 500 South Denver, Tulsa, OK 74103.	Nov. 23, 2004	400462
Texas: Parker (Case No.: 04–06–1202P).	City of Aledo	Dec. 13, 2004, Dec. 20, 2004, *The Weatherford Democrat*.	The Honorable Susan Langley, mayor, city of Aledo, 100 Sanchez Trail, Aledo, TX 76008.	Mar. 21, 2005	481659
Travis (Case No.: 03–06–2670P).	City of Austin	Dec. 15, 2004, Dec. 22, 2004, *Austin American Statesman*.	The Honorable Will Wynn, mayor, city of Austin, P.O. Box 1088, Austin, TX 78767.	Mar. 23, 2005	480624
Hays (Case No.: 04–06–1001P).	City of Buda	Jan. 6, 2005, Jan. 13, 2005, *The Free Press*.	The Honorable John Trube, mayor, city of Buda, P.O. Box 1218, Buda, TX 78610.	Apr. 14, 2005	481640
Denton (Case No.: 04–06–1463P).	City of Corinth	Jan. 18, 2005, Jan. 25, 2005, *Denton Record Chronicle*.	The Honorable Vic Burgess, mayor, city of Corinth, 3300 Corinth Parkway, Corinth, TX 76208.	Apr. 26, 2005	481143
Tarrant (Case No.: 04–06–1204P).	City of Crowley ..	Dec. 13, 2004, Dec. 20, 2004, *The Star Telegram*.	The Honorable Billy Davis, mayor, city of Crowley, 120 North Hampton Road, Crowley, TX 76036.	Mar. 21, 2005	480591
Dallas (Case No.: 04–06–867P).	City of Dallas	Dec. 22, 2004, Dec. 29, 2004, *Dallas Morning News*.	The Honorable Laura Miller, mayor, city of Dallas, Dallas City Hall, 1500 Marilla Street, Rom 5EN, Dallas, Texas 75201–6390.	Mar. 30, 2005	480171
Fort Bend (Case No.: 04–06–2152P).	Unincorporated Areas.	Jan. 26, 2005, Feb. 2, 2005, *Fort Bend Star*.	The Honorable Robert E. Hebert, Judge, Fort Bend County, 301 Jackson Street, Suite 719, Richmond, TX 77469.	Jan. 14, 2005	480228
Tarrant (Case No.: 04–06–1204P).	City of Fort Worth.	Dec. 13, 2004, Dec. 20, 2004, *The Star Telegram*.	The Honorable Michael Moncrief, mayor, city of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Mar. 21, 2005	480596
Hays (Case No.: 04–06–1001P).	Unincorporated Areas.	Jan. 6, 2005, Jan. 13, 2005, *The Free Press*.	The Honorable Jim Powers, Judge, Hays County, 111 E. San Antonio Street, Suite 300, San Marcos, TX 78666.	Apr. 14, 2005	480321
Fort Bend, Harris and Waller (Case No.: 04–06–2152P).	City of Katy	Jan. 26, 2005, Feb. 2, 2005, *The Katy Times*.	The Honorable Doyle Callender, mayor, city of Katy, 910 Avenue C, Katy, TX 77493.	Jan. 14, 2005	480301
Parker (Case No.: 04–06–1202P).	Unincorporated Areas.	Dec. 13, 2004, Dec. 20, 2004, *The Weatherford Democrat*.	The Honorable Mark Riley, Judge, Parker County, 1 Courthouse Square, Weatherford, TX 76086.	Mar. 21, 2005	480520
Denton (Case No.: 03–06–2687P).	City of The Colony.	Jan. 26, 2005, Feb. 2, 2005, *The Colony Courier Leader*.	The Honorable John Dillard, mayor, city of The Colony, City Hall, 6800 Main Street, The Colony, TX 75056.	Feb. 14, 2005	481581
Waller (Case No.: 04–06–2152P).	Unincorporated Areas.	Jan. 27, 2005, Feb. 3, 2005, *Waller County News Citizen*.	The Honorable Owen Ralston, Judge, Waller County, 836 Austin Street, Room 203, Hempstead, TX 77445.	Jan. 14, 2005	480460

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: March 25, 2005.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 05–6430 Filed 3–31–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the BFEs and modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and 44 CFR part 67.

The Federal Emergency Management Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) modified ♦Elevation in feet (NAVD) modified
MO	Knob Noster (City) Johnson County (FEMA Docket No. P7659).	Clear Fork		♦726
		Hughes Branch		♦779
		Tributary 1		♦781
		Tributary 2		♦778
Maps are available for inspection at City Hall, 218 North State Street, Knob Noster, Missouri.				
OK	Altus (City) Jackson County (FEMA Docket No. P7659).	Tributary 1	Approximately 0.40 mile downstream of North 2070 Road/Challenger Boulevard.	*1,339
			Approximately 250 feet upstream of East Tammarack Road.	*1,376
		Tributary 2	Just upstream of the Burlington and Santa Fe Railroad Bridge.	*1,346
			Approximately 1.7 miles upstream of Veterans Drive.	*1,370

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) modified ♦Elevation in feet (NAVD) modified
		Tributary 3	At the confluence with Tributary 1	*1,363
Maps are available for inspection at 300 East Commerce Street, Altus, Oklahoma.				
OK	Jackson County (Unicorporated Areas) (FEMA Docket No. P7659).	Tributary 1	Just downstream of County Highway 164	*1,334
			Approximately 1,550 feet upstream of the confluence of Tributary 2.	*1,343
		Tributary 2	At confluence with Tributary 1	*1,343
			Just upstream of the Burlington Northern and Santa Fe Railway Bridge.	*1,346
Maps are availabe for inspection at 101 North Main Street, Room 101, Altus, Oklahoma.				
OK	Blanchard (City) Grady and McClain Counties (FEMA Docket No. P7663).	Bridge Creek	Approximately 150 feet downstream of County Line Road.	*1,199
			Just downstream of County Line Road	*1,199
		East Branch Walnut Creek Tributary.	Approximately 1,675 feet downstream of Southeast 7th Street.	*1,196
			Approximately 525 feet upstream of Northeast 10th Street.	*1,270
		North Fork Walnut Creek	Approximately 2,570 feet downstream of U.S. Highway 62/277.	*1,164
			Approximately 22,820 feet upstream of U.S. Highway 62/277.	*1,201
		Stinson Creek	Approximately 20 feet downstream of Sandrock Road.	*1,208
			Approximately 1,190 feet upstream of Sandrock Road.	*1,212
		Tributary A2	At the confluence with West Branch Walnut Creek Tributary.	*1,217
			Approximately 3,585 feet upstream of the confluence with West Branch Walnut Creek Tributary.	*1,241
		West Branch Walnut Creek Tributary.	Approximately 4,035 feet downstream of Southeast 7th Street.	*1,195
			Approximately 3,690 feet upstream of N2990 Road.	*1,242
Maps are available for inspection at City Hall, 114 West Broadway, Blanchard, Oklahoma.				
OK	Grady County (Unincorporated Areas) (FEMA Docket No. P7663).	West Branch Walnut Creek Tributary.	Approximately 160 feet downstream of N2990 Road.	*1,227
			Approximately 4,030 feet upstream of N2990 Road.	*1,244
Maps are available for inspection at 4th Street and Choctaw Street, Chickasha, Oklahoma				
OK	McClain County (Unincorporated Areas) (FEMA Docket No. P7663).	East Branch Walnut Creek Tributary.	At the confluence with West Branch Walnut Creek Tributary.	*1,180
			Approximately 2,320 feet upstream of confluence with West Branch Walnut Creek Tributary.	*1,197
		North Fork Walnut Creek	Approximately 24,660 feet upstream of the confluence with Walnut Creek.	*1,164
			Approximately 7,340 feet upstream of State Highway 76.	*1,201
		Stinson Creek (Lower Reach).	At the confluence with North Fork Walnut Creek.	*1,175
			Approximately 6,500 feet upstream of Quailhaven Road.	*1,208
		West Branch Walnut Creek Tributary.	Approximately 3,350 feet upstream of the confluence with Walnut Creek.	*1,171
			Approximately 2,590 feet upstream of Tyler Avenue.	*1,206
Maps are available for inspection at 501 North Street, Purcell, Oklahoma.				
TX	Corsicana (City) Navarro County (FEMA Docket No. P7659).	Mesquite Branch	At the confluence with Post Oak Creek (Lower Reach).	*368
			Approximately 20 feet upstream of South 15th Street.	*416
		Post Oak Creek (Lower Reach).	Approximately 200 feet downstream of the confluence of Mesquite Branch.	*368

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) modified ♦Elevation in feet (NAVD) modified
			Approximately 370 feet downstream of the confluence of South Fork Post Oak Creek and divergence of Post Oak Creek (Upper Reach).	*407
		Post Oak Creek (Upper Reach).	Approximately 350 feet upstream of the confluence of South Fork Post Oak Creek and divergence of Post Oak Creek (Upper Reach).	*408
			Approximately 2,960 feet upstream of Bowie Drive.	*416
		Post Oak Creek Tributary 3.	At the confluence with Post Oak Creek (Lower Reach).	*398
			Just upstream of Burlington Northern & Santa Fe Railway.	*402
		Post Oak Creek Tributary 5.	At the confluence with Post Oak Creek (Lower Reach).	*406
			Just upstream of Forrest Lane	*430
		Post Oak Creek Tributary 6.	At the confluence with Post Oak Creek (Upper Reach).	*411
			Approximately 190 feet upstream of Emhouse Road.	*449
		South Fork Post Oak Creek.	At the confluence with Post Oak Creek (Lower Reach) and Post Oak Creek (Upper Reach).	*408
			Approximately 1,490 feet upstream of North 29th Street.	*438
		Town Branch	Approximately 150 feet upstream of the confluence with Mesquite Branch.	*390
			Approximately 620 feet upstream of North 24th Street.	*454

Maps are available for inspection at the Engineering Department, City of Corsicana Government Center, 200 North 12th Street, Corsicana, Texas.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 25, 2005.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 05–6435 Filed 3–31–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the BFEs and modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and 44 CFR part 67.

The Federal Emergency Management Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location of referenced elevation	♦Elevation in feet (NAVD) modified	Communities affected
Alexander Creek:		
Approximately 8,025 feet upstream of Ward Road	♦942	FEMA Docket No. P7661 Cass County (Unincorporated Areas), City of Raymore.
Approximately 5,600 feet upstream of Prairie Road	♦1,004	
East Branch South Grand River:		
Approximately 9,900 feet upstream of confluence of Wolf Creek	♦886	Cass County (Unincorporated Areas), City of Peculiar.
Approximately 510 feet upstream of Kendall Road	♦954	
East Branch of West Fork East Creek:		
At confluence with West Fork East Creek	♦974	FEMA Docket No. P7661, Cass County (Unincorporated Areas), City of Belton.
Approximately 3,050 feet upstream of Confluence with West Fork East Creek	♦990	
East Creek Tributary:		
Approximately 990 feet downstream of Pickering Road	♦918	Cass County (Unincorporated Areas), City of Raymore.
Approximately 10,000 feet upstream of Confluence of North Fork East Creek Tributary	♦1,000	
East Fork of East Tributary of East Branch South Grand River:		
At confluence with East Tributary of East Branch South Grand River	♦937	Cass County (Unincorporated Areas).
Approximately 3,250 feet upstream of 200th Street	♦1,007	
East Tributary of East Branch South Grand River:		
At confluence with East Branch South Grand River	♦889	Cass County (Unincorporated Areas).
Approximately 2,920 feet upstream of Prairie Road	♦993	
East Tributary of Lumpkins Fork:		
Approximately 4,770 feet downstream of North Madison Street	♦954	City of Raymore.
Approximately 40 feet upstream of 155th Street	♦999	
East Tributary of Massey Creek:		
Approximately 3,225 feet downstream of Missouri Highway D	♦944	FEMA Docket No. P7661, Cass County (Unincorporated Areas).
Approximately 85 feet upstream of Cedar Road	♦997	
Lower East Fork of East Creek Tributary:		
At confluence with East Creek Tributary	♦931	Cass County (Unincorporated Areas), City of Raymore.
Approximately 12,800 feet upstream of U.S. Highway 71	♦987	
Lower East Tributary of Mill Creek:		
At confluence with Mill Creek	♦885	Cass County (Unincorporated Areas).
Approximately 8,120 feet upstream of confluence with Mill Creek	♦937	
Lumpkins Fork:		

Source of flooding and location of referenced elevation	♦Elevation in feet (NAVD) modified	Communities affected
At 155th Street	♦945	Cass County (Unincorporated Areas).
Approximately 70 feet upstream of North Madison Street	♦979	
Massey Creek:		
Approximately 5,070 feet downstream of 223rd Street	♦904	Cass County (Unincorporated Areas).
At State Line Road	♦969	
Middle East Tributary of Mill Creek:		
Approximately 3,950 feet upstream of Confluence with Mill Creek	♦912	Cass County (Unincorporated Areas).
Middle East Tributary of Mill Creek:		
Approximately 6,320 feet upstream of confluence with Mill Creek	♦940	FEMA Docket No. P7661, Cass County (Unincorporated Areas).
Mill Creek:		
At County Boundary	♦871	Cass County (Unincorporated Areas).
Approximately 95 feet downstream of 187th Street	♦1,045	
North Branch of Upper East Fork of East Creek Tributary:		
Approximately 1,700 feet downstream of Hubach Hill Road	♦976	Cass County (Unincorporated Areas).
Approximately 25 feet upstream of Hubach Hill Road	♦986	
North Fork of East Creek Tributary:		
At confluence with East Creek Tributary	♦953	Cass County (Unincorporated Areas).
Approximately 11,000 feet upstream of confluence with East Creek Tributary	♦990	
North Tributary of Wolf Creek:		
Approximately 410 feet downstream of East 233rd Street	♦927	Cass County (Unincorporated Areas), City of Peculiar.
Approximately 40 feet upstream of East 227th Street	♦954	
Poney Creek:		
Approximately 4,925 feet downstream of Bennett Road	♦831	Cass County (Unincorporated Areas), City of Freeman.
Poney Creek:		
Approximately 7,550 feet upstream of Poney Creek Road	♦849	FEMA Docket No. P7661, Cass County (Unincorporated Areas), City of Freeman.
Silver Lake:	♦1,029	City of Raymore.
South Grand River:		
Approximately 5,160 feet downstream of State Highway 2	♦829	Cass County (Unincorporated Areas).
Approximately 765 feet upstream of Lake Annette Road	♦850	
Tributary of Alexander Creek:		
Approximately 1,500 feet downstream of State Highway 58	♦988	Cass County (Unincorporated Areas), City of Raymore.
Approximately 85 feet upstream of State Highway 58	♦996	
Upper East Fork of East Creek Tributary:		
Approximately 2,685 feet downstream of Good Ranch Road	♦947	Cass County (Unincorporated Areas), City of Raymore.
Approximately 50 feet upstream of Hubach Hill Road	♦993	
Upper East Tributary of Mill Creek:		
At Highland Ridge Drive	♦933	Cass County (Unincorporated Areas).
Approximately 5,800 feet upstream of Highland Ridge Drive	♦988	
West Tributary of East Branch South Grand River:		
Approximately 2,095 feet downstream of East 223rd Street	♦896	FEMA Docket No. P7661, Cass County (Unincorporated Areas).
Approximately 75 feet upstream of East 223rd Street	♦915	
West Tributary of Lumpkins Fork:		
At 155th Street	♦946	Cass County (Unincorporated Areas).
Approximately 1,065 feet upstream of 155th Street	♦998	
Wolf Creek:		
Approximately 7,100 feet upstream of Confluence with East Branch South Grand River	♦889	Cass County (Unincorporated Areas), City of Peculiar.

Source of flooding and location of referenced elevation	♦Elevation in feet (NAVD) modified	Communities affected
Approximately 1,170 feet upstream of 233rd Street	♦946	

ADDRESSES:

Unincorporated Areas of Cass County, Missouri:

Maps are available for inspection at 102 East Wall Street, Harrisonville, Missouri.

City of Belton, Cass County, Missouri:

Maps are available for inspection at City Hall, 506 Main Street, Belton, Missouri.

City of Freeman, Cass County, Missouri:

Maps are available for inspection at City Hall, 105 East Main Street, Freeman, Missouri.

City of Peculiar, Cass County, Missouri:

Maps are available for inspection at City Hall, 600 Schug Avenue, Peculiar, Missouri.

City of Raymore, Cass County, Missouri:

Maps are available for inspection at City Hall, 104 North Madison Street, Raymore, Missouri.

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD) modified	Communities affected
Cottonwood Creek:		
Just upstream of SE 14th Street	*467	FEMA Docket No. P7607, City of Dallas, City of Grand Prairie.
Approximately 700 feet upstream of Great Southwest Parkway	*531	
Duck Creek:		
Approximately 600 feet downstream of Collins Road	*458	City of Dallas, City of Garland, City of Mesquite, Town of Sunnyvale, Dallas County (Unincorporated Areas).
Just downstream of Beltline Road	*592	
South Fork Cottonwood Creek:		
Approximately 150 feet downstream of Carrier Parkway	*486	City of Garland.
Just downstream of Great Southwest Parkway	*547	
Stream 2C2:		
At the mouth of Stream 2C2	*494	City of Grand Prairie.
Apporximately 630 feet upstream of Glenbrook Drive	*495	
Stream 8D1:		
At the mouth of Stream 8D1	*467	City of Dallas, City of Grand Prairie.
Approximatley 50 feet downstream of Belt Line Road	*489	
Stream 8D3:		
Approximately 300 feet downstream of Southeast 4th Street	*474	FEMA Docket No. P7607, City of Grand Prairie.
Approximately 75 feet downstream of South Center Street	*488	
Stream 8D6:		
At the mouth of Stream 8D6	*505	City of Grand Prairie.
Approximately 2,350 feet upstream of Arkansas Lane	*544	
Stream 8D71		
Approximately 2,000 feet downstream of Sherman Street	*496	City of Grand Prairie.
Approximately 50 feet downstream of Sherman Street	*512	

ADDRESSES:

Unincorporated Areas of Dallas County, Texas:

Maps are available for inspection at the Administration Building, 411 Elm Street, 4th Floor, Dallas, Texas.

City of Dallas, Dallas County, Texas:

Maps are available for inspection at 320 East Jefferson Boulevard, Dallas, Texas.

City of Garland, Dallas County, Texas:

Maps are available for inspection at 200 North 5th Street, Garland, Texas.

City of Grand Prairie, Dallas County, Texas:

Maps are available for inspection at the City Development Center, 206 West Church Street, Grand Prairie, Texas.

City of Mesquite, Dallas County, Texas:

Maps are available for inspection at 320 East Jefferson Boulevard, Dallas, Texas.

Town of Sunnyvale, Dallas County, Texas:

Maps are available for inspection at 537 Long Creek Road, Sunnyvale, Texas.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 25, 2005.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 05–6434 Filed 3–31–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 573

[Docket No. NHTSA–2001–10856; Notice 3]

RIN 2127–AI29

Motor Vehicle Safety; Disposition of Recalled Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: This document responds to the Rubber Manufacturers Association's (RMA) September 27, 2004 petition for reconsideration of the August 13, 2004 final rule addressing the disposal of recalled tires. RMA requested that NHTSA reconsider a statement in the preamble to the final rule that Section 7 of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act prohibits the use of recalled tires in the construction of landfills. NHTSA has decided that the TREAD Act does not prohibit the use of recalled tires in landfill construction.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. George Person, Office of Defects Investigation, NHTSA. Telephone 202–366–5210. For legal issues: Ms. Jennifer Timian, Office of Chief Counsel, NHTSA. Telephone 202–366–5263.

SUPPLEMENTARY INFORMATION: On November 1, 2000, the TREAD Act, Pub. L. 106–414, 114 Stat. 1800, was enacted. The Act mandated, among other things, that a manufacturer's remedy program for recalled tires ''include a plan addressing how to limit, to the extent reasonably within the control of the manufacturer, the disposal of replaced tires in landfills, particularly through shredding, crumbling, recycling, recovery, and other alternative beneficial non-vehicular uses.'' Section 7 TREAD Act, codified at, 49 U.S.C. 30120(d).

To implement Section 7 of the TREAD Act, on December 18, 2001, we published a Notice of Proposed Rulemaking that, among other things, would require manufacturer remedy programs to address how the manufacturer will limit the disposal of the recalled tires in landfills and instead channel them into positive categories of reuse. 66 FR 65165. RMA and the National Solid Waste Management Association (NSWMA) commented that certain States and local jurisdictions currently permit the use of scrap tires in landfills in certain applications like lining and engineering fill. Accordingly, RMA asked NHTSA in its final rule to distinguish between the use of tires as landfill construction materials, which RMA argued was an alternative beneficial non-vehicular use encouraged under the statute, and the discarding of tires into landfills.

On August 13, 2004, NHTSA published a final rule implementing Section 7. 69 FR 50077. In the preamble, we rejected the request by RMA and NSWMA that we affirmatively authorize the use of scrap tires in landfills in the final rule.

On September 27, 2004, RMA petitioned the agency to reconsider its views. It asserted that Section 7's and the final rule's language addressed disposal of tires in landfills, and that use of tires in landfill construction does not meet this definition. The association argued that this end-use application is considered in the scrap tire industry and market to be an ''alternative beneficial non-vehicular use'' specifically allowed and encouraged under the TREAD Act. In support of its petition, RMA provided a copy of its report, ''U.S. Scrap Tire Markets, 2003 edition,'' which noted that the use of shredded tires in landfill construction and operation was the fastest growing civil engineering application for scrapped tires.

RMA's petition presents the narrow question of whether Section 7 of the TREAD Act prohibits the use of recalled tires or parts thereof in landfill construction. We conclude that it does not. Section 7 employs the term ''disposal,'' and also refers to beneficial non-vehicular uses. In the context of Section 7, disposal does not include the use of tires or parts thereof in landfill construction.

This notice is limited to Section 7 of the TREAD Act. Our interpretation of Section 7 does not limit how any Federal, State, or local regulatory authorities address replaced tires under the laws and regulations they administer. Moreover, NHTSA does not authorize or endorse the use of tires or parts thereof in landfill construction or any other particular application for scrapped tires.

Regulatory Analyses and Notices

This notice does not alter the burdens and impacts discussed in the Regulatory Analyses in the preamble to the final rule. 69 FR 50083–84. To the extent that the Regulatory Analyses may be relevant, they are hereby incorporated by reference. The analysis of the Paperwork Reduction Act is updated as follows. On January 11, 2005, OMB approved the information collection necessitated by the final rule. The approval number associated with this information collection is OMB No. 2127–0004 (expiration date January 31, 2008).

Issued on: March 29, 2005.

Jeffrey W. Runge,

Administrator.

[FR Doc. 05–6471 Filed 3–31–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 679

[Docket No. 040607171–5078–02; I.D. 051804C]

RIN 0648–AR88

Pacific Halibut Fisheries; Subsistence Fishing

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to amend the subsistence fishery rules for Pacific halibut in waters off Alaska. This action is necessary to address subsistence halibut management concerns in densely populated areas. This action is intended to meet the conservation and management requirements of the Northern Pacific Halibut Act of 1982 (Halibut Act) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective on May 2, 2005.

ADDRESSES: Copies of the environmental assessment (EA), regulatory impact review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn:

Lori Gravel-Durall, or from NMFS, Alaska Region, 709 West 9th Street, Room 453, Juneau, AK 99801, or by calling the Sustainable Fisheries Division, Alaska Region, NMFS, at 907–586–7228. Send comments on collection-of-information requirements to NMFS at the address specified above and to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Bubba Cook, 907–586–7425 or *bubba.cook@noaa.gov*.

SUPPLEMENTARY INFORMATION: Management of the fisheries for Pacific halibut (*Hippoglossus stenolepis*, hereafter halibut) in waters in and off Alaska is based on an international agreement between Canada and the United States. This agreement, titled the ''Convention between United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea'' (Convention), was signed in Ottawa, Canada, on March 2, 1953, and amended by the ''Protocol Amending the Convention,'' signed in Washington, D.C., on March 29, 1979. This Convention, administered by the International Pacific Halibut Commission (IPHC), is given effect in the United States by the Halibut Act. Generally, fishery management regulations governing the halibut fisheries are developed by the IPHC and recommended to the U.S. Secretary of State. When approved, these regulations are published by NMFS in the **Federal Register** as annual management measures. For 2004, the annual management measures were published February 27, 2004 (69 FR 9231).

The Halibut Act also provides for the North Pacific Fishery Management Council (Council) to develop halibut fishery regulations, including limited access regulations, in its geographic area of concern that would apply to nationals or vessels of the U.S. (Halibut Act, section 773(c)). Such an action by the Council is limited only to those regulations that are in addition to and not in conflict with IPHC regulations, and they must be approved and implemented by the U.S. Secretary of Commerce (Secretary). Any allocation of halibut fishing privileges must be fair and equitable and consistent with other applicable Federal law. This is the authority under which the Council acted in October 2000, to adopt a subsistence halibut policy. This policy was originally implemented by regulations published on April 15, 2003, at 68 FR 18145 (corrected May 15, 2003 at 68 FR 26230), and codified at 50 CFR 300 under subpart E.

A proposed rule to amend the subsistence halibut policy was published in the **Federal Register** on July 9, 2004 (69 FR 41447). Comments on the proposed rule were invited through August 9, 2004. Forty-one letters were received that included 43 separate comments, which are summarized and responded to below.

The principal elements of this amendment are described and explained in the preamble to the proposed rule and are not repeated here for brevity. In brief, these elements include: (1) changing the boundaries of the Anchorage/Matsu/Kenai non-subsistence area, (2) eliminating gear restrictions in Areas 4C, 4D, and 4E, (3) increasing gear and harvest restrictions in Area 2C, (d) allowing retention of legal sized subsistence halibut with CDQ halibut in Areas 4C, 4D, and 4E, (4) creating a Community Harvest Permit (CHP) system to mitigate increased gear and harvest restrictions in affected areas, (5) creating a Ceremonial and Educational Permit system to recognize customary and traditional tribal practices, and (6) including the Subsistence Halibut Program in the appeals process.

This final rule is substantively the same as the proposed rule published July 9, 2004 (69 FR 41447), except that certain technical changes have been made in response to comments received on the proposed rule. These changes are explained below under the Response to Comments and under Changes from the Proposed Rule.

Response to Comments

NMFS received 41 letters of comment that contained 43 separate comments from various agencies, Alaska Native organizations, and individuals. These comments are grouped into three categories, including: (1) the content of the proposed rule (comments 1–19); (2) alternatives for proposed changes addressed by the Council in December 2004, but not part of this action (comments 20–27); and (3) the overall subsistence halibut policy, but also not part of this action (comments 28–43). The following summarizes and responds to these comments.

Comments on the Content of the Proposed Rule

Comment 1: We oppose the increased gear restriction of 30 hooks per vessel in Area 2C.

Response: The Council recommended increased restrictions in Area 2C primarily to address localized depletion concerns due to increased subsistence halibut fishing effort. Area 2C has one of the highest population densities with proximity to easily accessible local fishing grounds, which allows for increased exploitation of the halibut resource in those areas. Based on public testimony, written comments, and analysis, the Council determined that increased gear restrictions were necessary in Area 2C to address localized depletion concerns.

The Council proposed superseding the 30–hook-per-person restriction with a 30–hook-per-vessel restriction in Area 2C. By reducing the number of hooks allowed to be fished from a single vessel, the Council effectively reduced the daily catch per vessel when two or more subsistence fishermen are on the vessel. The reduction in allowable gear also would reduce incidental catch of additional species that might also be subject to localized depletion, including rockfish and lingcod. NMFS agrees with this rationale for increasing the subsistence gear restrictions in Area 2C.

Comment 2: We support increased gear and harvest restrictions for all users. However, no distinction should be made in the regulations between Alaska Natives and non-Natives because the Subsistence Halibut Program was intended to help all rural and tribal residents feed their families.

Response: Halibut harvested while subsistence fishing are intended for the sustenance of the persons that are subsistence fishing, their families, and their communities in accordance with cultural traditions of Alaska Native and rural lifestyles. However, the Subsistence Halibut Program is designed to make distinctions among users based on State of Alaska (State) and Council findings of customary and traditional use of halibut by persons living in certain rural Alaska communities and by members of certain Alaska Native tribes. Hence, neither all rural Alaska communities nor all Alaska Native tribes are found to be eligible for subsistence halibut fishing privileges. The Halibut Act provides the authority to allocate or assign halibut fishing privileges among various fishermen.

This rule recognizes the unique customary and traditional practices of tribes by implementing Ceremonial and Educational Permits and a CHP program. These provisions were created to improve the original subsistence rule, which did not adequately meet the customary and traditional needs of Alaska Native tribes and are consistent with the authority granted by the Halibut Act.

Comment 3: Area 2C should be included in the CHP program.

Response: The CHP program applies only in Area 2C as described at 50 CFR 300.65(i) of this action.

Comment 4: Designated subsistence fishers should provide their signature in the harvest logbooks for special permits to verify participation in harvests conducted under the special permits.

Response: The Council authorized the development of special permits to mitigate increased restrictions in areas where rural communities and tribes practiced customary and traditional use of the halibut resource. The CHP, Ceremonial Permit, and Educational Permit were developed in a cooperative effort to provide more local control of monitoring of subsistence halibut removals, thereby increasing the accuracy and availability of harvest data.

Because of the liberal limits applied to the special permits, NMFS recommended a substantial increase in the recordkeeping and reporting requirements under those permits. The permit coordinator is responsible for ensuring that all recordkeeping and reporting is conducted in accordance with regulatory requirements. As part of this responsibility, the permit coordinator must ensure that the designated harvester is identified on the applicable permit log. Any abuse of these recordkeeping and reporting requirements could result in NMFS withholding issuance of future special permits or, in certain cases, an enforcement action. Therefore, NMFS believes that the proposed system using a permit coordinator provides sufficient verification and that requiring the signatures of designated subsistence fishers is unnecessary at this time.

Comment 5: Reducing the number of hooks from a per-fishermen to a per-vessel limit is disadvantaging the public's efforts to feed their families by making subsistence fishing more intensive and costly. Halibut removals are more effectively controlled through bag limits.

Response: NMFS understands the increased cost and effort required under the proposed gear and harvest restrictions. However, the Council imposed increased gear restrictions based on localized depletion concerns. See also Response under Comment 1.

Harvest (bag) limits constitute one method of controlling the removal of a single species. However, harvest limits without gear limits would have less of an effect in reducing incidental catch of non-halibut species. As the amount of allowable gear increases, the potential for incidental catch of non-target species increases. Incidental catch of rockfish and lingcod represents one of the concerns regarding increased restrictions in high-productivity and high-use areas such as Areas 2C and 3A. Based on the incidental catch and localized depletion concerns, the Council concluded that further gear restrictions were necessary in Area 2C in addition to more restrictive harvest limits.

Comment 6: Increasing restrictions will discourage the affected public from following the rules.

Response: One of the original goals of the Subsistence Halibut Program was to enable Alaska Natives and non-Natives, who have a customary and traditional use of halibut, to continue to take halibut for that purpose. Additionally, the Council stated that it intended to legitimize an existing fishery and not create a new fishery.

In attempting to achieve these goals, the Council proposed certain restrictions consistent with customary and traditional use patterns in specific areas. The Council recognized that each of the areas differed significantly in its demographics, population density, and cultural backgrounds. Based on that recognition, the Council proposed increasing or decreasing restrictions in the different areas to accommodate these differences. In areas where increased restrictions were proposed, the Council determined through public testimony, written comments, and analysis that concerns regarding the subsistence halibut fishery exist. Therefore, NMFS believes that a rational basis exists for increased restrictions in these areas.

Comment 7: We oppose the reduction of the daily retention limit to 20 halibut per vessel per day.

Response: The Council recommended increased restrictions in Area 2C primarily to address localized depletion concerns due to increased subsistence halibut fishing effort in this area. Area 2C has one of the highest human population densities in Alaska with proximity to easily accessible local fishing grounds, which allows for increased exploitation of the halibut resource in those areas. Based on public testimony, written comments, and analysis, the Council determined that increased gear restrictions were necessary in Area 2C to address localized depletion concerns.

The Council proposed superseding the 20–halibut-per-person restriction with a 20–halibut-per-vessel restriction to address localized depletion concerns in Area 2C. The reduction in allowable harvest also would help prevent incidental catch of additional species that might also be subject to localized depletion, including rockfish and lingcod.

Comment 8: Regulations should not be liberalized to allow tribal members to harvest more halibut. The existing regulations provide a reasonable opportunity for tribes and others to meet their subsistence needs.

Response: The Council received public testimony and written comments indicating that Alaska Native tribes and other affected rural communities would be unable to meet their customary and traditional levels of harvest if increased restrictions were applied beyond those provided in the original subsistence halibut action. In response to these concerns, the Council chose to implement special permits that mitigate increased restrictions in localized areas where certain tribes and rural communities would be adversely affected. NMFS believes the special permits adequately balance the subsistence needs of the affected public with the goal of preventing localized depletion in areas of concern.

Comment 9: We are opposed to the regulation of the halibut fishery with regard to ceremonial use because the Council has no definition of ceremonial use.

Response: The Alaska Native Subsistence Halibut Working Group recommended the creation of Ceremonial Permits and the Council directed an analysis of that recommendation. In the analysis, a qualifying ceremonial use is defined as ''one in which the use of halibut is customary and traditional and is related to some act or occasion of cultural significance.'' This definition would include deaths, potlatches, or other events of cultural significance.

NMFS recognizes that different tribes have different cultural requirements. Therefore, NMFS chose not to list events or occasions that would qualify as ''ceremonial'' because it might lead to the unintended exclusion of a legitimate culturally significant event from eligibility for a Ceremonial Permit. In an effort to promote cooperative management with the tribes, NMFS instead chose to allow the individual tribes to decide what constitutes a ceremonial purpose and to require a tribe to indicate on their permit application the occasion of cultural or ceremonial significance. NMFS does not intend to make a subjective decision on the validity of an indicated ceremonial purpose. However, if NMFS discovers that a tribe is abusing the Ceremonial Permit it could withhold issuance of future special permits or, in certain cases, initiate an enforcement action.

Comment 10: Any mixing of community development quota (CDQ) fishing and subsistence fishing will compromise enforcement of normal CDQ regulations. Therefore, all halibut should be offloaded and weighed from combined subsistence and CDQ trips. If legal-sized halibut can be retained and not counted as part of the CDQ, any overage above the CDQ enforced trip limit could be claimed as subsistence.

Response: Mixing of CDQ and subsistence fishing halibut harvests will not compromise enforcement. The purpose of allowing subsistence fishermen in Areas 4C, 4D, and 4E to retain subsistence halibut with CDQ halibut is to allow sufficient opportunity to conduct subsistence fishing when conditions are not restricted by sea ice coverage and inclement weather. In short, if a CDQ fisherman who is also eligible to subsistence fish for halibut found himself in good weather when the fish are biting, he could harvest his CDQ allotment and his subsistence halibut as well. This scenario specifically contemplated that the harvest of legal-sized halibut in excess of a CDQ limit would be claimed as subsistence halibut. However, a CDQ fisherman who is not eligible for subsistence fishing would remain subject to an overage violation. Therefore, NMFS does not believe that allowing retention of CDQ and subsistence halibut in Areas 4C, 4D, and 4E will compromise enforcement.

NMFS also disagrees that all subsistence halibut should be offloaded and weighed. NMFS does not believe that the estimated removals in Areas 4C, 4D, and 4E warrant reporting requirements any more stringent than those required of subsistence fishermen in other areas. NMFS understands and agrees with the desire to obtain an accurate accounting of halibut removals. However, according to the 2003 subsistence halibut survey, only 7.9 percent of the total removals of halibut in the subsistence fishery occurred in Areas 4C, 4D, and 4E combined. The estimated subsistence removals in Areas 4C, 4D, and 4E combined account for only 0.1 percent of the total halibut removals in Alaska. Therefore, NMFS sees no reason to increase the reporting burden on the subsistence fishermen in Areas 4C, 4D, and 4E by requiring them to weigh subsistence halibut when caught with CDQ halibut given the relatively low impact on the halibut resource in those areas.

Comment 11: The IPHC supports the proposed change to eliminate gear restrictions in the subsistence fishery in Areas 4C, 4D, and 4E because it prevents a conflict with commercial fishery gear.

Response: NMFS notes this support.

Comment 12: NMFS should wait for more factual information and should not rely on unsubstantiated perceptions of increased halibut removals because of the subsistence fishery before imposing more restrictions. There should be no increase in restrictions in the Sitka area unless there is factual evidence to justify the increase.

Response: Increased restrictions in Area 2C and the Sitka Local Area Management Plan (LAMP) were recommended by the Council as part of this action in response to public testimony and written comments. Based on public testimony and other available anecdotal information about localized depletion in Area 2C and the Sitka LAMP, NMFS agrees that the restrictions implemented in this action are necessary to address those concerns about localized depletion based on the correlation of increased access in areas of high human population density. See also Response under Comments 1 and 7.

Comment 13: The daily retention limit of 20–fish-per-vessel in Area 2C should be 10 or less.

Response: The Council assessed alternative harvest limits based on the need to balance customary and traditional needs with concerns about localized depletion and the use of the halibut resource by commercial and sport fishermen. Based on these alternatives, the Council determined that 20–halibut-per-vessel strikes the most appropriate balance.

Comment 14: The CHP system as described in the proposed rule is far too restrictive and will not allow for tribes and rural communities to meet their subsistence needs through the customary and traditional use of community harvesters. The CHP system should allow up to five vessels per day to harvest halibut under the proposed system.

Response: The Council recommended a CHP program that would serve as an alternative to proxy fishing in addition to mitigating the impacts of the more restrictive measures in Area 2C. The Council also clarified that a CHP may be issued by NMFS only to Alaska Native tribes or government entities of small, remote coastal communities where a pattern of subsistence harvest is established that includes community harvesters and that such permits may be developed and implemented through cooperative agreements. Also, the Council recommended including restrictions on gear and harvest limits, which are consistent with customary and traditional harvest patterns and practices, and are sufficient to meet the subsistence needs of the community.

In July 2002, the Council's Halibut Subsistence Committee suggested that only one CHP be issued per tribal or community entity. However, NMFS was left broad discretion to develop the details of the limits and administration of the CHP. Following consultation with tribal representatives, NMFS agrees that each eligible tribe or community should be qualified to receive up to five permit cards with each CHP, which would allow for increased efficiency and would nominally change the administration of the permit at the CHP Permit Coordinator level.

Comment 15: Tribes are concerned about the implications of holding the tribe, the permit coordinator, and the harvester ''jointly and severally liable'' for violations involving the special permits. It may be hard to convince someone to serve as a permit coordinator if the consequence of a mistake results in jail or a fine.

Response: Because of the liberalized restrictions under the special permits, the Council recommended that the permits be subject to sanctions under NMFS authority. Because of their indirect administration through a tribal or community entity, special permits would be subject to joint and several liability. This approach is consistent with NOAA Enforcement's approach to joint and several liability in other fisheries, which places responsibility for violations on the vessel owner, vessel operator, and, potentially, crew members.

Joint and several liability means each liable party is individually responsible for the entire obligation. For instance, if NMFS finds a CHP harvester in violation of the regulations, depending on the facts of the case, the harvester, the CHP Coordinator, and the tribe may all be subjects of an enforcement action. NOAA Enforcement retains a high degree of discretion in administering penalties under 15 CFR part 904.

Comment 16: Thirty days is too few for an educational permit. Educational permits should last at least 90 days.

Response: The Ceremonial and Educational Permits were based on existing U.S. Fish and Wildlife (USFWS) and National Park Service (NPS) ceremonial permits as requested by the tribes. The permits administered by USFWS and NPS provided a 15-day effective permit period. NMFS decided that 15 days would be too restrictive and burdensome on the tribes and determined that the effective permit period should be 30 days.

NMFS understands that tribes would like the Educational Permits to extend

90 days to accommodate the summer culture camps. However, NMFS believes providing multiple permits over the same 90-day period will enhance data quality and ensure that permits are not misused.

Comment 17: It seems unreasonable to limit the administration of the special permits to only one permit coordinator. What if the permit coordinator gets sick or is unable to attend to their duties? Taking the opportunity to subsistence fish when the time is right is too important to forfeit if the coordinator is not available.

Response: One of the purposes of the CHP Coordinator, Ceremonial Permit Coordinator, or the Instructor is to ensure a verifiable point of contact and sufficient control of the permit. As proposed, the tribes must designate a single individual as the primary person responsible for the Ceremonial or Educational Permit. Making a single individual responsible for the permit ensures accuracy of data and proper administration. However, as proposed, the regulations would not allow for any delegation of permit responsibilities in the event of incapacitation of the permit coordinator. Therefore, the regulations will be revised to indicate that the permit coordinator remains the principal authority responsible for the administration of the permit, but will allow flexibility for an alternate to be designated in the absence or unavailability of the designated permit coordinator.

Comment 18: If a CHP is to expire after only one year, it should be reissued automatically.

Response: The potential for abuse of the liberal provisions of the CHP requires an annual expiration and application process. The annual application process would allow NMFS to assess subsistence halibut harvests, ensure compliance with the CHP regulations, and withhold new permits if necessary.

Comment 19: The CHP program should be open only to tribes and those communities without tribal governments that can demonstrate a customary and traditional pattern of community harvesters.

Response: The Council clarified its intent that all eligible Area 2C communities listed in 50 CFR 300.65(f) would be eligible for CHPs because they are subject to the additional vessel limit restrictions. The Council's Advisory Panel (AP) recommendations specifically referenced the Halibut Subsistence Committee description of the CHP system, which suggested population size (i.e., 500) as a potential criterion for CHP eligibility. However, the Council did not adopt this recommendation. Therefore, all Area 2C communities, except those in which an eligible tribe exists, and tribes listed in 50 CFR 300.65(f) may request these permits under this rule.

One of the principle tenets of the Subsistence Halibut Program and customary and traditional use is the sharing of halibut with others. Objectively determining at what level of sharing a single individual becomes a ''community harvester'' would be difficult without defined criteria. Therefore, NMFS does not intend to define a customary and traditional pattern of community harvesters beyond the criteria provided by the Council that establishes the CHP program.

Comments on the Analysis of Proposed Changes Addressed by the Council in December 2004

Comment 20: The halibut stocks in the Sitka LAMP are not suffering from the subsistence halibut fishery.

Response: The Council recommended a longline closure area around Low Island in the Sitka Lamp during the summer months. The local waters south of Low Island are reported to be the center of high halibut production for fishermen using small skiffs. The prohibition on use of longline gear in this area would improve the harvesting success of those fishermen. This action is not intended to resolve a resource conservation issue in the Sitka LAMP, but instead attempts to equitably allocate the resource among different users.

In December 2004, the Council recommended increased gear and harvest restrictions in the Sitka LAMP. This action does not address those recommendations. Proposed implementing rules for the increased gear and harvest restrictions in the Sitka LAMP will be published in the **Federal Register** for public comment at a later date.

Comment 21: Fishing for subsistence halibut from a registered charter vessel should be limited to the immediate family members of the vessel owner.

Response: In December 2004, the Council recommended a revision to the definition of a charter vessel. This action does not address the use of charter vessels for the harvest of subsistence halibut. Proposed implementing rules for the revised charter vessel definition will be published in the **Federal Register** for public comment at a later date.

Comment 22: The number of charter clientele on a charter boat should be capped.

Response: This action does not address the management of charter vessels.

Comment 23: The State of Alaska Department of Fish and Game recommends changing gear restrictions in the Kodiak Island road zone, Prince William Sound, and Cook Inlet to 5–hooks-per-fisher to achieve consistency with State regulations for groundfish in those areas.

Response: In December 2004, the Council recommended increased gear and harvest restrictions in the Kodiak Island road zone. This action does not address those increased gear restrictions. Proposed implementing rules for the gear restrictions in the Kodiak Island road zone will be published in the **Federal Register** for public comment at a later date.

Comment 24: The $400 annual limit for customary and traditional exchange should be eliminated so that there are no cash sales.

Response: This rule does not address customary trade of halibut. In December 2004, the Council recommended revising the customary trade limit for subsistence halibut. Proposed implementing rules for changes in the customary trade limit will be published in the **Federal Register** for public comment at a later date.

Comment 25: There should be a possession limit equal to the daily bag limit.

Response: This rule does not address a possession limit for halibut. In December 2004, the Council recommended a possession limit for IPHC Areas 2C, 3A, and 3B. Proposed implementing rules for a possession limit will be published in the **Federal Register** for public comment at a later date.

Comment 26: NMFS should impose a 20–fish-per-season or annual limit like commercial halibut because the 20–fish-per-day limit is excessively high and a threat to the fishery.

Response: The 20–halibut-per-day catch limit is not excessive in light of its purpose, which is to provide a reasonable daily catch limit for a person that is subsistence fishing in order to supply food for his or her family and community. Proxy fishing is not provided for under the Subsistence Halibut Program. Therefore, the daily catch limit should be sufficient to allow the fisherman to supply fish to persons other than himself. Moreover, subsistence fishermen typically do not harvest more fish than they actually need and will use.

The customary and traditional practice of subsistence fishing does not include wasting fish. Hence, subsistence

fishing is self-limiting by the amount of halibut that a subsistence fisherman and his or her family can reasonably use for food. Although a 20–fish-per-day limit appears high for an individual, it allows a subsistence fisherman to harvest a sufficient amount of halibut to share with his or her family and community. It does not mean that a subsistence halibut fisherman will be going out every day to catch 20 halibut. The 20–halibut-per-day-limit merely allows for efficiency in harvesting subsistence halibut up to an amount that they will reasonably be able to prepare and store. NMFS intends for the restrictions on halibut harvest in Area 2C to continue to allow for a reasonable daily catch limit while addressing localized depletion concerns.

NMFS also disagrees that subsistence fishermen should be subject to an annual allocation and the associated monitoring and reporting requirements analogous to the individual fishing quota program for the commercial halibut fishery. Surveying registered fishermen is the same methodology used to estimate sport halibut harvests by the State of Alaska and NMFS does not believe the subsistence halibut fishery should be subjected to a more robust estimation procedure than is the sport halibut fishery when, according to existing data, the latter group harvests several times as many halibut as the former. Therefore, NMFS does not believe the subsistence fishery should be subject to an annual limit or quota and the associated monitoring and reporting requirements as the commentator would suggest.

Nevertheless, subsistence use of halibut may conflict with other uses of the resource, particularly in more populated areas of Alaska. In response to this concern, the Council in December 2004, recommended additional gear and harvest restrictions in the densely populated areas of the Sitka LAMP and the Kodiak Island road zone in addition to a possession limit in IPHC Areas 2C, 3A, and 3B. However, this action does not address the Council's December recommendations. Proposed implementing rules for the Council's December recommendations will be published in the **Federal Register** for public comment at a later date.

Comment 27: Recordkeeping requirements should be imposed on subsistence fishermen to track customary trade of halibut. Customary trade can also lead to inaccurate data on the actual level of subsistence harvest because it encourages halibut IFQ holders to characterize ''home pack'' as subsistence harvest.

Response: This rule does not address customary trade of halibut. In December 2004, the Council recommended revising the customary trade limit for subsistence halibut. Proposed implementing rules for customary trade of subsistence halibut will be published in the **Federal Register** for public comment at a later date.

Comments Directed at the Overall Subsistence Halibut Policy

Comment 28: Commercial IFQ permit holders are using the subsistence fishery as a means to increase their quota without proper accounting and are fishing for untold family members. The subsistence halibut regulations on retention and customary trade remain too permissive, allowing for large scale abuses by commercial interests such as lodge operators and the entry of subsistence halibut into commercial markets.

Response: One of the purposes of the Subsistence Halibut Program was to allow for the customary and traditional practice of sharing. This purpose is achieved by allowing harvesters to retain halibut beyond their own immediate needs for distribution to members of their family, friends, or others in the community. Under 50 CFR 300.66(h) retention of subsistence halibut with commercial halibut is prohibited except in limited circumstances in Areas 4C, 4D, and 4E. Additionally, under 50 CFR 300.66(j), it is unlawful for persons to retain or possess subsistence halibut for commercial purposes, cause subsistence halibut to be sold, bartered or otherwise enter commerce, or solicit exchange of subsistence halibut for commercial purposes. Therefore, fishing for or retaining subsistence halibut by an IFQ holder when commercial fishing for halibut or allowing subsistence halibut to enter commerce would be illegal.

NOAA Enforcement will pursue identified abuses of the Subsistence Halibut Program, including any violations of the regulations regarding customary trade. NMFS also encourages anyone who observes illegal activity in the subsistence halibut fishery to contact NOAA Enforcement.

Comment 29: Subsistence halibut should be required to be marked or identified in some manner, and mandatory logs or reports of fishing locations, quantities harvested, and amounts of gear used, should be required.

Response: The harvest of subsistence halibut and certain species taken incidental to subsistence halibut fishing is estimated based on the subsistence halibut survey. This survey indicates that subsistence halibut harvests are low relative to other sources of halibut fishing mortality. Hence, NMFS determined that the estimation of subsistence harvests does not need to be any more precise, or the reporting requirements any more robust than those used for estimating the sport harvest of halibut. Sport harvest of halibut is 9.3 percent of total halibut removals, which is substantially larger than subsistence harvest, which is 1.3 percent of total halibut removals.

Marking fish would constitute a regulatory burden with no corresponding enforcement or data collection value.

Comment 30: The non-subsistence areas in Juneau, Sitka, and Ketchikan have wrongfully restricted Alaska Native's right to subsist in areas that have been traditionally used to subsistence fish for halibut.

Response: The Council adopted and NMFS approved the definition developed by the Alaska Joint Board of Fisheries and Game for non-subsistence areas. The designated areas include the Anchorage-Matsu-Kenai, Prince William Sound, Juneau, and Ketchikan non-subsistence areas as defined in the Alaska Administrative Code (5 AAC 99.105) and 50 CFR 300.65. No subsistence fishing for halibut may occur within the boundaries described under these designations. Since the implementation of the Subsistence Halibut Program, NMFS and the Council received public testimony and written comments stating the non-subsistence areas exclude eligible tribes from their customary and traditional fishing grounds and result in a safety hazard by forcing eligible subsistence fishermen to travel excessive distances to fish for subsistence halibut.

In December 2004, the Council recommended allowing the use of Ceremonial and Educational Permits in the non-subsistence areas. Proposed implementing rules for allowing the Ceremonial and Educational Permits in non-subsistence areas will be published in the **Federal Register** for public comment at a later date.

Comment 31: Alaska Natives have customary and traditional use rights which supersede State and Federal restrictions in the Subsistence Halibut Program. Subsistence fishing for halibut should have priority over commercial or sport fisheries.

Response: The Halibut Act, under which the Subsistence Halibut Program is authorized, provides for fair and equitable allocation of halibut fishing privileges among U.S. fishermen, but does not establish an order of priority for those allocations. Allocation policy

is made by the Council. NMFS will review policy recommendations for fairness, equity, and consistency with the Halibut Act and other applicable law.

Comment 32: NMFS should employ a catch record card (CRC) system for the Subsistence Halibut Program.

Response: Although the suggested CRC method for estimating subsistence harvests is a reasonable alternative to the methodology used in the subsistence halibut survey conducted by ADF&G, the CRC method would be more complex and burdensome for the subsistence fishermen. The suggested CRC method presents the following problems: (1) agency action would be required to record and calculate the data reported on the CRCs, (2) the CRC method may produce a marginal increase in the precision and accuracy of the subsistence halibut harvest estimates, but surveying registered fishers is the same methodology used to estimate sport halibut harvests in Alaska and it is not clear why the subsistence halibut fishery should be subjected to a more robust estimation procedure than is the sport halibut fishery when, according to existing data, the latter harvests several times as many halibut as the former, (3) conducting a mail survey in parallel with a CRC requirement would substantially increase the reporting burden on affected fishermen, and (4) the SHARC system serves the same purpose, i.e., to distinguish the group of persons who intend to fish for subsistence halibut from the universe of those eligible to do so. This burden may be justified in the future, based on experience with the survey method, but for now is deemed unnecessary.

Comment 33: NMFS should set a size limit on halibut in order to protect future stocks.

Response: Size limits for biological purposes are established by the IPHC and do not represent an allocation measure assigned to the Council or NMFS under the Halibut Act. Proposals for biological management measures for halibut may be submitted to the IPHC.

Comment 34: Subsistence fishermen should be required to retrieve their gear in a timely manner.

Response: Currently, no regulations exist in any Federally managed fishery in the North Pacific that restricts the amount of time any form of gear is allowed to remain or ''soak'' in the water. Moreover, NMFS has no information on which to base such a restriction. Therefore, NMFS has no intention of regulating the soak time of subsistence fishing gear until information on the need for and implementation of such a management measure is developed.

Comment 35: NMFS should cooperate more with the tribal representatives to gather information about the subsistence fishery.

Response: Executive Order 13175 directs agencies to consult and coordinate with tribes on regulatory issues. NMFS regularly consults with Alaska Native representatives through the Alaska Native Subsistence Halibut Working Group. NMFS agrees that cooperating with the affected Alaska Native tribes will foster trust between the agency and subsistence fishermen and generally assure the success of the Subsistence Halibut Program. In developing its subsistence policy, the Council specifically recommended cooperative agreements with tribal, state, and Federal governments for harvest monitoring and general oversight of issues affecting subsistence halibut fishing. NMFS intends to continue to adhere to the Council's guidance and to consult with Alaska Native tribal representatives.

Comment 36: The subsistence halibut fishery should be discontinued and a valid accounting made of the commercial catch.

Response: The subsistence halibut fishery occurred for a long time before NMFS recognized longstanding customary and traditional practices among Alaska Native and rural residents of Alaska through regulations. The subsistence halibut fishery serves a valid purpose in allowing those eligible to provide sustenance for themselves, their families, and their communities. NMFS believes that the Subsistence Halibut Program has been successful in achieving that purpose. Therefore, NMFS does not intend to discontinue the Subsistence Halibut Program.

This rule does not address the commercial halibut fishery. The commercial catch of halibut is managed through an individual fishery quota (IFQ) system. The IFQ program provides a specific allocation of the total allowable catch of a species or fishery to a qualified person. Fishing for that allocation is subject to strict recordkeeping and reporting requirements and the responsible person may not exceed that limit without significant penalties. Consequently, the IFQ halibut fishery management system constitutes an appropriately valid accounting of IFQ halibut and sablefish.

Comment 37: Regulations should legitimize the existing halibut subsistence fishery without expanding or creating a new one.

Response: One of the stated goals of the original subsistence halibut action was to formalize a heretofore unrecognized fishery (68 FR 18145, April 15, 1003, EA/RIR). In the original analysis for the Subsistence Halibut Program the Council originally estimated harvest of subsistence halibut to be approximately 1.5 million pounds net (68 FR 18145, April 15, 2003, EA/RIR). The subsistence halibut survey conducted by ADF&G for 2003 indicates with a relatively high degree of confidence that the subsistence halibut fishery removed only 1.041 million pounds net. Prior estimates for subsistence halibut removals in individual IPHC areas are also fairly consistent with findings in the subsistence halibut survey. For instance, modest increases to subsistence halibut removals were recorded in Areas 2C and 3A of roughly 125,000 pounds each, but little or no increase was measured in the remaining IPHC areas. Therefore, based on the best available information provided in the 2003 subsistence halibut survey, NMFS believes that it has recognized in regulations the existing halibut subsistence fishery without expanding or creating a new one.

Comment 38: NMFS seriously underestimated interest in subsistence halibut fishing in Alaska, which has resulted in higher levels of subsistence halibut harvest than originally anticipated.

Response: The analysis prepared for the original Subsistence Halibut Program estimated that approximately 89,000 individuals would be eligible to harvest subsistence halibut (68 FR 18145, April 15, 2003, EA/RIR). NMFS originally estimated that approximately 10 percent of the eligible population would apply for the Subsistence Halibut Program. Thus, NMFS originally anticipated approximately 8,900 individuals to apply for and potentially participate with a subsistence halibut registration certificate.

According to the recent subsistence halibut survey conducted by ADF&G, of the 11,625 individuals registered to fish for subsistence halibut only an estimated 4,935 individuals actually fished in the subsistence halibut fishery. Therefore, actual participation in the fishery is well below the original estimate.

Additionally, the analysis estimated harvest of subsistence halibut would be approximately 1.5 million pounds net (68 FR 18145, April 15, 2003, EA/RIR). The subsistence halibut survey conducted by ADF&G for 2003 indicates with a relatively high degree of confidence that the subsistence halibut

fishery removed only 1.04 million pounds net, which is considerably less than the Council's original estimate of 1.5 million pounds net. Therefore, actual subsistence halibut harvest is lower than originally anticipated as indicated by the best available data.

Comment 39: NMFS has failed to set adequate limits for the new subsistence halibut fishery or for the unguided sport fishery for halibut.

Response: The gear and harvest restrictions proposed by the Council and implemented by NMFS strike an adequate balance between the needs of subsistence fishermen and conservation of the resource. See also Response under Comments 1 and 7.

This rule does not address the sport fishery for halibut.

Comment 40: Inaccurate estimates by NMFS of the actual levels of subsistence halibut harvest pose a risk to the halibut biomass as a whole, especially in light of recent IPHC data estimating that the exploitable biomass of halibut will continue to decline. This will potentially result in adverse effects to the halibut resource and all users of the halibut resource.

Response: In the original analysis for the Subsistence Halibut Program, the Council estimated total harvest for the subsistence fishery at 1.5 million pounds net (68 FR 18145, April 15, 2003, EA/RIR). The subsistence halibut survey conducted by ADF&G for 2003 indicates with a relatively high degree of confidence that the subsistence halibut fishery removed only 1.04 million pounds net, which is considerably less than the Council's original estimate. Additionally, the subsistence halibut survey indicates that only 1.3 percent of the total halibut removals in Alaska are attributed to the subsistence fishery. The level of subsistence halibut removals for subsistence is far less than the commercial harvest (73.5 percent), bycatch in other commercial fisheries (13.9 percent), the sport harvest (9.3 percent), or even wastage within the commercial halibut fishery (2.0 percent). Therefore, no reasonable basis exists to indicate the subsistence fishery poses a conservation risk or will adversely affect the halibut resource.

Nonetheless, the allocation for the commercial fishery may be adversely affected as the IPHC calculation of exploitable biomass continues to decrease. Recent subsistence and sport removals have tended to either remain constant or increase consistent with population trends and economic factors in Alaska. Because subsistence and sport caught removals are deducted from the exploitable biomass before allocation to the commercial fishery, this could result in a lower proportional share of the overall halibut resource for commercial exploitation as biomass decreases.

Comment 41: NMFS should not allow retention of any sport or commercial fish species with subsistence halibut because it increases the risk that subsistence halibut could be used clandestinely as bait, sold, or abused in other ways.

Response: The current halibut regulations prohibit the retention of subsistence halibut with commercial or sport caught halibut with limited exceptions in the Bering Sea. However, no prohibition exists regarding the retention of other commercial or sport caught species with subsistence halibut. For instance, a subsistence halibut fisherman could lawfully retain Dungeness crab caught using a sport fishing license along with subsistence halibut. Likewise, a commercial salmon troller could retain subsistence halibut along with commercially caught salmon, provided he or she is an eligible subsistence fisherman and abides by the gear and harvest restrictions for subsistence halibut.

NMFS currently does not perceive a problem with allowing the retention of sport caught fish of other species with subsistence halibut. Fishermen often harvest and retain a variety of species simultaneously subject to their personal tastes and subsistence needs. However, NMFS may seek to restrict retaining sport caught fish of other species with subsistence halibut in the future if available information suggests that allowing that practice adversely affects management of the Subsistence Halibut Program.

NMFS recognizes that a ''substitution effect'' could occur when a commercial fisherman has the opportunity to retain subsistence halibut with commercial fish of other species. This means the salmon troller might retain a subsistence halibut for personal use where he otherwise would have retained a commercially caught salmon. There potentially would also be an ''income effect'' that would encourage the salmon troller to sell the commercially caught salmon he might have otherwise kept absent the availability of subsistence halibut. However, there are many variables that might influence a commercial fisherman to substitute subsistence halibut for salmon or any other commercially caught species and retention of subsistence halibut is self limiting to the needs of the individual, their family, or their community. Therefore, NMFS does not believe there is sufficient reason to restrict the retention of subsistence halibut along with commercially caught fish of other species. Nonetheless, NMFS encourages the commentator to provide his comment to the Council for further review and consideration.

Comment 42: A full EIS should have been prepared for the original proposed subsistence halibut rules because substantial uncertainty and biological controversy exists. The Subsistence Halibut Program underestimates the magnitude of the actual subsistence halibut harvest and insufficiently discerns areas where harvest impacts on halibut and other species are likely to be concentrated.

Response: For the original subsistence halibut policy, the Council prepared an environmental assessment (EA) that analyzed and described the impact on the human environment that would result from implementation of this action. The EA indicated that the preferred alternative for the Subsistence Halibut Program did not pose public health and safety impacts, had no known risks to the human environment, and was not expected to cause significant cumulative impacts. NMFS believes that the EA adequately addressed the impact on the human environment and appropriately concluded that there were no significant cumulative impacts.

Comment 43: There is an unacceptable risk of cumulative impacts on non-halibut species of fish that will be retained as bycatch by subsistence halibut fishermen.

Response: The EA for the original Subsistence Halibut Program used incidental catch rates for commercial longline gear to estimate potential incidental catch in the subsistence halibut fishery. The EA estimated that halibut longline gear could result in incidental catch rates of 10–18 percent for rockfish in Area 2C; 27 percent for sablefish and 12 percent for Pacific cod in the Gulf of Alaska; and 15 percent for rockfish, 29 percent for sablefish, 14 percent for Pacific cod and 11 percent for Greenland turbot in the Bering Sea and Aleutian Islands. Although the estimates of these percentages based on commercial incidental catch rates provide an indication of potential incidental catch rates in the subsistence halibut fishery, no directed studies have been done to assess the effects of the subsistence halibut fishery on non-halibut species. However, as part of the 2003 subsistence halibut survey, the incidental catch of rockfish and lingcod was estimated in the subsistence halibut fishery. The increased restrictions for Area 2C were based in part on the potential incidental catch of rockfish

and lingcod in the subsistence halibut fishery. Therefore, for the purposes of this response, NMFS will focus on Area 2C.

The ADF&G Sport Fish Division survey for Southeast Alaska (IPHC Area 2C) indicates that 55,394 rockfish and 10,656 lingcod were harvested in the sport fishery in 2003. The subsistence halibut survey indicates that 14,870 rockfish and 3,298 lingcod were harvested from Area 2C as incidental catch in the subsistence halibut fishery in 2003. Therefore, the subsistence fishery harvested only 31 percent of the amount of lingcod and 27 percent of the amount of rockfish harvested by the sport fishery in Area 2C.

Commercial landings for lingcod and rockfish are reported in landed pounds and no adequate conversion factors exist to extrapolate commercial landed pounds into total individual fish harvested or vice versa for comparison with sport and subsistence harvests. However, the ADF&G Commercial Fish division data for 2003 indicate that 1,729,812 pounds of rockfish and 288,173 pounds of lingcod were landed from Area 2C.

Given the relatively low numbers of rockfish and lingcod retained by subsistence fishermen as indicated by the subsistence halibut survey in comparison with the commercial and sport fisheries, NMFS does not believe that the subsistence halibut fishery will have a significant direct or cumulative impact on non-halibut species. Consequently, NMFS does not believe that the subsistence halibut fishery represents an unacceptable risk to the non-halibut species caught as incidental catch in the fishery.

Changes from the Proposed Rule

The comments received on the proposed rule made some suggestions for change with which NMFS agrees. Hence, NMFS has changed regulatory text in this action from what was published in the proposed rule. None of these changes make substantive changes to the subsistence halibut management program described in the preamble to the proposed rule. These changes are identified and explained as follows.

1. NMFS intended that the fishing gear used under a CHP be limited to 30 hooks per person in possession of a valid subsistence halibut registration certificate and on board the vessel and not exceed 3 times the per-person hook limit. NMFS also intended that the gear used under a Ceremonial or Educational Permits be limited to 30 hooks per vessel. These limitations were clear in the preamble to the proposed rule. The regulatory text published in the proposed rule, however, was not explicitly clear. This lack of specificity and potential ambiguity in the proposed regulatory text was discovered subsequent to the publication of the proposed rule. Hence, the regulatory text at §§ 300.65(g)(1)(I), 300.65(i)(3)(iv), and (j)(3)(vi) is changed from what it was in the proposed rule to clarify the gear limitation for a CHP, Ceremonial Permit, and Educational Permit.

2. NMFS intended that the operation of the special permits consist of a permit log that is maintained by the permit coordinator and a permit card that must be on board the vessel when fishing under the applicable special permit. This was clear in the preamble to the proposed rule, but was not explicitly clear in the regulatory text. This lack of specificity and potential ambiguity in the proposed regulatory text was discovered subsequent to the publication of the proposed rule. Thus, the regulatory text at §§ 300.65(i), (i)(3)(iii), (j), and (j)(3)(iii) is changed from what it was in the proposed rule to clarify that a permit card must be on board the vessel when fishing under a special permit.

3. A change was suggested in Comment 14 to allow up to five separate vessels to fish under a CHP. NMFS agrees that the proposed CHP system is not consistent with customary and traditional harvest patterns and practices or sufficient to meet the subsistence needs of the affected communities and tribes. Under the proposed change, eligible tribes and communities would continue to receive one CHP, but could receive up to five laminated permit cards. This requirement would increase the administrative responsibilities of the CHP Permit Coordinator, but would allow for greater efficiency in conducting community harvest according to customary and traditional methods and needs. NMFS agrees with this suggestion for this purpose and finds that this change from the proposed rule is not substantive. The regulatory text at § 300.65(i) is changed from what it was in the proposed rule to indicate that five permit cards would be issued with the CHP, allowing up to five 5 vessels to fish simultaneously under a CHP.

4. Another change, based on recommendations in Comment 17, would allow flexibility in the administration of the special permits by permit coordinators. This is necessary to allow for the use of the special permits if the permit coordinator becomes incapacitated or is otherwise unavailable. Hence, NMFS changed the regulatory text at §§ 300.65(i)(5)(i)-(iii) and §§ 300.65(j)(5)(i)-(iii) from what was published in the proposed rule to indicate that the permit coordinator would remain ultimately responsible, but that the applicable permit may be administered by a designee.

Classification

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0512. Public reporting burden for this collection of information is estimated to average 10 minutes per response for each permit application and 30 minutes per response for each harvest log, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB by e-mail *David__Rostker@omb.eop.gov* or fax 202–395–7285.

Notwithstanding any other provision of the 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 PRA, unless that collection of information displays a currently valid OMB Control Number.

A Final Regulatory Flexibility Analysis (FRFA) was prepared for this action that examines regulations regarding the legal harvest of halibut for subsistence use in Convention waters in and off Alaska. The FRFA evaluates the small entity impacts for an action to amend subsistence halibut regulations affecting proxy fishing and the development of a ceremonial/cultural harvest permit system and an educational harvest permit system in Areas 2C and 3A. This action is believed to have the potential to result in a significant impact on a substantial number of small entities, as defined under the Regulatory Flexibility Act. The FRFA addresses the requirements of the Regulatory Flexibility Act at section 604(a).

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for two regulatory changes to issue permits to Alaska Native Tribes or community entities under the Action 1 preferred alternative, which are believed to have the potential to result in a significant impact on a substantial number of small entities. Special permits proposed in this rule would impact small entities in the form of small government

jurisdictions with fewer than 50,000 residents. The special permits represent the only aspect of this action that affects small entities. The remainder of the action bears exclusively on the non-commercial activities of ''individuals,'' which are subsequently excluded from the RFA.

The purpose and need for this action is to provide for improved safety at sea, recognition and accommodation of traditional Native customs and practices, facilitation of efficient acquisition of subsistence food, reductions in waste and discards, and promotion of halibut conservation. Special permits administered under this action would provide for the above subsistence needs under the existing Subsistence Halibut Program. Twenty-nine rural communities and 19 tribes in IPHC Area 2C and 14 rural communities and 19 tribes in IPHC Area 3A may be affected by this action.

The proposed rule was published in the **Federal Register** on July 9, 2004 (69 FR 41453). The IRFA prepared for the preferred alternative was described in the classifications section of the preamble to the proposed rule. The public comment period ended August 9, 2004. No comments were received on the IRFA.

Specialized permits implemented by this action would require additional reporting for halibut harvest. The applications for the proposed specialized permits and additional reporting requirements would be designed to minimize the information collection burden on subsistence halibut fishermen while retrieving essential information. New recordkeeping and reporting requirements under this action would require mandatory reporting of subsistence harvests conducted under special permits that include community harvest permits (CHPs), Ceremonial Permits, and Educational Permits. All the small entities included in this analysis would be subject to the increased recordkeeping and reporting requirements. No special knowledge or training would be required for any recordkeeping and reporting requirements for the special permits implemented under this action.

The Council analyzed five alternatives for this action. These alternatives addressed varying applications of each special permit under this proposed rule including a no action alternative and the selected preferred alternative. Under Alternative 1, the no action alternative, the status quo would be maintained and no special permits would issue to Alaska Native tribes or rural communities under the Subsistence Halibut Program. Alternative 2 analyzed the development of a proxy system, but did not include special permits. Alternative 3 analyzed the development of a proxy system in conjunction with community harvest permits. Alternative 4 and Alternative 5 (the preferred alternative) recommended the development of special permits in the form of ceremonial/cultural permits and community harvest permits.

The Council determined that the Alternatives 1 through 4 failed to meet the goals of the Subsistence Halibut Program to provide for improved safety at sea, recognition and accommodation of traditional Native customs and practices, facilitation of efficient acquisition of subsistence food, reductions in waste and discards, and promotion of halibut conservation. The Council determined that implementing special permits according to the preferred alternative would provide a means to meet these goals by establishing a system that provides for better harvest assessment and stock monitoring while recognizing the unique character of the Alaska Native tribes and rural communities. For the Community Harvest Permits, the Council selected a permit system based on the recommendations of the Halibut Subsistence Committee as opposed to a proxy system based on the model provided by the State of Alaska. The Council believed that a proxy system would fail to provide adequate harvest assessment and would present cumbersome management and enforcement problems. Therefore, the Council concluded that Community Harvest Permits would more closely adhere to the customary and traditional fishing practices of Alaska Native tribes and rural communities, which historically used individuals with particular expertise in halibut to harvest halibut for most or all of the tribe or community. For the Ceremonial and Educational Permits, the Council selected a permit system modeled after the U.S. Fish and Wildlife Service's subsistence permit programs because that permit system represented a proven system that corresponded well with the similar subsistence goals of the Subsistence Halibut Program. The Council selected the Ceremonial and Educational Permit system to recognize the unique needs and characteristics of Alaska Native tribes.

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

List of Subjects

50 CFR Part 300

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 25, 2005.

William T. Hogarth

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR parts 300 and 679 are amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for 50 CFR part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

§ 300.63 [Amended]

■ 2. In § 300.63, the introductory paragraph preceding paragraph (a) is removed.

■ 3. In § 300.65, paragraphs (c) and (h)(4) are removed; paragraph (i) is redesignated as paragraph (c); paragraphs (d)(4) and (g)(1)(i), (g)(2), and (g)(3)(iii) are revised; and new paragraphs (i) through (k) are added to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in waters in and off of Alaska.

* * * * *

(d) * * *

(4) No charter vessel shall engage in sport fishing, as defined at § 300.61, for halibut within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(i) No charter vessel shall retain halibut caught while engaged in sport fishing, as defined at § 300.61, for other species, within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(ii) Notwithstanding paragraphs (d)(4) and (d)(4)(i) of this section, halibut harvested outside Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, may be retained onboard a charter vessel engaged in sport fishing, as defined in § 300.61, for other species within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

* * * * *

(g) * * *

(1) * * *

(i) Subsistence fishing gear set or retrieved from a vessel when fishing under a subsistence halibut registration certificate or a Community Harvest Permit (CHP) must not have more than 30 hooks per person registered in accordance with paragraph (h) of this section and on board the vessel and shall never exceed 3 times the per-person hook limit except that:

(A) No hook limit applies in Areas 4C, 4D, and 4E;

(B) In Area 2C, subsistence fishing gear set or retrieved from a vessel when persons are fishing under a subsistence halibut registration certificate must not have more than 30 hooks per vessel;

(C) In Area 2C, subsistence fishing gear set or retrieved from a vessel when fishing under a Ceremonial or Educational Permit pursuant to paragraph (j) of this section must not have more than 30 hooks per vessel; and

(D) In Area 2C within the Sitka LAMP from June 1 to August 31, setline gear may not be used in a 4 nautical mile radius extending south from Low Island at 57°00′42″ N. lat., and 135°36′34″ W. long.

* * * * *

(2) The daily retention of subsistence halibut in rural areas is limited to no more than 20 fish per person eligible to conduct subsistence fishing for halibut under this paragraph (g) and on board the vessel, except that:

(i) No daily retention limit applies in Areas 4C, 4D, and 4E;

(ii) No daily retention limit applies to persons fishing under a community harvest permit (CHP) pursuant to paragraph (i) of this section;

(iii) The total allowable harvest for persons fishing under a Ceremonial or Educational Permit pursuant to paragraph (j) of this section is 25 fish per permit; and

(iv) In Area 2C the daily retention limit is 20 fish per vessel.

(3) * * *

(iii) The Anchorage-Matsu-Kenai non-subsistence marine waters area in Commission Regulatory Area 3A (see Figure 4 to subpart E) is defined as:

(A) All waters of Cook Inlet north of 59°30.40′ N. lat., except those waters within mean lower low tide from a point one mile south of the southern edge of the Chuitna River (61°05.00′ N. lat., 151°01.00′ W. long.) south to the easternmost tip of Granite Point (61°01.00′ N. lat., 151°23.00′ W. long.) (Tyonek subdistrict); and

(B) All waters of Alaska south of 59°30.40′ N. lat. on the western shore of Cook Inlet to Cape Douglas (58°10′ N. lat.) and in the east to Cape Fairfield (148°50.25′ W. long.), except those waters of Alaska west of a line from the westernmost point of Jakolof Bay (151°31.09′ W. long.) and following the shore to a line extending south from the easternmost point of Rocky Bay (151°18.41′ W. long.); and

* * * * *

(i) *Community Harvest Permit (CHP).* An Area 2C community or Alaska Native tribe listed in paragraphs (f)(1) or (f)(2) of this section may apply for a CHP, which allows a community or Alaska Native tribe to appoint one or more individuals from its respective community or Alaska Native tribe to harvest subsistence halibut from a single vessel under reduced gear and harvest restrictions. The CHP consists of a harvest log and up to five laminated permit cards. A CHP is a permit subject to regulation under § 679.4(a) of this title.

(1) *Qualifications.* (i) NMFS may issue a CHP to any community or Alaska Native tribe that applies according to paragraph (i)(2) of this section and that is qualified to conduct subsistence fishing for halibut according to paragraph (f) of this section.

(ii) NMFS will issue a CHP to a community in Area 2C only if:

(A) The applying community is listed as eligible in Area 2C according to paragraph (f)(1) of this section; and

(B) No Alaska Native tribe listed in paragraph (f)(2) exists in that community.

(iii) NMFS will issue a CHP to an Alaska Native tribe in Area 2C only if the applying tribe is listed as eligible in Area 2C according to paragraph (f)(2) of this section.

(iv) Eligible communities or Alaska Native tribes may appoint only one CHP Coordinator per community or tribe.

(2) *Application.* A community or Alaska Native tribe may apply for a CHP by submitting an application to the Alaska Region, NMFS. Applications must be mailed to: Restricted Access Management Program, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668. A complete application must include:

(i) The name of the community or Alaska Native tribe requesting the CHP;

(ii) The full name of the person who is designated as the CHP Coordinator for each community or Alaska Native tribe, the designated CHP Coordinator's mailing address (number and street, city, state, and zip code), community of residence (the rural community or residence from paragraph (f)(1) of this section) or the Alaska Native tribe if applicable (as indicated in paragraph (f)(2) of this section), and the daytime telephone number; and

(iii) Any previously issued CHP harvest logs.

(3) *Restrictions.* Subsistence fishing for halibut under a CHP shall be valid only:

(i) In Area 2C, except that a CHP may not be used:

(A) Within the Sitka LAMP defined in paragraph (d) of this section (see Figure 1 to subpart E); or

(B) Within the Juneau and Ketchikan non-rural areas defined in paragraph (g) of this section (see Figures 2 and 3 to subpart E);

(ii) To persons in possession of a valid subsistence halibut registration certificate issued in accordance with paragraph (h) of this section for the same community or Alaska Native tribe listed on the CHP;

(iii) On a single vessel on which a CHP card is present; and

(iv) If subsistence fishing gear set or retrieved from a vessel on which the CHP card is present does not exceed the restrictions of paragraph (g) of this section.

(4) *Expiration of permit.* Each CHP will be valid only for the period of time specified on the permit. A CHP will expire one year from the date of issuance to a community or Alaska Native tribe eligible to harvest halibut under paragraph (f) of this section. A community or Alaska Native tribe eligible to harvest subsistence halibut under paragraph (f) of this section may renew its CHP that is expired or will expire within three months by following the procedures described in paragraph (i)(2) of this section.

(5) *Duties of the CHP coordinator.* Each CHP Coordinator must ensure:

(i) The designated harvesters who may fish under the CHP are identified on the Community Harvest Permit harvest log when the CHP is issued to the designated harvesters;

(ii) The CHP remains in the possession of the CHP Coordinator or other tribal or government authority when not in use and is issued to the designated harvesters when necessary; and

(iii) All required recordkeeping and data reporting of subsistence harvests under the CHP are performed.

(6) *Harvest log submission.* Each Community Harvest Permit harvest log must be submitted to NMFS on or before the date of expiration by facsimile or mail. Harvest logs must be mailed to RAM at the address given in paragraph (i)(2) of this section or faxed to 907–586–7354. The log must provide information on:

(i) The subsistence fisher's identity including his or her full name, subsistence halibut registration

certificate number, date of birth, mailing address (number and street, city, state, and zip code), community of residence, daytime phone number, and tribal identity (if appropriate); and

(ii) The subsistence halibut harvest including whether the participant fished for subsistence halibut during the period specified on the permit, and if so, the date harvest occurred, the number and weight (in pounds) of halibut harvested, the type of gear and number of hooks used, the Commission regulatory area and local water body from which the halibut were harvested, and the number of lingcod and rockfish caught while subsistence fishing for halibut.

(j) *Ceremonial Permit or Educational Permit.* An Area 2C or Area 3A Alaska Native tribe that is listed in paragraph (f)(2) of this section may apply for a Ceremonial or Educational Permit, allowing the tribe to harvest up to 25 halibut per permit issued. The Ceremonial and Educational Permits each consist of a harvest log and a single laminated permit card. Ceremonial and Educational Permits are permits subject to regulation under § 679.4(a)of this title.

(1) *Qualifications.* (i) NMFS may issue a Ceremonial or Educational Permit to any Alaska Native tribe that completes an application according to paragraph (j)(2) of this section and that is qualified to conduct subsistence fishing for halibut according to paragraph (f)(2) of this section.

(ii) Eligible Alaska Native tribes may appoint only one Ceremonial Permit Coordinator per tribe.

(iii) Eligible educational programs may appoint only one authorized Instructor per Educational Permit.

(2) *Application.* An Alaska Native tribe may apply for a Ceremonial or Educational Permit by submitting an application to the Alaska Region, NMFS. Applications must be mailed to: Restricted Access Management Program, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668.

(i) A complete application must include:

(A) The name of the Alaska Native tribe requesting the Ceremonial or Educational Permit;

(B) The name of the person designated as the Ceremonial Permit Coordinator for each Alaska Native tribe or the name of the person designated as the Instructor for an Educational Permit, the Ceremonial Permit Coordinator or Instructor's mailing address (number and street, city, state, and zip code), and the daytime telephone number;

(C) Any previously issued Ceremonial Permit harvest logs from any expired Ceremonial Permit if applying for a Ceremonial Permit; and

(D) Any previously issued Educational Permit harvest logs from any expired Educational Permit if applying for a Educational Permit.

(ii) NMFS will issue a Ceremonial Permit for the harvest of halibut associated with traditional cultural events only if the application:

(A) Indicates the occasion of cultural or ceremonial significance; and

(B) Identifies the person designated by the eligible Alaska Native tribe as the Ceremonial Permit Coordinator.

(iii) NMFS will issue an Educational Permit only if the application:

(A) Includes the name and address of the educational institution or organization;

(B) Includes the instructor's name;

(C) Demonstrates the enrollment of qualified students;

(D) Describes minimum attendance requirements of the educational program; and

(E) Describes standards for the successful completion of the educational program.

(3) *Restrictions.* Subsistence fishing for halibut under Ceremonial or Educational Permits shall be valid only:

(i) In Area 3A, except in the Anchorage-Matsu-Kenai and Valdez non-rural areas defined in paragraph (g) of this section (see Figures 4 and 5 to subpart E);

(ii) In Area 2C, except in the Juneau and Ketchikan non-rural areas defined in paragraph (g) of this section (see Figures 2 and 3 to subpart E) and a Ceremonial Permit may not be used within the Sitka LAMP from June 1 through August 31;

(iii) On a single vessel on which the Ceremonial or Educational Permit card is present;

(iv) On the vessel on which the instructor is present for Educational Permits;

(v) To persons in possession of a valid subsistence halibut registration certificate issued in accordance with paragraph (h) of this section for the same Alaska Native tribe listed on the Ceremonial or Educational Permit, except that students enrolled in an educational program may fish under an Educational Permit without a subsistence halibut registration certificate; and

(vi) If subsistence fishing gear set or retrieved from a vessel on which the Ceremonial or Educational Permit card is present does not exceed the restrictions of paragraph (g) of this section.

(4) *Expiration of permits.* Each Ceremonial or Educational Permit will be valid only for the period of time specified on the permit. Ceremonial and Educational Permits will expire 30 days from the date of issuance to an Alaska Native tribe eligible to harvest halibut under paragraph (f)(2) of this section. A tribe eligible to harvest subsistence halibut under paragraph (f)(2) of this section may apply for additional Ceremonial or Educational Permits at any time.

(5) *Duties of Ceremonial Permit Coordinators and Instructors.* Each Ceremonial Permit Coordinator or Instructor must ensure:

(i) The designated harvesters or students who may fish under the Ceremonial or Educational Permit are identified on the Ceremonial/Educational Permit harvest log when the permit is used;

(ii) The Ceremonial Permit remains in the possession of the Ceremonial Permit Coordinator or other tribal authority when not in use and is issued to designated harvesters when necessary; and

(iii) All required recordkeeping and data reporting of subsistence harvests under the Ceremonial or Educational Permit are performed.

(6) *Harvest log submission.* Submission of a Ceremonial or Educational Permit log shall be required upon the expiration of each permit and must be received by Restricted Access Management within 15 days of the expiration by facsimile or mail. Harvest logs must be mailed to RAM at the address given in paragraph (j)(2) of this section or faxed to 907–586–7354. The log must provide information on:

(i) The subsistence fisher's identity including his or her full name, subsistence halibut registration certificate number if applicable (students do not need a SHARC), date of birth, mailing address (number and street, city, state, and zip code), community of residence, daytime phone number, and tribal identity;

(ii) The subsistence halibut harvest including whether the participant fished for subsistence halibut during the period indicated on the permit, and if so, the date when harvest occurred, the number and weight (in pounds) of halibut harvested, the type of gear and number of hooks used, the Commission regulatory area and local water body from which the halibut were harvested, and the number of lingcod and rockfish caught while subsistence fishing for halibut.

(k) *Appeals.* If Restricted Access Management (RAM) determines that an application is deficient, it will prepare and send an Initial Administrative Determination (IAD) to the applicant.

The IAD will indicate the deficiencies in the application or any additional provided information. An applicant who receives an IAD may appeal RAM's findings pursuant to § 679.43 of this title.

■ 4. In § 300.66, paragraphs (e) and (h) are revised; paragraph (k) is redesignated as paragraph (l) and republished, and a new paragraph (k) is added to read as follows:

§ 300.66 Prohibitions.

* * * * *

(e) Fish for subsistence halibut in and off Alaska unless the person is qualified to do so under § 300.65(f), possesses a valid subsistence halibut registration certificate pursuant to § 300.65(h), and makes this certificate available for inspection by an authorized officer on request, except that students enrolled in a valid educational program and fishing under an Educational Permit issued pursuant to § 300.65(j) do not need a subsistence halibut registration certificate.

* * * * *

(h) Retain on board the harvesting vessel halibut harvested while subsistence fishing with halibut harvested while commercial fishing or from sport fishing, as defined at § 300.61(b), except that persons authorized to conduct subsistence fishing under § 300.65(f), and who land their total annual harvest of halibut:

(1) In Commission regulatory Areas 4D or 4E may retain, with harvests of Community Development Quota (CDQ) halibut, subsistence halibut harvested in Commission regulatory areas 4D or 4E that are smaller than the size limit specified in the annual management measures published pursuant to § 300.62; or

(2) In Commission regulatory Areas 4C, 4D or 4E may retain, with harvests of CDQ halibut, subsistence halibut harvested in Commission regulatory areas 4C, 4D or 4E that are equal to or greater than the size limit specified in the annual management measures published pursuant to § 300.62.

* * * * *

(k) Retain subsistence halibut harvested under a CHP, Ceremonial Permit, or Educational Permit together in any combination or with halibut harvested under any other license or permit.

(l) Fillet, mutilate, or otherwise disfigure subsistence halibut in any manner that prevents the determination of the number of fish caught, possessed, or landed.

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 5. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

■ 6. In § 679.4, paragraphs (a)(1) introductory text and (a)(2) are revised and paragraph (a)(1)(xi) is added to the table to read as follows:

§ 679.4 Permits.

(a) * * *

(1) *What permits are available?* Various types of permits are issued for programs codified at 50 CFR parts 300 and 679. These permits are listed in the following table. The date of effectiveness for each permit is given along with certain reference paragraphs for further information.

If program permit or card type is:	Permit is in effect from issue date through end of:	For more information, see...
* * * * *		
(xi) Special Subsistence Permits		
(A) Community Harvest Permit	1 year	§ 300.65 of this title
(B) Ceremonial or Educational Permit	30 days	§ 300.65 of this title

(2) *Permit and logbook required by participant and fishery.* For the various types of permits issued, refer to § 679.5 for recordkeeping and reporting requirements. For subsistence permits, refer to § 300.65 of this title for recordkeeping and reporting requirements.

* * * * *

■ 7. In § 679.43, paragraph (a) is revised to read as follows:

§ 679.43 Determinations and appeals.

(a) *General.* This section describes the procedure for appealing initial administrative determinations made in this title under parts 679, 680, and under subpart E of part 300. This section does not apply to initial administrative determinations made under § 679.30(d).

* * * * *

[FR Doc. 05–6507 Filed 3–31–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 050314073–5073–01; I.D. 030705B]

RIN 0648–AS99

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Reopening of the Application Process for the Charter Vessel and Headboat Permit Moratorium in the Gulf of Mexico

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

ACTION: Temporary rule; emergency action.

SUMMARY: NMFS issues this emergency rule to provide a limited reopening of the application process for the charter vessel/headboat permit moratorium for reef fish and coastal migratory pelagic fish in the Gulf of Mexico. This reopening allows qualifying persons, who can provide documentation of economic harm as a result of inability to obtain a moratorium permit, to apply for reconsideration of moratorium permit eligibility. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of the collection-of-information requirements contained in this emergency rule and publishes the OMB control numbers for those collections. The intended effect of this emergency rule is to eliminate adverse socio-economic impacts on eligible Gulf charter vessel/headboat owners and operators while maintaining the integrity of the permit moratorium and its objectives.

DATES: This rule is effective April 1, 2005 through September 28, 2005.

ADDRESSES: Copies of the required regulatory analysis supporting this emergency rule may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Comments regarding the collection-of-information requirements contained in this emergency rule should be sent to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and by e-mail to

David_Rostker@omb.eop.gov, or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Phil Steele, 727–570–5305; fax: 727–824–5308, e-mail: *Phil.Steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for reef fish is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) that was prepared by the Gulf of Mexico Fishery Management Council (Council). The fisheries for coastal migratory pelagic resources are managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Coastal Migratory Pelagics FMP) that was prepared jointly by the Council and the South Atlantic Fishery Management Council. These FMPs were approved by NMFS and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

The Council, in cooperation with the Gulf charter vessel/headboat industry, developed Amendment 14 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Amendment 14) and Amendment 20 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Amendment 20) to address issues of increased fishing mortality and fishing effort in the for-hire (charter vessel/headboat) sector of the recreational fishery in the Gulf of Mexico. These two amendments proposed to establish a 3-year moratorium on the issuance of charter vessel or headboat permits for the reef fish fishery and coastal migratory pelagics fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico. The intended effect of these amendments was to cap the number of for-hire vessels operating in these fisheries while the Council evaluates the need for additional measures that may be necessary to rebuild these fishery resources and achieve optimum yield. The objective of capping the number of for-hire vessels was to be achieved via restrictive permit eligibility criteria based on permit history, participation as a historical captain, or vessel under construction parameters. NMFS approved Amendments 14 and 20 and promulgated the charter vessel/headboat permit moratorium regulations (67 FR 43558, June 28, 2002) to implement the amendments.

Soon after implementation of the charter vessel/headboat permit moratorium, NMFS and the Council determined that the amendments' implementing regulations contained an error relating to one of the eligibility criteria and, therefore, did not correctly reflect the action taken by the Council. As a result of the erroneous criterion, some persons entitled to receive a charter vessel/headboat permit would not have been able to obtain a permit. The Council, at its September and November 2002 meetings, provided further clarification of Council intent regarding the eligibility criteria that resulted in corrected Amendments 14 and 20. To maintain continuity in these fisheries until the error could be resolved through normal rulemaking, NMFS published an emergency rule (67 FR 77193, December 17, 2002) to extend the effective date of open access permits and to extend the date on which moratorium permits were to be required under the original rule. NMFS published a proposed rule (68 FR 11794, March 12, 2003) and a final rule (68 FR 26230, May 15, 2003) to implement the corrected Amendments 14 and 20. This final rule corrected the eligibility criterion; reopened the application process for obtaining a moratorium permit; again extended the effective dates of open access permits; again extended the applicable deadlines for applying for and obtaining moratorium permits; and extended the expiration date of the moratorium to account for the delay in implementation.

Need for This Emergency Rule

The intended effect of the moratorium was to cap the number of charter vessels and headboats operating in the Gulf reef fish and Gulf coastal migratory pelagic fisheries. Permit applicants were required to submit applications within a 90-day period. Since implementation of the moratorium, and particularly more recently, NMFS and the Council have become aware via numerous letters and phone calls that a substantial number of historical participants in these Gulf fisheries who meet the original moratorium permit eligibility requirements failed, for a variety of reasons, to submit a timely completed application and, therefore, never obtained the permit. As a result, the moratorium has had a more restrictive effect than was intended, and an estimated 34–810 qualifying historical participants may have suffered economic harm because they can no longer participate in these fisheries in the same manner as they did prior to the moratorium. The potential associated economic impact across all potentially affected vessels (34–810) is estimated to equate to approximately $2.6 million (34*$77,000) to $62 million (810*$77,000) in lost receipts and $1.3 million (34*$37,000) to $30 million (810*$37,000) in lost profits on an annual basis. These estimates would increase if some of the entities are headboats.

The Council, at its October 2004 meeting, reconsidered this issue and passed a motion requesting NMFS to implement an emergency rule to reopen the application period for the charter/headboat moratorium in the Gulf for 60 days based upon the economic harm to historical participants who were unintentionally excluded from the fishery, as long as the affected vessels demonstrate eligibility based upon the original moratorium permit criteria and some dependence on charter/headboat fishing in the Gulf. NMFS concurs with the Council's request and is issuing this emergency rule to implement the reopening of the permit moratorium application process.

Provisions of This Emergency Rule

Under this emergency rule, the application process for obtaining a charter vessel/headboat permit for Gulf reef fish or Gulf coastal migratory pelagic fish under the moratorium will be reopened for 120 days. Although the Council requested a 60-day reopening, NMFS believes that 120 days is appropriate to ensure adequate time for notifying potential applicants of the reopening and for applicants to compile necessary documentation and complete the application process while not placing an undue burden on the agency to continually accept new applications.

Eligibility Requirements

Eligibility for charter vessel/headboat permits under this reopening would be limited to applicants who: (1) meet one of the three original moratorium permit eligibility criteria; (2) were not issued an original charter vessel/headboat permit or letter of eligibility under the moratorium for which they were eligible; and (3) can document economic harm as a result of failure to obtain an original charter vessel/headboat permit under the moratorium. See § 622.4(r)(14)(i) in the accompanying codified text for a restatement of the original moratorium permit eligibility criteria.

Economic harm, for the purposes of this emergency rule, is based on the concept that a person who was eligible to receive a moratorium permit, but failed to do so, suffered an actual realized loss as a result of the inability to operate in these fisheries after the

moratorium in the same manner as he/she did prior to the moratorium. For example, a person who owned a charter vessel or headboat with an open access permit for Gulf reef fish or coastal migratory pelagic fish and fished in the Gulf of Mexico during the period March 29, 2000, through November 12, 2003, prior to the moratorium, but failed to obtain a moratorium permit, would meet the economic harm standard. However, a historical captain who never obtained an open access permit for these fisheries and who failed to obtain a moratorium permit would not meet the standard because the opportunity to participate in the same manner as prior to the moratorium (i.e., as a captain) was not lost.

NMFS considered a variety of evidence that would indicate operation of a vessel in the Gulf. It was concluded that the most reliable forms would include, but not be limited to, proof of:

1. Issuance of an open access charter vessel/headboat permit for Gulf reef fish during the period March 29, 2000, through November 12, 2003; or

2. Issuance of an open access charter vessel/headboat permit for coastal migratory pelagic fish during the period March 29, 2000, through November 12, 2003, and:

a. A documented homeport in the Gulf for the permitted vessel during that period;

b. Appropriately dated logbooks, passenger manifests, or fuel receipts for the permitted vessel that clearly indicate operation within the Gulf; or

c. Appropriately dated receipts for dock rental for the permitted vessel from a Gulf-based marina.

Application Requirements and Procedures

An applicant who desires a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish must submit an application for such permit to the Regional Administrator, Southeast Region, NMFS (RA) postmarked or hand-delivered not later than August 1, 2005. Failure to apply by the above deadline will preclude permit issuance even when the applicant meets the eligibility criteria for such permit. Application forms are available from the RA. The information requested on the application form varies according to the eligibility criterion that the application is based upon as indicated in § 622.4(r)(14). An applicant who believes he/she meets the permit or application history criterion based on ownership of a vessel under a different name, for example, as may have occurred when ownership has changed from individual to corporate or vice versa, must document his/her continuity of ownership.

Issuance of Initial Permits/Letters of Eligibility

If a complete application is submitted in a timely manner and the applicable eligibility requirements specified in § 622.4(r)(14) are met, the RA will issue a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish or a letter of eligibility for such fisheries, as appropriate, and mail it to the vessel owner or, in the case of a letter of eligibility, the applicant.

If an eligible applicant does not currently own a vessel to which the charter vessel/headboat moratorium permit could be applied, the RA will issue such applicant a letter of eligibility. The letter of eligibility is valid until redeemed for a moratorium permit or until the moratorium expires, whichever occurs first. The letter of eligibility may be redeemed through the RA for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish, as appropriate, based on the applicant's eligibility. However, a letter of eligibility issued based on eligibility as a historical captain is valid only for a vessel of the same or lesser authorized passenger capacity as the vessel used to document earned income in § 622.4(r)(14)(i)(C)(*2*) and is valid only for the fisheries certified on the application under § 622.4(r)(14)(i)(C)(*1*). Further, such letter of eligibility may only be redeemed for a charter vessel/headboat permit with a historical captain endorsement, and such a permit is only valid on a vessel that the historical captain operates as a captain.

Justification for Emergency Rule

For the reasons stated above, this emergency rule meets NMFS policy guidelines for the use of emergency rules (62 FR 44421, August 21, 1997), because the emergency situation results from recently discovered circumstances; presents a serious management problem in the fishery; and the emergency rule realizes immediate benefits that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency rule is necessary to minimize adverse social and economic impacts (i.e., unintended exclusion of participation in these fisheries). The AA has also determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

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

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

The AA finds good cause to waive the requirement to provide prior notice and opportunity for public comment, pursuant to authority set forth at U.S.C. 553(b)(B), as such procedures would be impracticable and contrary to the public interest. This is true because further delay in implementation will only prolong the adverse impacts to former participants currently excluded from participation in the fishery. Specifically, over 30 percent of qualified charter vessels and headboats have been excluded from continued legal participation in the Gulf reef fish and Gulf coastal migratory pelagic fisheries, which has resulted in a loss of all income for a substantial portion of the fishery, as well as a potential increase in the cost of fishing trips to the members of the public who seek to take such fishing trips. Although qualified applicants who did not obtain permits can purchase a permits from participants in the fishery, these permits have sold for approximately $10,000, which is a substantial cost. Because this is a substantive rule that relieves a restriction (i.e., the existing application deadline), as discussed above, it is not subject to the 30-day delayed effectiveness provision of the Administrative Procedure Act pursuant to 5 U.S.C. 553(d)(1).

This emergency rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), namely the charter vessel/headboat permit application, submission of information on vessel construction, submission of information on historical captain eligibility, and submission of documentation of economic harm. These requirements have been approved by the Office of Management and Budget (OMB) under control number 0648–0520. Public reporting burdens for the charter vessel/headboat permit application, submission of information on vessel construction, submission of information on historical captain eligibility, and submission of documentation of economic harm, are estimated to average 20 minutes, 2 hours, 2 hours, and 30 minutes per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information. Public comment is sought regarding: whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David__Rostker@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: March 21, 2005.

Rebecca Lent,

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

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.4, suspend the last sentence of paragraph (r) introductory text and paragraphs (r)(1) through (r)(8); add two new sentences at the end of paragraph (r) introductory text; and add new paragraphs (r)(13) through (r)(18) to read as follows:

§ 622.4 Permits and fees.

* * * * *

(r) * * * However, to accommodate an emergency reopening of the permit application process, through September 28, 2005, paragraphs (r)(1) through (r)(8) of this section have been suspended, and paragraphs (r)(13) through (r)(18) of this section that outline applicable requirements and procedures related to the reopening of the permit application process have been added. The purpose of reopening the application process is to mitigate unintended economic harm that resulted from qualified applicants' inability to obtain a charter vessel/headboat permit under the moratorium and, therefore, the inability to participate in those fisheries in the same manner they participated prior to the moratorium.

* * * * *

(13) *Applicability.* The only valid charter vessel/headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish are those that have been or are issued under the moratorium criteria in this paragraph (r). Existing permits may be renewed, are subject to the transferability provisions in paragraph (r)(9) of this section, and are subject to the requirement for timely renewal in paragraph (r)(10) of this section.

(14) *Eligibility requirements for a permit under the reopening of the moratorium application process.* Eligibility for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish under this reopening of the application process is limited to applicants who were not issued an original charter vessel/headboat permit or a letter of eligibility under the moratorium for which they were eligible based on one of the three original moratorium permit eligibility criteria as specified in paragraphs (r)(14)(i)(A), (r)(14)(i)(B), or (r)(14)(i)(C) of this section and who can document economic harm, as specified in paragraph (r)(14)(ii) of this section, as a result of failure to obtain an original charter vessel/headboat permit under the moratorium.

(i) *Original moratorium permit eligibility criteria.* The original moratorium permit eligibility criteria include--

(A) An owner of a vessel that had a valid charter vessel/headboat permit for Gulf reef fish or coastal migratory pelagic fish on March 29, 2001, or held such a permit during the preceding year or whose application for such permit had been received by NMFS by March 29, 2001, and was being processed or awaiting processing.

(B) Any person who can provide NMFS with documentation verifying that, prior to March 29, 2001, he/she had a charter vessel or headboat under construction and that the associated expenditures were at least $5,000 as of that date. If the vessel owner was constructing the vessel, the vessel owner must provide NMFS with receipts for the required expenditures. If the vessel was being constructed by someone other than the owner, the owner must provide NMFS with a copy of the contract and/or receipts for the required expenditures.

(C) A historical captain, defined for the purposes of this paragraph (r) as a person who provides NMFS with documentation verifying that -

(*1*) Prior to March 29, 2001, he/she was issued either a USCG Operator of Uninspected Passenger Vessel license (commonly referred to as a 6–pack license) or a USCG Masters license; operated, as a captain, a federally permitted charter vessel or headboat in the Gulf reef fish and/or coastal migratory pelagic fisheries; but does not have a fishery permit issued in his/her name; and

(*2*) At least 25 percent of his/her earned income was derived from charter vessel or headboat fishing in one of the following years: 1997, 1998, 1999, or 2000.

(ii) *Proof of economic harm.* Economic harm, for the purposes of this emergency rule, is based on the concept that a person suffered an actual realized loss as a result of the inability to operate in these fisheries after the moratorium in the same manner as he/she did prior to the moratorium. Proof of economic harm would include, but would not be limited to, proof of -

(A) Issuance of an open access charter vessel/headboat permit for Gulf reef fish during the period March 29, 2000, through November 12, 2003.

(B) Issuance of an open access charter vessel/headboat permit for coastal migratory pelagic fish during the period March 29, 2000, through November 12, 2003, and--

(*1*) A documented homeport in the Gulf for the permitted vessel during that period;

(*2*) Appropriately dated logbooks, passenger manifests, or fuel receipts for the permitted vessel that clearly indicate a location within the Gulf; or

(*3*) Appropriately dated receipts for dock rental for the permitted vessel from a Gulf-based marina.

(15) *Application requirements and procedures under the reopening of the permit application process.* An applicant who desires a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish must submit an application for such permit to the RA postmarked or hand-delivered not later than August 1, 2005. An applicant who believes he/she meets the permit or application history criterion based on ownership of a vessel under a different name, for example, as may have occurred when ownership has changed from individual to corporate or

vice versa, must document his/her continuity of ownership. Application forms are available from the RA. The information requested on the application form varies according to the eligibility criterion that the application is based upon as indicated in paragraph (r)(14) of this section; however, all applicants must provide a copy of the applicable, valid USCG Operator of Uninspected Passenger Vessel license or Masters license and valid USCG Certificate of Inspection. Failure to apply in a timely manner will preclude permit issuance even when the applicant meets the eligibility criteria for such permit.

(16) *Incomplete applications.* If an application that is postmarked or hand-delivered in a timely manner is incomplete, the RA will notify the applicant of the deficiency. If the applicant fails to submit an application that corrects the deficiency and that is received by the RA within 60 days of the date of the RA's notification, the application will be considered abandoned.

(17) *Issuance of permits.* If an applicant submits a complete application in a timely manner and the applicable eligibility requirements specified in paragraph (r)(14) of this section are met, the RA will issue a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish or a letter of eligibility for such fisheries, as appropriate, and mail it to the vessel owner or, in the case of a letter of eligibility, to the applicant. If an eligible applicant does not currently own a vessel to which the charter vessel/headboat moratorium permit could be applied, the RA will issue such applicant a letter of eligibility. The letter of eligibility is valid until redeemed for a moratorium permit or until the moratorium expires, whichever occurs first. The letter of eligibility may be redeemed through the RA for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish, as appropriate, based on the applicant's eligibility. However, a letter of eligibility issued based on eligibility as a historical captain is valid only for a vessel of the same or lesser authorized passenger capacity as the vessel used to document earned income in paragraph (r)(14)(i)(C)(2) of this section and is valid only for the fisheries certified on the application under paragraph (r)(14)(i)(C)(1) of this section. Further, such letter of eligibility may be redeemed only for a charter vessel/headboat permit with a historical captain endorsement, and such a permit is valid only on a vessel that the historical captain operates as a captain.

(18) *Notification of ineligibility.* If the applicant does not meet the applicable eligibility requirements of paragraph (r)(14) of this section, the RA will notify the applicant, in writing, of such determination and the reasons for it as soon as possible, but not later than September 28, 2005. The RA's decision will constitute the final administrative action by NMFS regarding permit eligibility.

[FR Doc. 05–6509 Filed 3–31–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040112010–4114–02; I.D. 032805B]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Closure of the Eastern U.S./Canada Area and Prohibition of Harvesting, Possessing, or Landing of Yellowtail Flounder from the Entire U.S./Canada Management Area

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

ACTION: Closure.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has projected that 100 percent of the total allowable catch (TAC) of Georges Bank (GB) yellowtail flounder allocated to be harvested from the Western and Eastern U.S./Canada Areas has been harvested. The National Marine Fisheries Service, therefore, is closing the Eastern U.S./Canada Area to limited access NE multispecies days-at-sea (DAS) vessels and prohibiting all vessels from harvesting, possessing, or landing GB yellowtail flounder from within the entire U.S./Canada Management Area.

DATES: Effective 0001 hrs local time, April 1, 2005 through 2400 hrs local time, April 30, 2005.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, (978) 281–9141, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the yellowtail flounder landings limit within the Western and Eastern U.S./Canada Areas are found at 50 CFR 648.85(a)(3)(iv)(C). The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area, under specific conditions. The TAC allocation for GB yellowtail flounder for the 2004 fishing year was specified at 6,000 mt in the final rule implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) (April 27, 2004, 69 FR 22906). Section 648.85(a)(3)(iv)(C)(3) authorizes the Regional Administrator to close the Eastern U.S./Canada Area to all limited access NE multispecies DAS vessels and prohibit all vessels from harvesting, possessing, or landing GB yellowtail flounder from the entire U.S./Canada Management Area when 100 percent of the GB yellowtail flounder TAC is projected to be harvested.

Based upon Vessel Monitoring System reports and other available information, the Regional Administrator has determined that 100 percent of the GB yellowtail flounder TAC of 6,000 mt was harvested as of March 25, 2005. Based on this information, the Eastern U.S./Canada Area is closed to limited access NE multispecies DAS vessels and all vessels are prohibited from harvesting, possessing, or landing GB yellowtail flounder from the entire U.S./Canada Management Area for the remainder of the fishing year, effective April 1, 2005.

Classification

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

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

Dated: March 28, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–6501 Filed 3–29–05; 3:38 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 62
Friday, April 1, 2005

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. FV05–946–1 PR]

Irish Potatoes Grown in Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the State of Washington Potato Committee (Committee) for the 2005–2006 and subsequent fiscal periods from $0.002 to $0.0035 per hundredweight of potatoes handled. The Committee locally administers the marketing order which regulates the handling of Irish potatoes grown in Washington. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by May 2, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; E-mail: *moab.docketclerk@usda.gov;* or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 113 and Marketing Order No. 946, both as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Washington potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable potatoes beginning July 1, 2005, and continue until amended, suspended, or terminated. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2005–2006 and subsequent fiscal periods from $0.002 to $0.0035 per hundredweight of potatoes handled.

The order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers in Washington. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate was formulated and discussed at a public meeting, thus all directly affected persons had an opportunity to participate and provide input.

For the 1997–98 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of $0.002 per hundredweight of potatoes handled. This assessment rate continues in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on February 3, 2005, and unanimously recommended 2005–2006 expenditures of $36,750 and an increased assessment rate of $0.0035 per ton of potatoes. In comparison, last year's budgeted expenditures were $38,500. The recommended assessment rate is $0.0015 higher than the rate currently in effect. The Committee recommended the higher assessment rate to maintain its monetary reserve at a satisfactory level.

The major expenditures recommended by the Committee for the 2005–2006 fiscal period include $18,000 for surveillance inspections, $4,800 for Washington State Potato Commission (Commission) expenses, $3,000 for office supplies, $3,000 for Committee expense, $1,500 for Committee member compensation, and $1,500 for the financial audit. The Committee operates under an agreement with the Commission. The Commission provides the Committee office space and administrative services. Budgeted expenses for these items in 2004–05 were $20,000, $4,800, $3,000, $1,500, $1,500, and $2,000, respectively.

The assessment rate recommended by the Committee was derived by multiplying anticipated shipments of Washington potatoes by various assessment rates. Applying the $0.0035 per hundredweight assessment rate to the Committee's 10,000,000 hundredweight crop estimate should provide $35,000 in assessment income. Thus, income derived from handler assessments and interest ($800) plus $950 from the Committee's monetary reserve would be adequate to cover the recommended $36,750 budget for 2005–2006. Funds in the reserve were $50,277 as of January 31, 2005. The Committee estimates that $17,700 will be deducted from the reserve to cover budgeted expenses for 2004–2005. Thus, the Committee estimates a reserve of $32,577 on June 30, 2005, which would be within the maximum permitted by the order of approximately two fiscal period's operational expenses (§ 946.42).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although the assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate the Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2005–2006 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 51 handlers of Washington potatoes subject to regulation under the order and approximately 272 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

During the 2003–2004 marketing year, 10,652,495 hundredweight of Washington potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of $7.45 per hundredweight, the Committee estimates that 48 handlers, or about 94 percent, had annual receipts of less than $5,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Washington potatoes for the 2003 marketing year was $5.25 per hundredweight. The average annual producer revenue for the 272 Washington potato producers is therefore calculated to be approximately $205,609. In view of the foregoing, the majority of the Washington potato producers and handlers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2005–2006 and subsequent fiscal periods from $0.002 to $0.0035 per hundredweight for potatoes. The Committee unanimously recommended 2005–2006 expenditures of $36,750 and the $0.0035 per hundredweight assessment rate. The proposed assessment rate of $0.0035 is $0.0015 higher than the 2003–2004 rate. With an estimated 2005–2006 potato crop of 10,000,000 hundredweight, the $0.0035 rate should provide the Committee with $35,000 in assessment income which combined with interest income and funds from the monetary reserve would be adequate to cover budgeted expenses. The Committee recommended the higher assessment rate to help ensure that its monetary reserve is maintained at a satisfactory level. Funds in the reserve were $50,277 as of January 31, 2005. The Committee estimates that $17,700 will be deducted from the reserve to cover budgeted expenses for 2004–2005. Thus, the Committee estimates a reserve of $32,577 on June 30, 2005, which would be within the maximum permitted by the order of approximately two fiscal period's operational expenses (§ 946.42).

The major expenditures recommended by the Committee for the 2005–2006 fiscal period include $18,000 for surveillance inspections, $4,800 for Washington State Potato Commission (Commission) expenses, $3,000 for office supplies, and $3,000 for Committee expense, $1,500 for Committee member compensation, and $1,500 for the financial audit. The Committee operates under an agreement with the Commission. The Commission provides the Committee office space and administrative services. Budgeted expenses for these items in 2004–05 were $20,000, $4,800, $3,000, $1,500, $1,500, and $2,000, respectively.

The Committee discussed alternatives to this rule, including alternative expenditure levels. The Committee ultimately determined that the recommended expenses were reasonable. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with an adequate reserve.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2005–2006 season could range from about $5.25 per hundredweight and about $5.85 per hundredweight. Therefore, the estimated assessment revenue for the 2005–2006 fiscal period as a percentage of total producer revenue could range between 0.060 and 0.067 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the order. In addition, the Committee's

meeting was widely publicized throughout the Washington potato industry and all interested persons were invited to attend and participate in the Committee's deliberations on all issues. Like all Committee meetings, the February 3, 2005, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Washington potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ama.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2005–2006 fiscal period begins on July 1, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Washington potatoes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay for expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is proposed to be amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 946.248 is revised to read as follows:

§ 946.248 Assessment rate.

On and after July 1, 2005, an assessment rate of $0.0035 per hundredweight is established for Washington potatoes.

Dated: March 28, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–6417 Filed 3–31–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–289–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, and –200C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This document revises an earlier NPRM, applicable to all Boeing Model 737–100, –200, and –200C series airplanes. The original NPRM would have required repetitive inspections to detect discrepancies of certain fuselage skin panels located just aft of the wheel well, and repair if necessary. The original NPRM was prompted by reports of fatigue cracking of the skins and doublers located aft of the wing, between body station (BS) 727 and BS 1016, and between body stringers 14 and 25. This supplemental NPRM revises the original NPRM by adding requirements for certain airplanes, revising the compliance time for inspection of modified skin areas, and allowing alternative service information for certain actions. The actions specified by this new supplemental NPRM are intended to detect and correct fatigue cracking of the skin panels, which could cause rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 26, 2005.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–289–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–289–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

For the service information referenced in the proposed rule, contact Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Suzanne Lucier, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6438; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this

proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–289–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–289–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to all Boeing Model 737–100, –200, and –200C series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 7, 2004 (69 FR 897). That NPRM would have required repetitive inspections to detect discrepancies of certain fuselage skin panels located just aft of the wheel well, and repair if necessary. That NPRM was prompted by reports of fatigue cracking of the skins and doublers located aft of the wing, between body station (BS) 727 and BS 1016, and between body stringers 14 and 25, on numerous Boeing Model 737–100, –200, and –200C series airplanes. The cracking has been attributed to fatigue from a combination of shear stresses due to repeated wrinkling of the skin, and the skin chem-milled pockets configuration. Such fatigue cracking, if not corrected, could cause rapid decompression of the airplane.

Actions Since Original NPRM Was Issued

Due consideration has been given to the comments received in response to the original NPRM.

Request To Revise Inspection References

Paragraph (b) of the original NPRM refers to Boeing Service Bulletin 737–53–1065, Revision 2, dated April 19, 2001, for conditions associated with the inspection requirements. One commenter (the manufacturer) requests that we revise that service bulletin reference to include earlier revision levels. The manufacturer recommends that we require inspections of all previously modified airplanes having stiffening angles—regardless of the service bulletin revision used.

We agree that (stiffener) modifications for airplanes modified in accordance with the original issue and Revision 1 of the service bulletin should also be inspected. Excluding these earlier service bulletin versions was an oversight in the development of the original NPRM. We have revised paragraphs (b) and (c) of this supplemental NPRM accordingly.

Request To Revise Compliance Time

The manufacturer requests that we revise paragraph (b) of the original NPRM (inspection of modified skin areas) to also change the compliance time: from 16,000 flight cycles after the modification to 16,000 total accumulated flight cycles. Post-modification cracks have been found in service, which the manufacturer believes existed when the modification was installed but were visually undetectable at the time. The modification with the stiffening angles is designed to prevent shear wrinkling by breaking up the bay into smaller dimensions. These angles do not reduce the hoop stress in the areas where the cracks typically exist. As a result, cracks that exist when the modification is installed will continue to propagate under hoop loading and may grow to a significant length before the airplane accumulates an additional 16,000 flight cycles after the modification. The manufacturer concludes that the compliance time for the initial inspection of modified areas should be based on the total accumulated flight cycles, and not the flight cycles accumulated since the modification.

We agree. We have revised the compliance time in paragraph (b) of this supplemental NPRM accordingly.

Conclusion

Since these changes expand the scope of the original NPRM, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment. Additional comments on the original NPRM are addressed below.

Request To Allow Additional Repair Information

Two commenters request that we revise the original NPRM to include the Boeing 737 Structural Repair Manual (SRM) as an acceptable source of service information for compliance with the repair requirements specified in paragraphs (d)(1)(iii) and (d)(2). The commenters state that, since Boeing issued Service Bulletin 737–53–1065, Revision 2, dated April 19, 2001 (cited in the original NPRM), the SRM has been revised to include repair procedures for skin cracks. The repairs in Section 53–30–3, Figure 48, of the SRM apply to most of the areas covered by the original NPRM. The commenters note that Figure 48 of the SRM is an FAA-approved repair for this type of damage; allowing this optional repair in the original NPRM will reduce the number of repair inquiries from operators. Therefore, the commenters request that crack repairs in accordance with the SRM also be allowed in paragraphs (d)(1)(iii) and (d)(2) of the original NPRM.

We agree with the commenters' request and have changed paragraphs (d)(1)(iii) and (d)(2) accordingly in this supplemental NPRM.

Request To Clarify Requirement

One commenter, the manufacturer, states that cracks underneath external repair doublers (installed for repairs unrelated to the requirements specified in this proposed AD) have been found in service. The commenter requests that we revise paragraphs (a) and (c) of the original NPRM to also address inspections of chemical-milled steps underneath external repair doublers. Undetected cracks that are not sufficiently spanned by a repair doubler could propagate undetected. The commenter suggests that an FAA-approved repair with three rows of fasteners on each side of the chemical-milled step would be adequate to maintain ultimate load capability even if undetected cracks develop underneath the repair.

We agree with the request. External repair doublers impede the ability to inspect the exterior of fuselage side skins. The commenter's suggested change would provide adequate inspection procedures for the skin under the repair doublers. We find the commenter's suggestion satisfactory and have included new paragraph (g) of this supplemental NPRM to provide inspection procedures for those airplanes as one method of compliance with the requirements of paragraphs (a) and (c) of this supplemental NPRM.

Request To Limit Repetitive Inspections

This same commenter requests that we revise the repetitive inspection requirement specified in paragraph (d)(1)(ii) of the original NPRM to a one-time-only inspection after the time-limited repair has been done, as specified in the service bulletin.

We agree with the request. Eliminating the repetitive inspections will not compromise safety. We have changed paragraph (d)(1)(ii) in this

supplemental NPRM to correspond to the compliance times of Service Bulletin 737–53–1065.

Changes to 14 CFR Part 39/Effect on Supplemental NPRM

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). These changes are reflected in this supplemental NPRM.

Explanation of Additional Changes to Supplemental NPRM

Boeing has received a Delegation Option Authorization (DOA). We have revised paragraph (e) of this supplemental NPRM to allow any discrepancy, including cracking, to be repaired according to data that conform to the airplane's type certificate and that are approved by an Authorized Representative for the Boeing DOA Organization (rather than the Designated Engineering Representative (DER)) whom we have authorized to make such findings.

We have also revised paragraph (h)(2) of this supplemental NPRM to delegate the authority to approve an alternative method of compliance for any repair required by the AD to the Authorized Representative for the Boeing DOA Organization rather than the DER.

Interim Action

This is considered to be interim action. The manufacturer has advised that it is developing an improved preventive modification intended to address the identified unsafe condition for unmodified skin areas. After this modification is developed, approved, and available, we may consider additional rulemaking.

Cost Impact

There are about 1,000 airplanes of the affected design in the worldwide fleet. The FAA estimates that 390 airplanes of U.S. registry would be affected by this supplemental NPRM.

The inspection would take about 47 to 88 work hours per airplane (depending on configuration), at an average labor rate of $65 per work hour. Based on these figures, we estimate the cost of the inspection to be $3,055 to $5,720 per airplane, per inspection cycle.

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

Authority for This Rulemaking

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 Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2002–NM–289–AD.

Applicability: All Model 737–100, –200, and –200C series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the skin panels, which could cause rapid decompression of the airplane, accomplish the following:

Repetitive Inspections: Unmodified Skin Areas

(a) For fuselage skin panel areas that have not been modified with stiffening angles: Before the airplane accumulates 16,000 total flight cycles, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later, inspect the unmodified fuselage side skins just aft of the main wheelwell, and perform all follow-on actions, in accordance with Part I of the Accomplishment Instructions of Boeing Service Bulletin 737–53–1065, Revision 2, dated April 19, 2001; except as provided by paragraph (g) of this AD. If no cracking, loose fasteners, disbonding, or damage is found: Repeat the inspection at the time specified in paragraph 1.E., Compliance, of the service bulletin, as applicable, except as provided by paragraph (d) of this AD.

Repetitive Inspections: Modified Skin Areas

(b) For fuselage skin panel areas that have been modified with stiffening angles in accordance with Boeing Service Bulletin 737–53–1065, dated January 4, 1985; Revision 1, dated October 12, 1989; or Revision 2, dated April 19, 2001: Before the airplane accumulates 16,000 total flight cycles, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later, inspect the modified areas as specified in accordance with Part I of Boeing Service Bulletin 737–53–1065, Revision 2, dated April 19, 2001. Repeat the inspection at the time specified in paragraph 1.E., of the service bulletin, as applicable, except as provided by paragraph (d) of this AD. If any cracks, loose fasteners, disbonding, or

damage is found: Repair before further flight in accordance with the requirements of paragraph (d) of this AD.

Terminating Action for Inspections of Modified Skin Areas

(c) For fuselage skin panel areas that have been modified with stiffening angles in accordance with Boeing Service Bulletin 737–53–1065, dated January 4, 1985; Revision 1, dated October 12, 1989; or Revision 2, dated April 19, 2001: At the later of the times specified by paragraphs (c)(1) and (c)(2) of this AD, perform a subsurface eddy current or magneto optical imaging inspection to detect subsurface skin cracks along the edge of the bonded doubler, in accordance with Figure 10 of Boeing Service Bulletin 737–53–1065, Revision 2, dated April 19, 2001; except as provided by paragraph (g) of this AD. If any cracks are found, repair before further flight in accordance with paragraph (d) of this AD. Accomplishment of this inspection and all applicable corrective actions terminates the repetitive inspections required by paragraph (b) of this AD for the modified areas.

(1) Inspect within 24,500, but not fewer than 20,000, flight cycles after the modification of the skin.

(2) Inspect within 4,500 flight cycles after the effective date of this AD.

Repair: Modified and Unmodified Skin Areas

(d) If any cracking is detected during any inspection required by this AD: Do the actions specified by paragraph (d)(1) or (d)(2) of this AD before further flight. Do the actions in accordance with Boeing Service Bulletin 737–53–1065, Revision 2, dated April 19, 2001, except as required by paragraph (e) of this AD.

(1) Do a time-limited repair (including a detailed inspection of the skin in the area of the repair to detect corrosion and doubler disbonding) in accordance with Part III of the Accomplishment Instructions of the service bulletin.

(i) After the time-limited repair has been accomplished: At intervals not to exceed 3,000 flight cycles, perform an external general visual inspection of the repair to detect loose or missing fasteners, in accordance with Part III of the Accomplishment Instructions of the service bulletin, until the actions specified in paragraph (d)(1)(v) of this AD have been accomplished.

(ii) Within 4,500 flight cycles after the time-limited repair has been accomplished: Perform an internal inspection of the repair to detect cracking or doubler disbonding using general visual and high-frequency eddy current methods, in accordance with Figure 11 of the service bulletin, unless the actions specified in paragraph (d)(1)(v) of this AD have been accomplished.

(iii) If any cracking is found during any inspection required by paragraph (d)(1) of this AD: Repair before further flight in accordance with paragraph (e) of this AD. Another approved repair method is in Section 53–30–3, Figure 48, of the Boeing 737 Structural Repair Manual (SRM).

(iv) If any disbonding is found during any inspection required by paragraph (d)(1) of this AD: Repair before further flight in accordance with Part II of the service bulletin.

(v) Within 10,000 flight cycles after accomplishment of the time-limited repair: Make the repair permanent in accordance with Part III of the Accomplishment Instructions of the service bulletin. Permanent repair of an area terminates the repetitive inspections specified in this AD for that repaired area only.

(2) Do a permanent repair (including an inspection using external subsurface eddy current or magneto optical imaging methods to detect cracks at the chem-milled step in each adjacent bay of the fuselage skin, a detailed inspection of the skin in the area of the repair for corrosion and doubler disbonding, and applicable corrective action) of the cracked area, in accordance with Part II of the Accomplishment Instructions of the service bulletin. Another approved repair method is in Section 53–30–3, Figure 48, of the Boeing 737 Structural Repair Manual (SRM). Permanent repair of an area terminates the repetitive inspections specified in this AD for that repaired area only.

Exceptions to Service Bulletin Procedures

(e) During any inspection required by this AD, if any discrepancy (including cracking) is detected for which the service bulletin specifies to contact Boeing for appropriation action: Before further flight, repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO); or according to data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically refer to this AD.

(f) Although Boeing Service Bulletin 737–53–1065, Revision 2, dated April 19, 2001, recommends that cracks found in Zone 2 be reported to Boeing, this AD does not require such a report.

(g) For airplanes subject to the requirements of paragraphs (a) and (c) of this AD: Inspections are not required in areas that are spanned by an FAA-approved repair that has a minimum of 3 rows of fasteners above and below the chemical-milled step. If an external doubler covers the chemical-milled step, but does not span it by a minimum of 3 rows of fasteners above and below, one method of compliance with the inspection requirement of paragraphs (a) and (c) of this AD is to inspect all chemical-milled steps covered by the repair using internal nondestructive test (NDT) methods in accordance with Part 6, Subject 53–30–20, of the Boeing 737 NDT Manual. Follow-on and corrective actions must be done as specified in this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, FAA, is authorized to approve AMOCs for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically refer to this AD.

Issued in Renton, Washington, on March 22, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6451 Filed 3–31–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–127–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all Short Brothers Model SD3–60 series airplanes, that would have required performing an inspection of the shear attachment fitting for the fin-to-fuselage front spar, and of the shear cleat for the fin root rib at the aft spar location for corrosion; reporting inspection results; and performing corrective action, if necessary. This new action revises the proposed rule by adding additional inspection areas, a repetitive borescope (intrascope) inspection, and applicable corrective actions per new Short Brothers information. This new action also revises the proposed rule by deleting the inspection report. The actions specified by this new proposed AD are intended to detect and correct corrosion in the area of the main spar web fittings of the vertical stabilizer, which could result in reduced structural integrity of the vertical stabilizer. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 26, 2005.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114,

Attention: Rules Docket No. 2003–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–127–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–127–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to all Short Brothers Model SD3–60 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on February 6, 2004 (69 FR 5769) (hereafter referred to as the ''original NPRM''). The original NPRM would have required performing an inspection of the shear attachment fitting for the fin-to-fuselage front spar, and of the shear cleat for the fin root rib at the aft spar location for corrosion; reporting inspection results; and performing corrective action, if necessary. The original NPRM was prompted by reports of corrosion in the area of the main spar web fittings, which act as shear attachments for the vertical stabilizer. That condition, if not detected and corrected, could result in corrosion in the area of the main spar web fittings of the vertical stabilizer, which could result in reduced structural integrity of the vertical stabilizer.

Actions Since Issuance of the Original NPRM

Since the issuance of the original NPRM, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, has issued British airworthiness directive G–2004–0005, which supersedes British airworthiness directive 004–11–2002, referenced in the original NPRM. The new British airworthiness directive requires inspections and replacements in accordance with Short Brothers Service Bulletin SD360–53–45, dated December 2003; and repetitive inspections in accordance with the Short Brothers Recommended Maintenance Manual. However, the maintenance manual has not been revised to include the repetitive inspections. The repetitive inspection information is included in Bombardier Temporary Revisions (TRs) TR360–MPSUPP–04 and TR360–MPSUPP–03, both dated August 20, 2003.

Relevant Service Information

Shorts has issued Short Brothers Service Bulletin SD360–53–45, dated December 2003, which supersedes Short Brothers Service Bulletin SD360–53–44, Revision 1, dated January 24, 2003 (referenced in the original NPRM as the appropriate source of service information). Service Bulletin SD360–53–45 describes procedures for inspecting new areas of the vertical stabilizer for corrosion and damage, doing repetitive inspections of areas with acceptable or no corrosion and damage, and replacing corroded or damaged parts with new parts.

Short Brothers Service Bulletin SD360–53–45, dated December 2003, refers to Short Brothers Recommended Maintenance Programme (Section 5–26–53, ATA 53–40, Item 12(d) and Section 5–26–55, ATA 55–30, Item 5(a)) as the source of service information for the repetitive borescope inspections. The repetitive inspections, which are not yet included in the general revisions of Short Brothers Recommended Maintenance Programme, are included in Bombardier TRs TR360–MPSUPP–04 and TR360–MPSUPP–03, both dated August 20, 2003.

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

The Civil Aviation Authority (CAA), the airworthiness authority for the United Kingdom, has classified this new service information as mandatory and issued British airworthiness directive G–2004–0005, issued March 2, 2004, to ensure the continued airworthiness of these airplanes in the United Kingdom. British airworthiness directive G–2004–0005, issued March 2, 2004, supersedes British airworthiness directive 004–11–2002 (referenced in the original NPRM).

Therefore, we have revised the supplemental NPRM to refer to the service bulletins and TRs described previously as the appropriate sources of service information for accomplishing the actions proposed in this supplemental NPRM.

Conclusion

Since these changes expand the scope of the original NPRM, we have

determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Clarification on Repetitive Inspections

The TRs described previously are intended to be inserted into the Airworthiness Limitations section of the Short Brothers Recommended Maintenance Programme. However, since the affected airplane models were in the certification process before the effective date of Section 25.1529 (''Instructions for Continued Airworthiness'') of the Federal Aviation Regulations (14 CFR 25.1529), which requires Airworthiness Limitations sections in airplane maintenance manuals, there is no Airworthiness Limitations section into which we can require insertion of the TRs. Therefore, instead of requiring the insertion of the TRs, we are requiring repetitive inspections, and any applicable corrective actions, in paragraph (c) of this supplemental NPRM. The recurring inspection interval in the TRs is 24 months, the same as this supplemental NPRM.

Cost Impact

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
Inspection, per inspection cycle	4	$65	None	$260	46	$11,960, per inspection cycle.

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

Authority for This Rulemaking

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

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

Regulatory Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Short Brothers PLC: Docket 2003–NM–127–AD.

Applicability: All Model SD3–60 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion in the area of the main spar web fittings of the vertical stabilizer, which could result in reduced structural integrity of the vertical stabilizer, accomplish the following:

Inspection and Previous Actions

(a) Except as provided by paragraphs (a)(1) and (a)(2) of this AD, within 4,800 flight hours or 90 days after the effective date of this AD, whichever occurs first, do a borescope inspection to detect corrosion of the shear attachment fittings of the vertical stabilizer, in accordance with the Accomplishment Instructions of Short Brothers Service Bulletin SD360–53–45, dated December 19, 2003.

(1) If an airplane (the shear attachment fitting) has been inspected in accordance with the Accomplishment Instructions of Short Brothers Service Bulletin SD360–53–44, Revision 1, dated January 24, 2003, before the effective date of this AD, and was found to have no corrosion on the fittings, then the initial inspection specified in paragraph (a) of this AD is not required.

(2) If the shear attachment fitting has been inspected in accordance with the Accomplishment Instructions of Short Brothers Service Bulletin SD360–53–44, Revision 1, dated January 24, 2003, and was found to have corrosion, but the corroded fitting is not yet replaced, then a review of the inspection results is required to determine if the corrosion was within the acceptable limits specified in Short Brothers Service Bulletin SD360–53–45, dated December 19, 2003.

Corrective Actions and Repetitive Inspections

(b) If any corrosion is found during the inspection required by paragraph (a) of this AD, do the applicable actions required by paragraph (b)(1) or (b)(2) of this AD.

(1) If any corrosion is within the limits specified in the Accomplishment Instructions of Short Brothers Service Bulletin SD360–53–45, dated December 19, 2003, do the actions required by paragraphs (b)(1)(i) and (b)(1)(ii) of this AD.

(i) Repeat the inspection required by the service bulletin at intervals not to exceed 6 months.

(ii) Within 18 months after the initial inspection required by paragraph (a) of this AD, replace all corroded shear attachment fittings in accordance with the Accomplishment Instructions of the service bulletin. Accomplishing the replacement ends the repetitive inspections required by paragraph (b)(1)(i) of this AD.

(2) If any corrosion is outside the limits specified in the Accomplishment Instructions of Short Brothers Service Bulletin SD360–53–45, dated December 19, 2003, before further flight, replace the corroded fitting with a new fitting, in accordance with the Accomplishment Instructions of the service bulletin.

(c) If no corrosion is found during the inspection required by paragraph (a) or if the fitting was replaced with a new fitting in accordance with Short Brothers Service Bulletin SD360–53–45, dated December 19, 2003: Do the actions in paragraphs (c)(1) and (c)(2) of this AD.

(1) Within 24 months after the initial inspection required by paragraph (a) of this AD or within 24 months after replacement of the fitting with a new one, whichever occurs later, do a borescope (intrascope) detailed inspection for corrosion in accordance with Part A of the Accomplishment Instructions of Short Brothers Service Bulletin SD360–53–45, dated December 19, 2003. Repeat this inspection thereafter at intervals not to exceed 24 months. Do corrective actions in accordance with paragraph (b) of this AD.

(2) Thereafter, except as provided in paragraph (f) of this AD, no alternative borescope inspections may be approved.

Previous Repetitive Inspections

(d) Borescope (intrascope) detailed inspections done before the effective date of this AD in accordance with Bombardier Temporary Revision (TR) TR360–MPSUPP–04 and TR360–MPSUPP–03, both dated August 20, 2003, are acceptable for compliance with the requirements of paragraph (c)(1) of this AD.

Disposition of Repairs for Corroded/Oversized Holes

(e) Where Short Brothers Service Bulletin SD360–53–45, dated December 19, 2003, says to contact the manufacturer for action on any corroded or oversized hole found during the inspection required by paragraph (a) or (c) of this AD, before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (or its delegated agent).

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in British airworthiness directive G–2004–0005, dated March 16, 2004.

Issued in Renton, Washington, on March 23, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6449 Filed 3–31–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20785; Directorate Identifier 2005–NM–002–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707, 720, and 720B 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 all Boeing Model 707, 720, and 720B series airplanes. This proposed AD would require revising the Limitations section of the airplane flight manual (AFM). The AFM revisions include instructions for monitoring the low pressure lights for the center tank fuel pumps, and a statement prohibiting the resetting of a tripped circuit breaker for a fuel pump in any tank. This proposed AD is prompted by the results of fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent dry operation of the fuel pumps in the center fuel tank, which could result in high temperatures or sparks inside the fuel tank, ignition of fuel vapors, and consequent fire or explosion. We are also issuing this AD to prohibit the resetting of a tripped circuit breaker for a fuel pump in any tank, which could allow an electrical fault to override the protective features of the circuit breaker, and result in sparks inside the fuel tank, ignition of fuel vapors, and consequent fire or explosion.

DATES: We must receive comments on this proposed AD by May 16, 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.

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–2005–20785; the directorate identifier for this docket is 2005–NM–002–AD.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6501; 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–2005–20785; Directorate Identifier 2005–NM–002–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the

comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

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

Among other actions, SFAR 88 requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

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

As a result of the fuel system reviews associated with SFAR 88, the airplane manufacturer has determined that, if the fuel pumps in the center fuel tank of Boeing Model 707, 720, and 720B series airplanes are allowed to run when the fuel quantity is low, high temperatures or sparks caused by metal-to-metal contact may occur, resulting in an ignition source for fuel vapors and consequent fire or explosion. The airplane manufacturer has also determined that, if a tripped circuit breaker for a fuel pump in any tank is reset, an ignition source may be created in the fuel tank. The tripping of a circuit breaker indicates an electrical fault, and resetting the circuit breaker may result in the electrical fault overriding the protective features of the circuit breaker, resulting in sparks inside the fuel tank, an ignition source for fuel vapors, and consequent fire or explosion.

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 revising the Limitations section of the airplane flight manual. The AFM revisions include instructions for monitoring the low pressure lights for the center tank fuel pumps, and a statement prohibiting the resetting of a tripped fuel pump circuit breaker.

Costs of Compliance

There are about 225 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 hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Revising AFM	1	$65	None	$65	90	$5,850

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–2005–20785; Directorate Identifier 2005–NM–002–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by May 16, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 707, 720, and 720B series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by the results of fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent dry operation of the fuel pumps in the center fuel tank, which could result in high temperatures or sparks inside the fuel tank, ignition of fuel vapors, and consequent fire or explosion. We are also issuing this AD to prohibit the resetting of a tripped circuit breaker for a fuel pump in any tank, which could allow an electrical fault to override the protective features of the circuit breaker, and result in sparks inside the fuel tank, ignition of fuel vapors, and consequent fire or explosion.

Compliance

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

Airplane Flight Manual (AFM) Revisions

(f) Within 30 days after the effective date of this AD: Revise the Limitations section of the Boeing 707 Airplane Flight Manual to include the following information. This may be done by inserting a copy of this AD into the AFM. Thereafter, operate the airplane in accordance with the limitations specified in these AFM revisions.

''*OPERATION WITH BOOST PUMPS INOPERATIVE*. For ground and flight operations, a fuel pump circuit breaker which has tripped must not be reset.

CENTER TANK FUEL PUMPS. Center tank fuel pumps must not be 'ON' unless personnel are available in the flight deck to monitor the low pressure lights.

Each center tank fuel pump switch must be positioned to 'OFF' without delay when the respective center tank fuel pump low pressure light illuminates.''

Note 1: When information identical to that in paragraph (f) of this AD has been included in the general revision of the AFM, the general revision may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Actions Accomplished Previously

(g) Incorporation of the information in Approval Reference Number 045151 of the Boeing Model 707 Airplane Flight Manual is considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance (AMOCs)

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

Issued in Renton, Washington, on March 23, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6448 Filed 3–31–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20590; Directorate Identifier 2005–CE–13–AD]

RIN 2120–AA64

Airworthiness Directives; GROB–WERKE Model G120A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all GROB–WERKE (GROB) Model G120A airplanes. This proposed AD would require you to replace the main landing gear front and rear spherical bearings with improved spherical bearings. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this proposed AD to replace front and rear main landing gear bearings that are exposed to high axial loads, which could result in failure of the landing gear bearing. This failure could lead to loss of control on landing.

DATES: We must receive any comments on this proposed AD by May 3, 2005.

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

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

To get the service information identified in this proposed AD, contact GROB–WERKE, Burkart Grob e.K., Unternehmenbereich Luft-und Raumfahrt, Lettenbachstrasse 9, 86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998 105; facsimile: 011 49 8268 998 200.

To view the comments to this proposed AD, go to *http://dms.dot.gov*. This is docket number: FAA–2005–20590; Directorate Identifier 2005–CE–13–AD.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4146; facsimile: 816–329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or

arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, ''FAA–2005–20590; Directorate Identifier 2005–CE–13–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2005–20590; Directorate Identifier 2005–CE–13–AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

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

Discussion

What events have caused this proposed AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all GROB–WERKE (GROB) Model G120A airplanes. The LBA reports an incident of a damaged spherical bearing (part number (P/N) S20) installed in the main landing gear on one of the affected airplanes. Evidence showed that the bearing inner ring was shifted against the outer ring. This indicated that the bearing was exposed to high axial loads. Grob has an improved spherical bearing (P/N SSRC 20 C2) that can tolerate higher axial loads.

What is the potential impact if FAA took no action? Main landing gear front and rear bearings exposed to high axial loads could result in failure of the landing gear bearing. This failure could lead to loss of control on landing.

Is there service information that applies to this subject? GROB has issued Service Bulletin No. MSB1121–054, dated November 22, 2004.

What are the provisions of this service information? The service bulletin includes procedures for replacing the front and rear spherical bearings with new improved spherical bearings.

What action did the LBA take? The LBA classified this service bulletin as mandatory and issued German AD Number D–2005–075, dated February 9, 2005, to ensure the continued airworthiness of these airplanes in Germany.

Did the LBA inform the United States under the bilateral airworthiness agreement? These GROB Model G120A airplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other GROB Model G120A airplanes of the same type design that are registered in the United States, we are proposing AD action to replace front and rear main landing gear bearings exposed to high axial loads, which could result in failure of the landing gear bearing. This failure could lead to loss of control on landing.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

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

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 6 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to do this proposed replacement of the main landing gear front and rear spherical bearings with improved spherical bearings. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 work hours × $65 per hour = $65	None. GROB will supply parts free of charge	$520	8 × $520 = $4,160.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII,

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this proposed AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket FAA–2005–20590; Directorate Identifier 2005–CE–13–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

GROB–WERKE: Docket No. FAA–2005–20590; Directorate Identifier 2005–CE–13–AD.

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

(a) We must receive comments on this proposed airworthiness directive (AD) by May 3, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model G120A airplanes, all serial numbers, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to replace front and rear main landing gear bearings that are exposed to high axial loads, which could result in failure of the landing gear bearing. This failure could lead to loss of control on landing.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Replace the main landing gear front and rear spherical bearings (part number (P/N) S20) with improved spherical bearings (P/N SSRC 20 C2).	Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already done.	Follow GROB Service Bulletin No. MSB1121–054, dated November 22, 2004.
(2) Do not install any main landing front gear and rear spherical bearings (P/N S20).	As of the effective date of this AD	Not applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4146; facsimile: 816–329–4090.

Is There Other Information That Relates to This Subject?

(g) German AD Number D–2005–075, dated February 9, 2005, also addresses the subject of this AD.

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

(h) To get copies of the documents referenced in this AD, contact GROB–WERKE, Burkart Grob e.K., Unternehmenbereich Luft-und Raumfahrt, Lettenbachstrasse 9, 86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998 105; facsimile: 011 49 8268 998 200. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*. This is docket number. FAA–2005–20590; Directorate Identifier 2005–CE–13–AD.

Issued in Kansas City, Missouri, on March 25, 2005.

Nancy C. Lane,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6444 Filed 3–31–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20588; Directorate Identifier 2005–CE–11–AD]

RIN 2120–AA64

Airworthiness Directives; Extra Flugzeugproduktions- und Vertriebs-GmbH Models EA–300, EA–300S, EA–300L, and EA–300/200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Extra Flugzeugproduktions- und Vertriebs- GmbH (EXTRA) Models EA–

300, EA–300S, EA–300L, and EA–300/200 airplanes. This proposed AD would require you to seal with firewall sealant the gaps between the bottom fuselage cover (belly fairing) and the firewall and repeat the sealing procedure whenever you install the bottom fuselage cover (belly fairing). This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this proposed AD to prevent fuel from flowing behind the firewall in the case of a fuel leak. This could result in an in-flight fire, which could cause loss of the airplane and crew.

DATES: We must receive any comments on this proposed AD by May 3, 2005.

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

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

To get the service information identified in this proposed AD, contact EXTRA Flugzeugproduktions- und Vertriebs- GmbH, Schwarze Heide 21, 46569 Hünxe, Germany; telephone: 49–2358–9137–0; facsimile: 49–2858–9137–30.

To view the comments to this proposed AD, go to *http://dms.dot.gov*. This is docket number: FAA–2005–20588; Directorate Identifier 2005–CE–11–AD.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4146; facsimile: 816–329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, ''FAA–2005–20588; Directorate Identifier 2005–CE–11–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2005–20588; Directorate Identifier 2005–CE–11–AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

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

Discussion

What events have caused this proposed AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on certain Extra Flugzeugproduktions- und Vertriebs- GmbH (EXTRA) Models EA–300, EA–300S, EA–300L, and EA–300/200 airplanes. The LBA reports an incident of a fire in the engine compartment on one of the affected airplanes due to a leaking gascolator. Evidence showed that the spilled fuel had leaked down the firewall and through the non-sealed connections between the firewall and the bottom fuselage cover (belly fairing). The fire in the engine compartment spread to the cabin and resulted in loss of the airplane.

What is the potential impact if FAA took no action? A fuel leak behind the firewall could result in an in-flight fire, which could cause loss of the airplane and crew.

Is there service information that applies to this subject? EXTRA has issued Service Bulletin No. 300–4–04, Issue: A, dated May 25, 2004.

What are the provisions of this service information? The service bulletin includes procedures for:

—Sealing with firewall sealant the gaps between the bottom fuselage cover (belly fairing) and the firewall; and
—Repeating the sealing whenever you install the bottom fuselage cover (belly fairing).

What action did the LBA take? The LBA classified this service bulletin as mandatory and issued German AD Number D–2004–489, dated November 11, 2004, to ensure the continued airworthiness of these airplanes in Germany.

Did the LBA inform the United States under the bilateral airworthiness agreement? These EXTRA Models EA–300, EA–300S, EA–300L, and EA–300/200 are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other EXTRA Models EA–300, EA–300S, EA–300L, and EA–300/200 airplanes of the same type design that are registered in the United States, we are proposing AD action to prevent fuel from flowing behind the firewall in the

case of a fuel leak. This could result in an in-flight fire, which could cause loss of the airplane and crew.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

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

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 199 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to seal with firewall sealant the gaps between the bottom fuselage cover (belly fairing) and the firewall:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work hour × $65 per hour = $65	$140	$205	$205 × 199 = $40,795.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket FAA–2005–20588; Directorate Identifier 2005–CE–11–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Extra Flugzeugproduktions- und Vertriebs-GmbH: Docket No. FAA–2005–20588; Directorate Identifier 2005–CE–11–AD.

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

(a) We must receive comments on this proposed airworthiness directive (AD) by May 3, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
(1) Group A	
(i) EA–300	0 through 67.
(ii) EA–300S	0 through 31.
(iii) EA–300L	0 through 167, 168 through 170 (or converted to 1168 through 1170), 1171, 172 (or converted to 1172), 173 (or converted to 1173), and 1174 through 1181.
(iv) EA–300/200	0 through 31.
(2) Group B	
EA–300, EA–300S, EA–300L, and EA–300/200	All.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to prevent fuel from flowing behind the firewall in the case of a fuel leak. This could result in an in-flight fire, which could cause loss of the airplane and crew.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) For airplanes listed in Group A of paragraph (c)(1) of this AD: Seal with firewall sealant the gaps between the bottom fuselage cover (belly fairing) and the firewall.	Within the next 50 hours time-in-service (TIS) or 3 calendar months after the effective date of this AD, whichever occurs first, unless already done.	Follow EXTRA Flugzeugproduktions- und Vertriebs- GmbH Service Bulletin No. 300–4–04, Issue: A, dated May 25, 2004.
(2) For airplanes listed in Group B of paragraph (c)(1) of this AD: Whenever you install the bottom fuselage cover (belly fairing), do the sealing procedure required by paragraph (e)(1) of this AD.	As of the effective date of this AD, whenever you install the bottom fuselage cover (belly fairing).	Follow EXTRA Flugzeugproduktions- und Vertriebs- GmbH Service Bulletin No. 300–4–04, Issue: A, dated May 25, 2004.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4146; facsimile: 816–329–4090.

Is There Other Information That Relates to This Subject?

(g) German AD Number D–2004–489, dated November 11, 2004, also addresses the subject of this AD.

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

(h) To get copies of the documents referenced in this AD, contact EXTRA Flugzeugproduktions- und Vertriebs- GmbH, Schwarze Heide 21, 46569 Hünxe, Germany; telephone: 49–2358–9137–0; facsimile: 49–2858–9137–30. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*. This is docket number FAA–2005–20588; Directorate Identifier 2005–CE–11–AD.

Issued in Kansas City, Missouri, on March 25, 2005.

Nancy C. Lane,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6443 Filed 3–31–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB39

Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas in Specialty Occupations and as Fashion Models, and Labor Attestation Requirements for Employers Using Nonimmigrants on H–1B1 Visas in Specialty Occupations; Filing Procedures

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (the Department or DOL) is proposing to amend its regulations related to the H–1B and H–1B1 programs to generally require employers to use Web-based electronic filing of labor condition applications (LCAs). The H–1B program allows an employer in the United States to temporarily employ a foreign worker on a nonimmigrant basis in a specialty occupation or as a fashion model of distinguished merit and ability. For its part, the H–1B1 program allows a U.S. employer to temporarily employ on a nonimmigrant basis in a specialty occupation a foreign worker from a country with which the U.S. has reached trade or other agreements listed in the Immigration and Nationality Act (now Chile and Singapore). ETA anticipates that increasing e-filing of H–1B and H–1B1 labor condition applications, and reducing U.S. Mail and fax-based filings, will enhance the effectiveness of the H–1B and H–1B1 programs, reduce costs and delays, and will match a U.S. employer with a qualified H–1B or H–1B1 worker in a more timely fashion. This notice of proposed rulemaking (NPRM) also proposes technical and clarifying amendments to ETA's H–1B and H–1B1 regulations to correct terminology and addresses, update internal agency procedures, and clarify text. Among these amendments are provisions to reflect Congressional reinstatement of certain attestation obligations applicable to employers who are H–1B dependent or who have committed willful violations of H–1B requirements.

DATES: To ensure consideration, comments must be received on or before May 2, 2005.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB39, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *E-mail:* Comments may be submitted by e-mail to *h1b.comments@dol.gov.* Include RIN 1205–AB39 in the subject line of the message.
- *U.S. Mail:* Submit written comments to the Assistant Secretary for Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210, Attention: William Carlson, Chief, Division of Foreign Labor Certification. Because of security measures, mail sent to Washington, DC is sometimes delayed. We will only consider comments postmarked by the U.S. Postal Service or other delivery service on or before the deadline for comments.

Instructions: All submissions received must include the RIN 1205–AB39 for this rulemaking. Receipt of submissions will not be acknowledged. Because DOL continues to experience occasional

delays in receiving postal mail in the Washington, DC area, commenters using mail are encouraged to submit any comments early.

Comments will be available for public inspection during normal business hours at the address listed above for mailed comments. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this proposed rule may be obtained in alternative formats (*e.g.,* large print, Braille, audiotape, or disk) upon request. To schedule an appointment to review the comments and/or to obtain the proposed rule in an alternative format, contact the Division of Foreign Labor Certification at (202) 693–3010 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Contact Rachel Wittman, Senior Policy Analyst, Division of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; telephone: (202) 693–3010 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority and Background

The Immigration and Nationality Act as amended (INA or Act) assigns responsibilities to the Department of Labor relating to the entry and employment in the United States of certain categories of employment-based immigrants and nonimmigrants, including under the H–1B and H–1B1 visas. *See* INA section 101 *et seq.* [8 U.S.C. 1101 *et seq.*].

The H–1B visa program permits admission to the United States, on a nonimmigrant basis, of foreign workers who will temporarily perform services in a specialty occupation or as a fashion model of distinguished merit and ability. *See* 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184(c), (g), and (i). Specialty occupations under the H–1B program are those requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree (or its equivalent) in the specific specialty as a minimum for entry into the occupation in the United States. 8 U.S.C. 1184(i)(1).

The H–1B1 visa was created as part of Congress' approval of the United States-Chile Free Trade Agreement and the United States-Singapore Free Trade Agreement and took effect January 1, 2004. It permits the temporary entry and employment in the United States of professionals in specialty occupations from countries with which the United States has entered into agreements identified in section 1184(g)(8)(A) of the Immigration and Nationality Act. *See* INA, 8 U.S.C. 1101(a)(15)(H)(i)(b1), 1182(t), 1184(g)(8)(A), and 1184(i). The statute now covers nationals of Chile and Singapore. 8 U.S.C. 1184(g)(8)(A). Under the INA amendments creating the H–1B1 visa, the Department of Labor's responsibilities regarding H–1B1 visas are required to be implemented in a manner similar to the H–1B program. To implement the H–1B1 program in accordance with the statutory requirements, on November 23, 2004, DOL issued an Interim Final Rule extending the H–1B regulations found at 20 CFR part 655 subparts H and I to the H–1B1 program, with limited exceptions consistent with statutory requirements. *See* 69 FR 68222 (November 23, 2004). (Prior to publication of the H–1B1 Interim Final Rule, DOL conducted its H–1B1 responsibilities in accordance with the statute and procedures posted on the DOL website prior to the H–1B1 visa effective date of January 1, 2004.)

Before H–1B or H–1B1 status for a foreign worker will be approved by the United States Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (formerly the Immigration and Naturalization Service or INS),[1] the Secretary of Labor must certify a ''labor condition application'' or LCA filed by the foreign worker's prospective employer. *See* 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b1), 1182(n) and (t); 20 CFR part 655, subpart H. In completing the ''labor condition application'' or LCA in paper form (Form ETA 9035) or electronic form (Form ETA 9035E), an employer must specifically indicate, among other things, the H–1B or H–1B1 nonimmigrant's prospective job title, the number of H–1B or H–1B1 nonimmigrants sought, the nonimmigrant's anticipated period of employment and rate of pay, and the location where the H–1B or H–1B1 nonimmigrant(s) will work. Additionally, the employer attests to four statements:

1. H–1B or H–1B1 nonimmigrants will be paid at least the local prevailing wage or the actual wage level paid by the employer to others with similar experience and qualifications, whichever is higher;

2. The employment of H–1B or H–1B1 nonimmigrants will not adversely affect the working conditions of workers similarly employed;

3. There is not a strike or lockout in the course of a labor dispute in the occupation in which H–1B or H–1B1 nonimmigrants will be employed at the place of employment; and

4. Notice of the application has been provided to workers employed in the occupations in which H–1B or H–1B1 nonimmigrants will be employed. *See* 8 U.S.C. 1182(n)(1) and (t)(1); 20 CFR 655.705(c)(1), 655.730(d), 655.731 through 655.734; Forms ETA 9035E, 9035, and 9035CP (Cover Pages). While DOL administers and enforces the labor condition application portion of the H–1B and H–1B1 program, USCIS identifies and defines the occupations covered by the H–1B and H–1B1 category (except as already defined in the Chile and Singapore Free Trade Agreements) and determines an alien's qualifications for such occupations.

Congress enacted the ''H–1B Visa Reform Act of 2004'' as part of the Consolidated Appropriations Act of 2005. *See* Public Law 108–447, 118 Stat. 2809, Division J, Title IV, Subtitle B (December 8, 2004). Among other provisions, the H–1B Visa Reform Act reinstated, effective March 8, 2005, special attestation requirements for employers who are H–1B dependent or who have been found to have committed willful violations of H–1B requirements or misrepresentations of a material fact during the five-year period prior to filing an H–1B LCA. *See* Public Law 108–447 at Division J, section 422(a). Reinstatement was achieved by deleting from INA section 212(n)(1)(E)(ii) the sunset date of October 1, 2003, previously applicable to the H–1B dependent employer and willful violator provisions. Pursuant to this INA amendment, H–1B dependent employers and willful violator employers who file H–1B applications after March 7, 2005, generally must attest that: the employer did not displace and will not displace a U.S. worker within the period of 90 days before and after filing a petition for an H–1B nonimmigrant; the employer will not place H–1B nonimmigrants with a secondary employer unless the employer has inquired if the secondary employer has displaced or intends to displace a U.S. worker in a period of 90 days before and after the placement of the H–1B nonimmigrant; the employer took good faith steps prior to filing the H–1B application to recruit U.S. workers; and, finally, the employer has offered the job to any U.S. applicant

[1] *See* 6 U.S.C. 236(b), 552(d), and 557.

who is equally or better qualified than the H–1B nonimmigrant for the job.

II. Filing Options Under Current Regulation

DOL's current regulations issued by the Employment and Training Administration (ETA) for the filing and processing of H–1B and H–1B1 labor condition applications, found in 20 CFR part 655, subpart H, allow employers to file LCAs with ETA in three ways: By electronic submission through the DOL web site, by U.S. Mail to a centralized processing center, and through facsimile submission to a centralized fax number. *See* 20 CFR 655.720.

The electronic filing system now available on the DOL website at *http://www.lca.doleta.gov,* which will become the required filing procedure for LCAs (except in limited circumstances) if this NPRM becomes a final regulation, permits employers to fill out and submit their LCAs electronically, without the need to submit a paper ''hard copy.'' The electronic LCA form, Form ETA 9035E, is identical in all respects to the paper LCA (Form ETA 9035), except the electronic form contains additional ''blocks'' to be marked by the employer to acknowledge the submission is being made electronically and the employer will be bound by the LCA obligations through such submission. The website includes detailed instructions, prompts, and checks to help employers fill out the 9035E. This process is designed to help ensure employers enter the H–1B and H–1B1 programs based on accurate LCA information and with explicit, immediate notice of their obligations. The website provides an option for employers that frequently file LCAs to become ''registered users.'' Under this option, registered users set up secure files within the ETA electronic filing system accessed by password and, each time the registered user files an LCA, information common to all its LCAs is entered automatically by the electronic filing system.

III. Overview of Regulatory Changes

This NPRM proposes amendment of ETA's regulations on the H–1B and H–1B1 programs, which are found at 20 CFR part 655, subpart H, to require electronic filing and processing of H–1B and H–1B1 labor condition applications (LCAs) except in limited circumstances where a physical disability prevents the employer from filing electronically. This transition to e-filing will reduce paper-based LCA filings now submitted by U.S. Mail and facsimile. This NPRM does not propose changes to the existing LCA forms (Forms ETA 9035, 9035E, and 9035CP) or to the current electronic filing procedures.

Creation of an electronic filing requirement necessitates amendment of ETA's current H–1B and H–1B1 regulations because the regulations now permit filing of LCAs by three means: electronic transmission, paper copy filed by U.S. Mail, and paper copy filed by facsimile. *See* 20 CFR 655.720. Therefore, this NPRM proposes to amend the H–1B and H–1B1 regulations at §§ 655.700, 655.705, 655.720, 655.730, 655.750, and 655.760 to state the requirement of electronic filing except in limited circumstances, and to remove references to filing by facsimile or U.S. Mail.

ETA believes that requiring e-filing of LCAs, except in limited circumstances where disabilities prevent an employer from using the Web-based electronic system, will enhance the effectiveness of the H–1B and H–1B1 programs in several ways, resulting in reduced costs and delays for both employers and ETA by providing U.S. employers with access to qualified H–1B or H–1B1 workers in a more timely fashion. (The justifications for moving to an e-filing system relate largely to the H–1B program because of the differing sizes of the programs. Whereas approximately 260,000 LCAs for the H–1B program are filed each year, only approximately 50 LCAs for the H–1B1 program were filed in the 9 months after the program became effective January 1, 2004. H–1B1 filings will continue at low rates since H–1B1 visas each year are limited to 1,400 from Chile and 5,400 from Singapore.)

First, ETA believes the e-filing process will limit the number of potentially incomplete H–1B and H–1B1 labor condition applications which are filed with the Department. The e-filing system instantly notifies the employer that an LCA is incomplete, giving the employer the immediate opportunity to correct the error. Instant notification limits the burdens and delays that occur when employers file incomplete LCAs. By contrast, with faxed or mailed LCAs, incomplete applications bring delays and require resources from both ETA and the employer to fix ''ETA personnel must review the LCA for completeness and notify the employer of missing information, the employer must resubmit the non-electronically filed LCA, and ETA again must review for completeness.

Second, electronic filing permits more efficient processing of LCAs than those submitted by either U.S. Mail or by facsimile. Since the scope of the Department's review of LCAs under section 212(n)(1) and section 212(t)(2) of the INA is limited to ''completeness and obvious inaccuracies,'' the filing and processing of LCAs is particularly amenable to an electronic filing and review system. Because of on-line guidance and checks, LCAs submitted electronically have fewer incomplete or obviously inaccurate entries and therefore are ordinarily acceptable for immediate electronic certification.

Third, through e-filing, ETA will be able to better capture statistics and analyze data to identify areas that need improvement and to prepare reports on the H–1B and H–1B1 programs, as well as to identify fraud or abuse that may lead to future enforcement actions.

Fourth, requiring e-filing of LCAs except in limited circumstances will not impose an undue burden on the users of the program. Employers, not individuals, submit H–1B and H–1B filings. The vast majority of labor condition applications are filed electronically. (Until approval of new forms, H–1B1 labor condition applications were required to be submitted to ETA by mail.) For example, in Fiscal Year (FY) 2004 more than 90 percent of H–1B labor condition applications were filed electronically. Additionally, a high percentage, if not most of, the positions covered by H–1B labor condition applications are in information, computer, and other high-technology fields. For example, in FY 2004, the top four H–1B occupations certified by DOL included:

1. Programmer analyst (18% of certified job openings);
2. Software engineer (5% of certified job openings);
3. Systems analyst (3%); and
4. Computer programmer (2%).

Similarly, according to data from the Department of Homeland Security, of the approved H–1B petitions in FY 2002, 38% were in computer-related occupations and 13% in architecture, engineering, and surveying, while in FY 2000 and 2001, 58% of approved petitions were in computer-related occupations. *See* Characteristics of Specialty Occupation Workers (H–1B)—Fiscal Year 2002 *(http://uscis.gov/graphics/shared/services/employerinfo/FY2002Charact.pdf)*; Fiscal Year 2001 (*http://uscis.gov/graphics/shared/services/employerinfo/FY2001Charact.pdf*); Fiscal Year 2000 (*http://uscis.gov/graphics/shared/services/employerinfo/FY2000Charact.pdf*).

Finally, this NPRM furthers the Federal government goal of promoting electronic government services and Internet-based information technology that will improve services to citizens. See, *e.g.*, E-Government Act of 2002,

Public Law 107–347, 116 Stat. 2899 (2002) (promoting use of the Internet and other information technologies to improve government services to citizens); Government Paperwork Elimination Act, section 1704, Public Law 105–277, Division C, Title XVII, 112 Stat. 2681 (1998) (requiring Federal agencies, as practicable, to offer options for electronically transacting business with and submitting information to the agency); Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995) (requiring use of information technology to the maximum extent practicable to reduce burden and improve data quality, agency efficiency, and responsiveness to the public).

The Department invites comments on the proposed elimination of U.S. Mail and facsimile filings, except in limited circumstances, and the requiring of employers to file electronically. The Department is particularly interested in receiving comments from small business entities on this proposal.

In addition to the proposed regulatory changes to institute a general requirement for electronic filing of LCAs, this NPRM also proposes a number of technical amendments to ETA's H–1B and H–1B1 regulations to correct terminology and addresses, update internal agency procedures, and clarify text. Specifically, this NPRM proposes amending the definition of the Immigration and Naturalization Service (INS) at § 655.715 to reflect that INS' functions in relation to H–1B visas now are performed by the U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security. The § 655.715 definition of State Employment Security Agency or SESA is also proposed to be amended to reflect that these state agencies now are known as ''State Workforce Agencies'' or SWAs.

This NPRM also proposes amending the H–1B and H–1B1 regulations at §§ 655.715, 655.720, 655.721, and 655.740 to remove references to the previous role of ''Regional Certifying Officers'' and ETA's Regional Offices in processing labor condition applications and taking other actions regarding LCAs. These regulatory references are unnecessary and should be deleted, because ETA Regional Offices no longer process LCAs, and this NPRM does not propose reinstating any processing role for ETA Regional Offices. We also propose amending § 655.720(d) to reflect that the ETA National Office, not ETA Regional Offices, handles other matters regarding the H–1B and H–1B1 programs, and to provide a clearer reference to the regulatory section that identifies how employers may challenge state prevailing wage determinations. Consistent with the deletion of references to a role regarding LCAs for ETA Regional Offices, this NPRM also proposes removal of § 655.721, which currently provides the addresses of ETA Regional Offices.

A number of regulatory amendments are included in this NPRM to reflect Congress' reinstatement, effective March 8, 2005, of special attestation requirements for employers who are H–1B dependent or willful violators. As discussed in Section I above, these special attestation requirements had sunset on September 30, 2003. Provisions reflecting the responsibility of employers who file applications regarding H–1B nonimmigrants (but not regarding H–1B1 nonimmigrants) to provide information regarding H–1B dependent status and these special attestations are found at §§ 655.705(c)(1), 655.730(c)(2), (c)(4)(vii), and (d)(5), and 655.736(c), (g)(1), (g)(2) and (g)(3). As reflected in these sections, the special attestation requirements for H–1B dependent employers and willful violators apply to H–1B labor condition applications filed with the Department on or after March 8, 2005. These special attestation requirements do not apply to H–1B labor condition applications filed from October 1, 2003, through March 7, 2005, or before January 19, 2001. An LCA filed during a period when the special attestation obligations for H–1B dependent employers and willful violators were not in effect (that is, prior to January 19, 2001, and from October 1, 2003, through March 7, 2005) may not be used by an H–1B dependent employer or willful violator to support either petitions for new H–1B nonimmigrants or requests for extensions of status for existing H–1B nonimmigrants.

Additionally, the following sections are being revised to reflect address changes: (1) in § 655.710(b) and § 655.734(a)(1)(ii), the address for filing complaints with the Department of Justice arising under 8 U.S.C. 1182(n)(1)(G)(i)(II) of the INA; (2) in § 655.720(c) (previously § 655.720(b)), the address for filing LCAs by mail; and (3) in § 655.750(b)(2), the address for withdrawing previously filed LCAs. In the case of both the address for filing LCAs by mail (§ 655.720(c)) and for withdrawing previously filed LCAs (§ 655.750(b)(2)), because ETA anticipates addresses may change between the publication of this NPRM and the resulting final rule, this NPRM states that addresses will be published on DOL's web site at *http://www.ows.doleta.gov/foreign/*. ETA anticipates the final rule will state the actual mailing address in both § 655.720(c) and § 655.750(b)(2).

Finally, where regulatory sections or subsections are being amended to reflect the e-filing requirement, these sections have been edited for clarity and to update terminology, such as replacing INS with USCIS.

IV. Administrative Information

Executive Order 12866—Regulatory Planning and Review: We have determined that this proposed rule is significant, although not ''economically significant'' within the meaning of Executive Order 12866. The proposed rule therefore has been reviewed by the Office of Management and Budget (OMB). The requirement for all-electronic filing (except in limited circumstances) of H–1B and H–1B1 labor condition applications, and corresponding elimination of U.S. Mail or facsimile filing options, will not have an economic impact of $100 million or more because this will not alter the required forms or attestations for labor condition applications, but rather require all-electronic filing of LCAs (except in limited circumstances). The proposed rule will alter the filing mechanism for less than 10 percent of the LCAs filed in FY 2004, namely those filed by means other than electronic filing. While employers previously filing by facsimile or U.S. Mail will have to change to electronic filing, they will be moving to a more efficient and rapid filing procedure.

Regulatory Flexibility Act: We have notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act (RFA) at 5 U.S.C. 605(b), that this proposed rule will not have a significant economic impact on a substantial number of small entities.

The factual basis for that certification is as follows: Based on past filing data, ETA estimates in the upcoming year employers will file approximately 260,000 attestations under the H–1B and H–1B1 program as a whole. (Since the H–1B program's inception, the number of H–1B attestations has exceeded the initial H–1B visas available each year; for example, for Fiscal Year 2003, about 261,000 attestations covering 517,000 job openings were certified even though only 195,000 initial H–1B visas were available that year. As previously noted, only approximately 50 H–1B1 attestations were filed with ETA in the first 9 months that the H–1B1 program operated.) Some employers will file multiple attestations in a year. We do not inquire about the size of employers

filing labor attestations; however, the number of small entities that file attestations in the upcoming year will be less than the expected total of 260,000 applications and significantly below the potential universe of small businesses to which the program is open. Because applications come from employers in all industry segments, we consider all small businesses as the appropriate universe for comparison purposes. According to the Small Business Administration's publication *The Regulatory Flexibility Act—An Implementation Guide for Federal Agencies,* there were 22,900,000 small businesses in the United States in 2002. Thus in comparison to the universe of all small businesses, the expected 260,000 applications represent approximately 1% of all small businesses. The Department of Labor asserts a small business pool of 1% does not represent a substantial proportion of small entities.

In any case, the Department of Labor does not believe this proposed rule will have a significant economic impact on employers using the H–1B and H–1B1 programs. This proposed rule does not alter the required forms or attestations for labor condition applications, but rather requires all-electronic filing of LCAs (except in limited circumstances). The proposed rule will alter the filing mechanism for less than 10 percent of the LCAs filed in FY 2004, namely those filed by means other than electronic filing. While employers previously filing by facsimile or U.S. Mail will have to change to electronic filing, they will be moving to a more efficient and rapid filing procedure. The Department of Labor welcomes comments on this RFA certification.

Unfunded Mandates Reform Act of 1995: This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996: This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996 (SBREFA). The standards for determining whether a rule is a major rule as defined by section 804 of SBREFA are similar to those used to determine whether a rule is an ''economically significant regulatory action'' within the meaning of Executive Order 12866. Because we certified this proposed rule is not an economically significant rule under Executive Order 12866, we certify that it also is not a major rule under SBREFA. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132: This proposed rule will not have substantial direct effects on the states, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform: This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act: The collection of information under 20 CFR part 655, subpart H, is currently approved under OMB control number 1205–0310. This proposed rule does not include a substantive or material modification of that collection of information. Forms ETA 9035 and 9035E are not being changed by this proposed rule and both will remain in use. Accordingly, the Department believes the Paperwork Reduction Act is inapplicable to this proposed rule. The Department invites the public to comment on its Paperwork Reduction Act analysis.

Catalog of Federal Domestic Assistance Number: This program is listed in the *Catalogue of Federal Domestic Assistance* at Number 17.252, ''Attestations by Employers Using Non-Immigrant Aliens in Specialty Occupations.''

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Chile, Employment, Forest and forest products, Health professions, Immigration, Labor, Longshore work, Migrant labor, Penalties, Reporting requirements, Singapore, Students, Wages.

For the reasons stated in the Preamble, the Department of Labor proposes to amend 20 CFR part 655, subpart H, as follows:

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

Subpart H—Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas in Specialty Occupations and as Fashion Models, and Labor Attestation Requirements for Employers Using Nonimmigrants on H–1B1 Visas in Specialty Occupations

1. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182(m), (n), and (t), 1184, 1188, and 1288(c) and (d); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 323, Pub. L. 103–206, 107 Stat. 2149; Title IV, Pub. L. 105–277, 112 Stat. 2681; Pub. L. 106–95, 113 Stat. 1312 (8 U.S.C. 1182 note); and 8 CFR 213.2(h)(4)(i).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b1), 1182(n), 1182(t), and 1184; 29 U.S.C. 49 *et seq.*; sec 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note); and Title IV, Pub. L. 105–277, 112 Stat. 2681.

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c), 1182(m), and 1184; and 29 U.S.C. 49 *et seq.*

2. Section 655.700 is amended by revising paragraph (b)(1) to read as follows:

§ 655.700 What statutory provisions govern the employment of H–1B and H–1B1 nonimmigrants and how do employers apply for an H–1B or H–1B1 visa?

* * * * *

(b) * * *

(1) First, an employer shall submit to DOL, and obtain DOL certification of, a labor condition application (LCA). The requirements for obtaining a certified LCA are provided in this subpart. The electronic LCA (Form ETA 9035E) is available at *http://www.lca.doleta.gov.* The paper-version LCA (Form ETA 9035) and the LCA cover pages (Form

ETA 9035CP), which contain the full attestation statements incorporated by reference into Form ETA 9035 and Form ETA 9035E, may be obtained from *http://ows.doleta.gov* and from the Employment and Training Administration (ETA) National Office. Employers must file LCAs in the manner prescribed in § 655.720(a).

* * * * *

3. Section 655.705 is amended by revising the section heading and paragraphs (c) introductory text and (c)(1) to read as follows:

§ 655.705 What Federal agencies are involved in the H–IB and H–1B1 programs, and what are the responsibilities of those agencies and of employers?

* * * * *

(c) *Employer's Responsibilities.* This paragraph applies only to the H–1B program; employer's responsibilities under the H–1B1 program are found at § 655.700(d)(4). Each employer seeking an H–1B nonimmigrant in a specialty occupation or as a fashion model of distinguished merit and ability has several responsibilities, as described more fully in this subpart and subpart I of this part, including—

(1) The employer shall submit a completed labor condition application (LCA) on Form ETA 9035E or Form ETA 9035 in the manner prescribed in § 655.720. By completing and submitting the LCA, and in addition by signing the LCA, the employer makes certain representations and agrees to several attestations regarding its responsibilities, including the wages, working conditions, and benefits to be provided to the H–1B nonimmigrants (*8 U.S.C. 1182(n)(1)*); these attestations are specifically identified and incorporated by reference in the LCA, as well as being set forth in full on Form ETA 9035CP. The LCA contains additional attestations for certain H–1B-dependent employers and employers found to have willfully violated the H–1B program requirements; these attestations impose certain obligations to recruit U.S. workers, to offer the job to U.S. applicants who are equally or better qualified than the H–1B nonimmigrant(s) sought for the job, and to avoid the displacement of U.S. workers (either in the employer's workforce, or in the workforce of a second employer with whom the H–1B nonimmigrant(s) is placed, where there are indicia of employment with that second employer (*8 U.S.C. 1182(n)(1)(E)–(G)*). These additional attestations are specifically identified and incorporated by reference in the LCA, as well as being set forth in full on Form ETA 9035CP. If ETA certifies the LCA, notice of the certification will be sent to the employer by the same means that the employer used to submit the LCA (that is, electronically where the Form ETA 9035E was submitted electronically, and by U.S. Mail where the Form ETA 9035 was submitted by U.S. Mail). The employer reaffirms its acceptance of all of the attestation obligations by submitting the LCA to the U.S. Citizenship and Immigration Services (formerly the Immigration and Naturalization Service or INS) in support of the Petition for Nonimmigrant Worker, Form I–129, for an H–1B nonimmigrant. *See 8 CFR 214.2(h)(4)(iii)(B)(2)*, which specifies that the employer will comply with the terms of the LCA for the duration of the H–1B nonimmigrant's authorized period of stay.

* * * * *

4. Section 655.710 is amended by revising paragraph (b) to read as follows:

§ 655.710 What is the procedure for filing a complaint?

* * * * *

(b) Complaints arising under section 212(n)(1)(G)(i)(II) of the INA, *8 U.S.C. 1182(n)(1)(G)(i)(II)*, alleging failure of the employer to offer employment to an equally or better qualified U.S. applicant, or an employer's misrepresentation regarding such offer(s) of employment, may be filed with the Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices, 950 Pennsylvania Avenue, NW., Washington, DC 20530, telephone: 1–800–255–8155 (employers), 1–800–255–7688 (employees); Web address: *http://www.usdoj.gov/crt/osc.* The Department of Justice shall investigate where appropriate and shall take such further action as may be appropriate under that Department's regulations and procedures.

5. Section 655.715 is amended by revising the definitions of *Certifying Officer and Regional Certifying Officer, Immigration and Naturalization Service*, and *State Employment Security Agency* to read as follows:

§ 655.715 Definitions.

* * * * *

Certifying Officer means a Department of Labor official, or such official's designee, who makes determinations about whether or not to certify labor condition applications.

* * * * *

Immigration and Naturalization Service (INS), now known as United States Citizenship and Immigration Services (USCIS) of the Department of Homeland Security, means the Federal entity that makes the determination under the INA on whether to grant visa petitions of employers seeking the admission of nonimmigrants under H–1B visas for the purpose of employment.

* * * * *

State Employment Security Agency (SESA), now known as a State Workforce Agency (SWA), means the State agency designated under section 4 of the Wagner-Peyser Act to cooperate with Office of Workforce Services (OWS) in the operation of the national system of public employment offices.

* * * * *

6. Section 655.720 is revised to read as follows:

§ 655.720 Where are labor condition applications (LCAs) to be filed and processed?

(a) Employers must file all LCAs regarding H–1B and H–1B1 nonimmigrants through the electronic submission procedure identified in paragraph (b) of this section except as provided in the next sentence. If physical disability prevents an employer from using the electronic filing system, an LCA may be filed by U.S. Mail in accordance with paragraph (c) of this section. Requirements for signing, providing public access to, and use of certified LCAs are identified in § 655.730(c). If the LCA is certified by DOL, notice of the certification will be sent to the employer by the same means that the employer used to submit the LCA, that is, electronically where the Form ETA 9035E was submitted electronically, and by U.S. Mail where the Form ETA 9035 was submitted by U.S. Mail.

(b) *Electronic submission.* Employers must file the electronic LCA, Form ETA 9035E, through the Department of Labor's Internet Web site at *http://www.lca.doleta.gov*. The employer must follow instructions for electronic submission posted on the website. In the event that ETA implements the Government Paperwork Elimination Act (*44 U.S.C.A. 3504* n.) and/or the Electronic Records and Signatures in Global and National Commerce Act (E–SIGN) (*15 U.S.C.7001–7006*) for the submission and certification of the Form ETA 9035E, instructions will be provided (by public notice(s) and by instructions on the Department's Web site) to employers as to how the requirements of these statutes will be met in the Form ETA 9035E procedures.

(c) *U.S. Mail.* If, as provided in paragraph (a) of this section, a physical disability prevents an employer from filing an LCA electronically, the employer may use Form ETA 9035 and

send it by U.S. Mail to ETA. ETA shall publish a Notice in the **Federal Register** identifying the address, and any future address changes, to which paper LCAs shall be mailed, and shall also post these addresses on the DOL Internet Web site at *http://www.lca.doleta.gov*. When Form ETA 9035 is submitted by U.S. Mail, the form must bear the original signature of the employer (or that of the employer's authorized agent or representative) at the time it is submitted to ETA.

(d) The ETA National Office is responsible for policy questions and other issues regarding LCAs. Prevailing wage challenges are handled in accordance with the procedures identified in § 655.731(a)(2).

§ 655.721 [Removed and reserved]

7. Section 655.721 is removed and reserved.

8. Section 655.730 is amended by revising paragraphs (b), (c), and (d)(5) to read as follows:

§ 655.730 What is the process for filing a labor condition application (LCA)?

* * * * *

(b) *Where and when is an LCA to be submitted?* An LCA shall be submitted by the employer to ETA in accordance with the procedure prescribed in § 655.720 no earlier than six months before the beginning date of the period of intended employment shown on the LCA. It is the employer's responsibility to ensure that ETA receives a complete and accurate LCA. Incomplete or obviously inaccurate LCAs will not be certified by ETA. ETA will process all LCAs sequentially and will make a determination to certify or not certify an LCA within seven working days of the date ETA receives the LCA.

(c) *What is to be submitted and what are its contents?* Form ETA 9035 or ETA 9035E.

(1) *General.* The employer (or the employer's authorized agent or representative) must submit to ETA one completed and dated LCA as prescribed in § 655.720. The electronic LCA, Form ETA 9035E, is found on the DOL Web site where the electronic submission is made, at *http://www.lca.doleta.gov*. For employers with a physical disability preventing them from filing electronically, copies of the paper form, Form ETA 9035, and cover pages Form ETA 9035CP are available on the ETA Web site at *http://ows.doleta.gov* and from the ETA National Office.

(2) *Undertaking of the Employer.* In submitting the LCA, and by affixing the signature of the employer or its authorized agent or representative on Form ETA 9035E or Form ETA 9035, the employer (or its authorized agent or representative on behalf of the employer) attests that the statements in the LCA are true and promises to comply with the labor condition statements (attestations) specifically identified in Forms ETA 9035E and ETA 9035, as well as set forth in full in the Form ETA 9035CP. The labor condition statements (attestations) are described in detail in §§ 655.731 through 655.734, and the additional attestations for LCAs filed by certain H–1B–dependent employers and employers found to have willfully violated the H–1B program requirements are described in §§ 655.736 through 655.739.

(3) *Signed Originals, Public Access, and Use of Certified LCAs.* In accordance with § 655.760(a) and (a)(1), the employer must maintain in its files and make available for public examination the LCA as submitted to ETA and as certified by ETA. When Form ETA 9035E is submitted electronically, a signed original is created by the employer (or the employer's authorized agent or representative) printing out and signing the form immediately upon certification by ETA. When Form ETA 9035 is submitted by U.S. Mail as permitted by § 655.720(a), the form must bear the original signature of the employer (or of the employer's authorized agent or representative) when it is submitted to ETA. For H–1B visas only, the employer must submit a copy of the signed, certified Form ETA 9035 or ETA 9035E to the U.S. Citizenship and Immigration Services (USCIS, formerly INS) in support of the Form I–129 petition, thereby reaffirming the employer's acceptance of all of the attestation obligations in accordance with 8 CFR 214.2(h)(4)(iii)(B)(2).

(4) *Content of LCA.* Each LCA shall identify the occupational classification for which the LCA is being submitted and shall state:

(i) The occupation, by Dictionary of Occupational Titles (DOT) Three-Digit Occupational Groups code and by the employer's own title for the job;

(ii) The number of nonimmigrants sought;

(iii) The gross wage rate to be paid to each nonimmigrant, expressed on an hourly, weekly, biweekly, monthly, or annual basis;

(iv) The starting and ending dates of the nonimmigrants' employment;

(v) The place(s) of intended employment;

(vi) The prevailing wage for the occupation in the area of intended employment and the specific source (*e.g.*, name of published survey) relied upon by the employer to determine the wage. If the wage is obtained from a SESA, now known as a State Workforce Agency (SWA), the appropriate box must be checked and the wage must be stated; the source for a wage obtained from a source other than a SWA must be identified along with the wage; and

(vii) For applications filed regarding H–1B nonimmigrants only (and not applications regarding H–1B1 nonimmigrants), the employer's status as to whether or not the employer is H–1B–dependent and/or a willful violator, and, if the employer is H–1B–dependent and/or a willful violator, whether the employer will use the application only in support of petitions for exempt H–1B nonimmigrants.

(5) *Multiple positions and/or places of employment.* The employer shall file a separate LCA for each occupation in which the employer intends to employ one or more nonimmigrants, but the LCA may cover more than one intended position (employment opportunity) within that occupation. All intended places of employment shall be identified on the LCA; the employer may file one or more additional LCAs to identify additional places of employment. Separate LCAs must be filed for H–1B and H–1B1 nonimmigrants.

(6) *Full-time and part-time jobs.* The position(s) covered by the LCA may be either full-time or part-time; full-time and part-time positions can not be combined on a single LCA.

(d) * * *

* * * * *

(5) For applications filed regarding H–1B nonimmigrants only (and not regarding H–1B1 nonimmigrants), the employer has determined its status concerning H–1B-dependency and/or willful violator (as described in § 655.736), has indicated such status, and if either such status is applicable to the employer, has indicated whether the LCA will be used only for exempt H–1B nonimmigrant(s), as described in § 655.737.

* * * * *

§ 655.734 [Amended]

9. Section 655.734 is amended in paragraph (a)(1)(ii) by removing the phrase ''Complaints alleging failure to offer employment to an equally or better qualified U.S. worker or an employer's misrepresentation regarding such offers of employment may be filed with the Department of Justice, 10th & Constitution Avenue, NW., Washington, DC 20530'' and adding in lieu thereof the phrase ''Complaints alleging failure to offer employment to an equally or better qualified U.S. applicant or an

employer's misrepresentation regarding such offers of employment may be filed with the Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices, 950 Pennsylvania Avenue, NW., Washington, DC 20530, telephone: 1 (800) 255–8155 (employers), 1 (800) 255–7688 (employees); Web address: *http://www.usdoj.gov/crt/osc.*''

10. Section 655.736 is amended in paragraph (g)(1) by removing the phrase ''paragraph (2)(g) of this section'' where it appears and adding in lieu thereof the phrase ''paragraph (g)(2) of this section'' and by revising paragraphs (c) introductory text, (g)(2), and (g)(4) to read as follows:

§ 655.736 What are H–1B-dependent employers and willful violators?

* * * * *

(c) *Which employers are required to make determinations of H–1B-dependency status?* Every employer that intends to file an LCA regarding H–1B nonimmigrants or to file H–1B petition(s) or request(s) for extension(s) of H–1B status from January 19, 2001, through September 30, 2003, and after March 7, 2005, is required to determine whether it is an H–1B-dependent employer or a willful violator which, except as provided in § 655.737, will be subject to the additional obligations for H–1B-dependent employers (*see* paragraph (g) of this section). No H–1B-dependent employer or willful violator may use an LCA filed before January 19, 2001, and during the period of October 1, 2003, through March 7, 2005, to support a new H–1B petition or request for an extension of status. Furthermore, on all H–1B LCAs filed from January 19, 2001, through September 30, 2003, and on or after March 8, 2005, an employer will be required to attest as to whether it is an H–1B-dependent employer or willful violator. An employer that attests that it is non-H–1B-dependent but does not meet the ''snap shot'' test set forth in paragraph (c)(2) of this section shall make and document a full calculation of its status. However, as explained in paragraphs (c)(1) and (2), which follow, most employers would not be required to make any calculations or to create any documentation as to the determination of H–1B status.

* * * * *

(g) * * *

* * * * *

(2) During the period between January 19, 2001, through September 30, 2003, and on or after March 8, 2005, any employer that is ''H–1B-dependent'' (under the standards described in paragraphs (a) through (e) of this section) or is a ''willful violator'' (under the standards described in paragraph (f) of this section) shall file a new LCA accurately indicating that status in order to be able to file petition(s) for new H–1B nonimmigrant(s) or request(s) for extension(s) of status for existing H–1B nonimmigrant(s). An LCA filed during a period when the special attestation obligations for H–1B dependent employers and willful violators were not in effect (that is before January 19, 2001, and from October 1, 2003, through March 7, 2005) may not be used by an H–1B dependent employer or willful violator to support petition(s) for new H–1B nonimmigrant(s) or request(s) for extension(s) of status for existing H–1B nonimmigrants.

* * * * *

(4) The special provisions for H–1B-dependent employers and willful violator employers do not apply to LCAs filed from October 1, 2003, through March 7, 2005, or before January 19, 2001. However, all LCAs filed before October 1, 2003, and containing the additional attestation obligations described in this section and §§ 655.737 through 655.739, will remain in effect with regard to those obligations, for so long as any H–1B nonimmigrant(s) employed pursuant to the LCA(s) remain employed by the employer.

§ 655.740 [Amended]

11. Section 655.740 is amended in paragraphs (a) introductory text and (a)(1) by removing the phrase ''regional Certifying Officer'' where it appears and adding in lieu thereof the phrase ''Certifying Officer,'' and in paragraph (a)(3) by removing the phrase ''the regional office'' and adding in lieu thereof ''ETA.''

12. Section 655.750 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 655.750 What is the validity period of the labor condition application?

(a) *Validity of certified labor condition applications.* A labor condition application certified pursuant to the provisions of § 655.740 is valid for the period of employment indicated on Form ETA 9035E or ETA 9035 by the authorized DOL official. The validity period of a labor condition application will not begin before the application is certified and the period of authorized employment shall not exceed three years. However, in the event employment pursuant to section 214(n) of the INA (formerly section 214(m), addressing increased portability of H–1B status) commences prior to certification of the labor condition application, the attestation requirements of the subsequently certified application shall apply back to the first date of employment. Where the labor condition application contains multiple periods of intended employment, the validity period shall extend to the latest date indicated or three years, whichever comes first.

(b) * * *

* * * * *

(2) Requests for withdrawals shall be in writing and shall be sent to ETA. ETA shall publish a Notice in the **Federal Register** identifying the address, and any future address changes, to which requests for withdrawals shall be mailed, and shall also post these addresses on the DOL Internet Web site at *http://www.lca.doleta.gov*.

* * * * *

13. Section 655.760 is amended by revising paragraph (a)(1) to read as follows:

§ 655.760 What records are to be made available to the public, and what records are to be retained?

(a) * * *

(1) A copy of the certified labor condition application (Form ETA 9035E or Form ETA 9035) and cover pages (Form ETA 9035CP). If the Form ETA 9035E is submitted electronically, a printout of the certified application shall be signed by the employer and maintained in its files and included in the public examination file.

* * * * *

Signed in Washington, DC, this 28th day of March, 2005.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 05–6454 Filed 3–31–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD 07–05–012]

RIN 1625–AA08

Special Local Regulations: Annual Fort Myers Beach Air Show, Fort Myers Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for the Fort Myers Beach Air Show, Fort Myers Beach, Florida. This

event is proposed to be held annually on the second Friday, Saturday, and Sunday of May between 8:30 a.m. and 4:30 p.m. EDT (Eastern Daylight Time). This proposed regulation is needed to restrict persons and vessels from entering the sterile zone (air box) below the aerial demonstration and restrict vessels from mooring/anchoring or transiting within the surrounding regulated area with the exception of the Matanzas Pass Channel. This proposed rule is necessary to ensure the safety of life for the participating aircraft, spectators, and mariners in the area on the navigable waters of the United States.

DATES: Comments and related material must reach the Coast Guard on or before May 2, 2005.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office Tampa, 155 Columbia Drive, Tampa, Florida 33606–3598. The Waterways Management Division maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Marine Safety Office Tampa between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jennifer Andrew at Coast Guard Marine Safety Office Tampa (813) 228–2191 Ext 8203.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD 07–05–012), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Marine Safety Office Tampa at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The South West Florida Aviation Foundation's show involves the performance of aerial demonstrations over the near-shore waters of Fort Myers Beach, Florida. The annual event is proposed for the second Friday, Saturday, and Sunday of May from 8:30 a.m. until 4:30 p.m. The nature of aerial demonstrations requires aircraft to use markers in the water as points of reference for aircraft maneuvers. The Federal Aviation Administration (FAA) has published guidelines that aircraft must comply with based on the speed of the aircraft involved and the location of the audience. This proposed regulation is in accordance with those guidelines for the sterile zone (air box) as well as egress routes and vessel movements outside the air box.

Discussion of Proposed Rule

The proposed regulations will include a sterile zone (air box) directly under the aerial demonstration over the near-shore waters of Fort Myers Beach in Lee County, Florida. All vessels and persons would be prohibited from entering, anchoring, mooring or transiting the proposed regulated area. Vessel traffic will be allowed to enter and exit Matanzas Pass Channel using the marked channel at Matanzas Pass Channel daybeacon #3 (26°25′54″ N, 82°58′12″ W, LLNR 16365) and #4 (26°26′06″ N, 82°57′48″ W, LLNR 16370) but may not linger within the regulated area. This proposed regulation is intended to provide for the safety of life on the navigable waters of the United States for Air Show participants and for mariners traveling in the vicinity of the Air Show and is based on FAA guidelines in the FAA Code: Order 8700.1, Operations Inspector Handbook, Volume 2, Chapter 49. All coordinates referenced use datum NAD 83.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The proposed regulation would last for only eight hours on each of the three event days. Vessel traffic is low in this area and vessels will still be allowed to enter and exit through the Matanzas Pass Channel.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit near to shore at Fort Myers Beach, FL in the vicinity of Matanzas Pass annually from 8:30 a.m. to 4:30 p.m. on the second Friday, Saturday, and Sunday in May. This proposed rule would not have a significant economic impact on a substantial number of small entities since it would be in effect for only eight hours a day on each of the three event days. Vessel traffic is low in this area and vessels will still be allowed to enter and exit through the Matanzas Pass Channel.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for

compliance, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—MARINE EVENTS & REGATTAS

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

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

2. Add § 100.736 to read as follows:

§ 100.736 Annual Fort Myers Beach Air Show; Fort Myers Beach, FL.

(a)(1) *Regulated Area.* The regulated area is formed by the following coordinates; point 1: 26°28′08″ N, 81°59′15″ W south to point 2: 26°27′37″ N, 81°59′39″ W east to point 3: 26°25′45″ N, 81°55′34″ W north to point 4: 26°26′14″ N, 81°55′22″ W and west along the contour of the shore to point 5: 26°27′52″ N, 81°58′04″ W to original point 1: 26°28′08″ N, 81°59′15″ W. All coordinates referenced use datum: NAD 83.

(2) *Air Box Area.* The air box area is contained within the regulated area and is formed by the following coordinates; point 1: 26°27′34″ N, 81°58′22″ W south to point 2: 26°27′07″ N, 81°58′39″ W east to point 3: 26°26′15″ N, 81°56′36″ W north to point 4: 26°26′42″ N, 81°56′22″ W and west to original point 1: 26°27′34″ N, 81°58′22″ W. All coordinates referenced use datum: NAD 83.

(b) Special local Regulations.

(1) Vessels and persons are prohibited from entering the air box area defined in paragraph (a)(2).

(2) No vessel may anchor/moor or transit within the regulated area defined in paragraph (a)(1), with the exception of vessel transit permitted in the marked channel as set forth in (b)(3) below.

(3) Vessels entering and exiting Matanzas Pass Channel will be allowed to transit using the marked channel only

at Matanzas Pass Channel day beacon #3 (26°25′54″ N, 82°58′12″ W, LLNR 16365) and day beacon #4 (26°26′06″ N, 82°57′48″ W, LLNR 16370) but may not linger within the regulated area. All coordinates referenced use datum: NAD 83.

(c) *Dates.* This section will be enforced annually on the second Friday, Saturday, and Sunday of May from 8:30 a.m. until 4:30 p.m.

Dated: March 24, 2005.

D.B. Peterman,

RADM, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 05–6477 Filed 3–31–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF EDUCATION

34 CFR Chapter I

Individuals With Disabilities Education Act, as Amended by the Individuals With Disabilities Education Improvement Act of 2004

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education.

ACTION: Notice of public meetings.

SUMMARY: The Secretary announces plans to hold a series of public meetings to seek comments and suggestions about proposed regulations, which the Secretary intends to publish in a Notice of Proposed Rule Making (NPRM) in the Spring of 2005, to implement programs under the recently amended IDEA.

DATES: The public meetings will be held from 1 p.m. to 4 p.m. and from 5 p.m. to 7 p.m.:

Monday, June 6, 2005 in San Antonio, TX;
Friday, June 17, 2005 in Nashville, TN;
Wednesday, June 22, 2005 in Sacramento, CA;
Friday, June 24, 2005 in Las Vegas, NV;
Monday, June 27, 2005 in New York, NY;
Wednesday, June 29, 2005 in Chicago, IL; and
Tuesday, July 12, 2005 in Washington, DC.

ADDRESSES: OSERS will provide specific location information through the NPRM to be published in the **Federal Register** in the Spring of 2005.

Individuals who need accommodations for a disability in order to attend the meetings (*i.e.*, interpreting services, assistive listening devices, or material in alternative formats) should notify the contact person listed under **FOR FURTHER INFORMATION CONTACT**. The meeting locations will be accessible to individuals with disabilities.

FOR FURTHER INFORMATION CONTACT: Troy R. Justesen, Acting Deputy Assistant Secretary, Office of Special Education and Rehabilitative Services, U.S. Department of Education, 400 Maryland Avenue, SW., room 5138, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7468.

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

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2004, The President signed into law Public Law 108–446, the Individuals with Disabilities Education Improvement Act of 2004, amending the Individuals with Disabilities Education Act (IDEA). Copies of the new law may be obtained at the following Web site: *http://edworkforce.house.gov/issues/108th/education/idea/conferencereport/confrept.htm.*

Enactment of the new law provides an opportunity to consider improvements in the regulations implementing the IDEA (including both formula and discretionary grant programs) that would strengthen the Federal effort to ensure every child with a disability has available a free appropriate public education that is (1) of high quality, and (2) designed to achieve the high standards reflected in the No Child Left Behind Act of 2001 (NCLB) and regulations. The Secretary intends to publish an NPRM in the **Federal Register** in the Spring of 2005, proposing regulations to implement the new law.

Announcement of Public Meetings: OSERS will be holding a series of public meetings during June and July of calendar year 2005, to seek additional comments and suggestions from the public after developing and publishing proposed rules to implement programs under the recently amended IDEA.

This notice provides information about dates, locations and times of these public meetings (see **DATES** earlier in this notice).

Electronic Access to this Document: You may view this document, as well as all other documents this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *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: *www.gpoaccess.gov/nara/index.html.*

Dated: March 28, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–6510 Filed 3–31–05; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–PA–0006; FRL–7893–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC RACT Determinations for Three Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Pennsylvania for the purpose of establishing and requiring reasonably available control technology (RACT) for three sources of volatile organic compounds (VOC). In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by May 2, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–PA–0006 by one of the following methods:

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

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

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

D. *Mail:* R03–OAR–2005–PA–0006, Makeba Morris, Chief, Air Quality and Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to RME ID No. R03–OAR–2005–PA–2006. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: LaKeshia Robertson, (215) 814–2113, or by e-mail at *robertson.lakeshia@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: March 24, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–6377 Filed 3–31–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0387; FRL–7704–8]

40 CFR Parts 152 and 158

Pesticides; Data Requirements for Conventional Chemicals; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting on proposed rule.

SUMMARY: The EPA is convening a 2–day public workshop to explain the provisions of its recently proposed rule updating and revising data requirements for conventional pesticides in 40 CFR parts 152 and 158. The data requirements identify the types of information that EPA needs to determine that a pesticide product can be registered, a tolerance or exemption can be issued for pesticide residues in food, or the pesticide can be used experimentally. The proposed rule is intended to: Improve the scientific basis for pesticide decisions; update the requirements last codified in 1984; and reorganize part 158 to improve usability. These efforts will help protect human health and the environment by identifying, assessing, and reducing the risks of conventional pesticides for use in the United States. This workshop is open to the public.

DATES: The workshop will be held on May 3, 2005, from 9 a.m. to 3:30 p.m. and on May 4, 2005, from 9 a.m. to noon.

ADDRESSES: The workshop will be held at Holiday Inn Rosslyn, 1900 N. Fort Myer Drive, Arlington, VA, 22209.

FOR FURTHER INFORMATION CONTACT: Vera Au, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–308–9069; fax number: 703–305–5884; e-mail address: *au.vera@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a producer or registrant of a pesticide product for agricultural, residential and industrial uses. This action may also affect any person or company who might petition the Agency for new tolerances, hold a pesticide registration with existing tolerances, or any person or company who is interested in obtaining or retaining a tolerance in the absence of a registration, that is, an import tolerance. This latter group may include pesticide manufacturers or formulators, importers of food, grower groups, or any person or company who seeks a tolerance. Potentially affected entities may include, but are not limited to:

Chemical Producers (NAICS 32532), e.g., pesticide manufacturers or formulators of pesticide products, importers or any person or company who seeks to register a pesticide or to obtain a tolerance for a pesticide.

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

Registration Division of the Office of Pesticide Programs at 703–305–5447.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0387. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

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

II. Background

EPA is convening a workshop to review proposed revisions to the data requirements for the registration of conventional pesticides. Under the Federal Food, Drug and Cosmetic Act and the Federal Insecticide, Fungicide and Rodenticide Act, anyone seeking to register a pesticide product is required to provide information to EPA that demonstrates their products can be used without posing unreasonable risk to human health and the environment. For food uses, the registrant is required to provide information demonstrating that there is a reasonable certainty that no harm will result from exposures to the residues of their pesticide product.

The workshop will include presentations by staff from the Health Effects Division and the Environmental Fate and Effects Division of the Office of Pesticide Programs. The proposed revisions are primarily directed at conventional pesticides, not antimicrobial pesticides, biochemical pesticides, nor microbial pesticides. Nonetheless, all interested parties are welcome and may benefit from the discussions since EPA is planning on revisions to the data requirements in these areas in the future. Some of the proposed revisions apply to all pesticide products, e.g. changes in general procedures and policies for data submission. During the workshop, persons in attendance will be able to ask questions regarding the material being presented. Day 1 will cover general data procedures, chemistry, toxicology and exposure data requirements. Day 2 will cover environmental fate and nontarget organisms data requirements.

The proposed revisions were issued in the **Federal Register** of March 11, 2005, (70 FR 12275)(FRL–6811–2). A 90–day comment period will end on June 9, 2005. A limited number of copies of the proposed rule will be available at the workshop. Attendees are encouraged to access the electronic version of the proposed rule from EDOCKET at Docket ID No. OPP–2004–0387.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements

Dated: March 24, 2005.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 05–6624 Filed 3–31–05; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7675]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location of referenced elevation	♦ Elevation in feet (NAVD)		Communities affected
	Existing	Modified	
Boggs Creek:			
Approximately 100 feet upstream of East McCarty Street	♦555	♦556	City of Jefferson City.
Approximately 3,400 feet upstream of Scenic Drive	None	♦612	
Dickerson Creek:			
Approximately 120 feet upstream of Business U.S. Highway 50	♦647	♦648	Cole County (Unincorporated Areas).
Approximately 1,880 feet upstream of confluence of Dickerson Creek Tributary No. 2.	♦724	♦723	
Dickerson Creek Tributary No. 1:			
Approximately 180 feet upstream of the confluence with Dickerson Creek	♦647	♦648	Cole County (Unincorporated Areas).
Approximately 740 feet upstream of Business U.S. Highway 50	♦652	♦651	
Dickerson Creek Tributary No. 2:			
At confluence with Dickerson Creek	♦699	♦700	City of Jefferson City Cole County (Unincorporated Areas).
Approximately 2,750 feet upstream of U.S. Highway 50	♦735	♦727	
East Branch Wears Creek:			
At confluence with Wears Creek	♦560	♦561	City of Jefferson City.
Approximately 150 feet upstream of Lafayette Street	None	♦578	
Grays Creek:			
At the confluence with Missouri River	♦560	♦562	City of Jefferson City Cole County (Unincorporated Areas).
Approximately 2.2 miles upstream of State Highway 179/Rock Hill Road	None	♦562	
Grays Creek Tributary:			
At the confluence with Grays Creek	♦560	♦562	City of Jefferson City.
Approximately 4,180 feet upstream of confluence with Grays Creek	♦561	♦562	
Moreau River:			
At the confluence with Missouri River	♦550	♦552	City of Jefferson City Cole County (Unincorporated Areas).
Approximately 5.2 miles upstream of U.S. Highway 54	None	♦591	
North Branch Wears Creek:			
At confluence with Wears Creek	♦559	♦561	City of Jefferson City.
Approximately 30 feet upstream of Schellridge Drive/Jaycee Drive	♦619	♦614	
Osage River:			
At the eastern County Boundary (approximately 7,750 feet downstream of Union Pacific Railroad).	♦545	♦548	City of Wardsville Cole County (Unincorporated Areas).
Approximately 10.1 miles upstream of State Highway B	None	♦563	
Wears Creek:			
Approximately 80 feet downstream of West Main Street	♦556	♦557	City of Jefferson City Cole County (Unincorporated Areas).
Wears Creek:			
Approximately 2,850 feet upstream of Frog Hollow Road	♦612	♦609	City of Jefferson City Cole County (Unincorporated Areas).

Source of flooding and location of referenced elevation	♦ Elevation in feet (NAVD)		Communities affected
	Existing	Modified	
ADDRESSES:			
Unincorporated Areas of Cole County, Missouri:			
Maps are available for inspection at the Department of Public Works, 5055 Monticello Road, Jefferson City, Missouri.			
Send comments to The Honorable Bob Jones, Presiding Commissioner, Cole County Annex, 301 East High Street, Room 200, Jefferson City, Missouri 65101.			
City of Jefferson City, Cole County, Missouri:			
Maps are available for inspection at City Hall, 320 East McCarty Street, Jefferson City, Missouri.			
Send comments to The Honorable John Landwehr, Mayor, City of Jefferson City, City Hall, 320 East McCarty Street, Jefferson City, Missouri 65101.			
City of Wardsville, Cole County, Missouri:			
Maps are available for inspection at 5805 Wardsville Road, Jefferson City, Missouri.			
Send comments to The Honorable Anthony Luebbering, Mayor, City of Wardsville, 5805 Wardsville Road, Jefferson City, Missouri 65101.			
Big Papillion Creek:			
Approximately 750 feet downstream of Harrison Street	♦1,003	♦997	City of Omaha.
Approximately 200 feet downstream of Burlington Northern & Santa Fe Railway	♦1,004	♦1,003	
Elkhorn River:			
Approximately 7,800 feet downstream of West Q Road	♦1,101	♦1,102	Douglas County (Unincorporated Areas).
Approximately 4,350 feet downstream of West Q Road	♦1,106	♦1,105	
Platte River:			
Approximately 23,200 feet downstream of West Center Road/U.S. Highway 275/State Highway 92.	♦1,101	♦1,102	Douglas County (Unincorporated Areas).
At the northern County Boundary (approximately 35,500 feet upstream of Ida Street/State Highway 64).	♦1,189	♦1,192	
ADDRESSES:			
Unincorporated Areas of Douglas County, Nebraska:			
Maps are available for inspection at the Douglas County Community Map Repository, 3015 Menke Circle, Omaha, Nebraska.			
Send comments to Ms. Kathy Kelley, Chief Administrative Officer, Douglas County, 1819 Farnam Street, Omaha, Nebraska 68183.			
City of Omaha:			
Maps are available for inspection at the Community Map Repository, City of Omaha, 1819 Farnam Street, Omaha, Nebraska.			
Send comments to The Honorable Mike Fahey, Mayor, City of Omaha, 1819 Farnam Street, 3rd Floor, Omaha, Nebraska 68183.			
Elkhorn River:			
Just upstream of the confluence with the Platte River	♦1,085	♦1,086	Sarpy County (Unincorporated Areas).
At the northern County Boundary (approximately 5.75 miles upstream of the confluence with the Platte River).	♦1,102	♦1,103	
Platte River:			
Approximately 800 feet upstream of the confluence with the Missouri River	♦967	♦966	Sarpy County (Unincorporated Areas).
At the northern County Boundary (approximately 5.11 miles upstream of the confluence of the Elkhorn River).	♦1,103	♦1,106	
Springfield Creek:			
At the confluence with the Platte River	♦1,012	♦1,011	Sarpy County (Unincorporated Areas).
Approximately 200 feet upstream of Buffalo Road	♦1,012	♦1,011	
ADDRESSES:			
Unincorporated Areas of Sarpy County, Nebraska:			
Maps are available for inspection at the Community Map Repository, Sarpy County Courthouse, 1210 Golden Gate Drive, Papillion, Nebraska.			
Send comments to The Honorable Inez Boyd, Chairman, Board of Commissioners, Sarpy County Courthouse, 1210 Golden Gate Drive, #116, Papillion, Nebraska 68046.			

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 25, 2005.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 05–6433 Filed 3–31–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7614]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Tennessee	McNairy County (Unincorporated Areas).	Crooked Creek	At a point approximately 0.9 mile downstream of High School Road.	None	*445
			At a point approximately 0.6 mile upstream of High School Road.	None	*460

Maps available for inspection at the McNairy County Courthouse, 170 West Court Avenue, Room 201, Selmer, Tennessee.

Send comments to The Honorable Mike Smith, McNairy County Mayor, McNairy County Courthouse, 170 West Court Avenue, Room 201, Selmer, Tennessee 38375.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: March 25, 2005.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 05–6432 Filed 3–31–05; 8:45 am]

BILLING CODE 9110–12–P

Notices

Federal Register
Vol. 70, No. 62
Friday, April 1, 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

Animal and Plant Health Inspection Service

[Docket No. 05–008–1]

National Wildlife Services Advisory Committee; Notice of Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, we are giving notice of a meeting of the National Wildlife Services Advisory Committee.

DATES: The meeting will be held on June 21, 22, and 23, 2005, from 8 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the National Wildlife Research Center, 4101 LaPorte Avenue, Fort Collins, CO.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne Garrett, Director, Operational Support Staff, WS, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737–1234; (301) 734–7921.

SUPPLEMENTARY INFORMATION: The National Wildlife Services Advisory Committee advises the Secretary of Agriculture concerning policies, program issues, and research needed to conduct the Wildlife Services program. The committee also serves as a public forum enabling those affected by the Wildlife Services program to have a voice in the program's policies.

The meeting will focus on operational and research activities. The committee will discuss Wildlife Services' efforts to increase operational capacity through prioritizing research objectives. Additionally, the committee will discuss pertinent national programs, including the avian and disease programs and how to increase their effectiveness, as well as ensuring Wildlife Services remains an active participant in the goal of agricultural protection. This meeting is open to the public.

Due to time constraints, the public will not be allowed to participate in the Committee's discussions. However, written statements concerning meeting topics may be filed with the Committee before or after the meeting by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT**, or may be filed at the meeting. Please refer to Docket No. 05–008–1 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act (5 U.S.C. App. II).

Done in Washington, DC, this 28th day of March 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E5–1458 Filed 3–31–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request: Food Stamp Program Pre-Screening Tool Survey

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed extension of this collection. The information collection involves the use of a web-based pre-screening tool for the general public to use to determine potential eligibility for Food Stamp Program benefits. A new component of this tool collects survey data about the usability of the tool. Some data provided by the users will be captured and retained for analytical purposes. No personal identifiers such as last names, social security numbers, birthdates, etc. will be collected or retained.

DATES: Written comments must be submitted on or before May 31, 2005.

ADDRESSES: Send comments to Celeste Perkins, Contracting Officer Technical Representative, Program Development Division, Food Stamp Program, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 810, Alexandria, VA 22302.

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), 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 comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Celeste Perkins at (703) 305–2507

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Program Pre-Screening Tool.

OMB Number: 0584–0519.

Expiration Date: May 31, 2005.

Type of Request: Revision of a currently approved collection.

Abstract: In June 2003 the Food and Nutrition Service (FNS) deployed an interactive web-based food stamp pre-screening tool that can be utilized by the general public to determine potential Food Stamp Program eligibility. A previous notice was published in the **Federal Register** on May 10, 2002 at 67 FR 31760. The tool has two components. The first component helps the users determine their eligibility for food stamps. Once the user enters household size, income, expenses and resource information, the tool will calculate and provide the user with an estimated range of benefits that the household may be eligible to receive. Other data collected are:

- ID (Each entry is assigned a unique identifier)

- State (System stores answer to required entry: which state or territory the user is from)
- Number of Children (System stores required entry: number of children in the household)
- Number of Elderly (System stores required entry: number of elderly members in the household)
- Migrant Workers (System stores required entry: is anyone in the household a seasonal or migrant farm worker)
- Homeless (System stores required entry: is the household homeless or living in a shelter)
- User Type (System stores required entry: who is using the tool)
- User Referral (System stores required entry: how the user heard about the tool)
- Amount (System stores tool output: if user was eligible to receive benefits and if so the estimated range of benefits)

Since food stamp eligibility and benefit amount may vary by location, FNS makes it clear that the tool is only an estimator, and the household will need to contact the local agency to determine actual eligibility and the appropriate benefit amount.

FNS does not retain any specific identifying information like last names, social security numbers, birthdays, etc about the household itself in the tool; however, the system does request the following information during the initial process in which the user enters data:

- The State in which the user resides;
- Whether the user is using the tool for personal reasons or on behalf of others;
- If they are using it on the behalf of others; the user will be asked to identify him/herself (*e.g.*, relative of a person in need, advocacy organization, faith-based group, etc.) using a drop down menu.

Note: The above information is not retained once the user logs out of the system.

The second component is a formal survey appended to this tool. This information will help FNS to determine the degree of usage, the need for modifying the tool and potential areas for further study.

The optional Survey Component consists of responses to the following items:

- Gender (System stores optional survey entry: User gender)
- Zip Code (System stores optional survey entry: User zip code)
- Current Food Stamp Participation (System stores optional survey entry: Is user currently receiving food stamp benefits)
- Past Food Stamp Participation (System stores optional survey entry: Has user ever received food stamps)
- Will Apply (System stores optional survey entry: Will the user apply for food stamps)
- Tool Ease (System stores optional survey entry: Was the tool easy to use)
- Changed Mind (System stores optional survey entry: Did the result of the screening change the likelihood that the user will apply for benefits)
- Completed Survey (System stores tool output: Was a survey completed (partially, in full or not at all)
- Comments (System stores optional survey entry: User comments)

Estimate of Burden

Pre-Screening Tool Component Burden

Affected Public: Potential food stamp applicants and those using the tool on their behalf.

Estimated Number of Respondents: 264,000 per year.

Number of Responses per Respondent: 1.

Total Number of Annual Responses: 264,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden: 44,000 hours.

Survey Component Burden

Affected Public: Potential food stamp applicants and those using the tool on their behalf.

Estimated Number of Respondents: 251,000 per year.

Number of Responses per Respondent: 1.

Total Number of Annual Responses: 251,000.

Estimated Time per Response: 1 minute.

Estimated Total Survey Annual Burden: 4,183 hours.

Estimated Total Pre-Screening Tool Annual Burden + Estimated Total Survey Annual Burden: 48,183.

Dated: March 28, 2005.

Jerome A. Lindsay,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 05–6489 Filed 3–31–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

BLT Vegetation Management Project, Deschutes National Forest, Klamath County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a proposed action to address forest health and hazardous fuels concerns within the 14,800 acre planning area known as the BLT Vegetation Project. The planning area is located in the Upper Little Deschutes Watershed, which includes the upper reaches of the Little Deschutes River; it is located in T.25–26 S, R. 6½E; T. 25–26 S, R. 7E; T. 24S, R. 8 E. The alternatives will include the proposed action, no action, and additional alternatives that respond to issues generated through the scoping process. The agency will give notice of the full environmental analysis and decision making process so interested and affected people may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by 30 days following the date that this notice appears in the **Federal Register**.

ADDRESSES: Send written comments to Phil Cruz, District Ranger, Crescent Ranger District, PO Box 208, Crescent, Oregon 97733.

FOR FURTHER INFORMATION CONTACT: Chris Mickle, Environmental Coordinator, Crescent Ranger District, PO Box 208, Crescent, Oregon 97773, phone (541) 433–3200. E-mail *lcmickle@fs.fed.us.*

Responsible Official: The responsible official will be Leslie Weldon, Forest Supervisor, Deschutes National Forest, PO Box 1654 Hwy 20 East, Bend, OR 97701.

SUPPLEMENTARY INFORMATION:

Purpose and Need. Current conditions on the landscape indicate that forests are moving toward late seral stages, with stand structure becoming more complex and more susceptible to stand replacement events. Stands once dominated by large trees (greater than 21 inches in diameter) have a steadily increasing amount of smaller trees. In many areas the large trees do not dominate the forest sufficiently to provide adequately for species that depend on late- and old-structure habitat. Overcrowding and competition with the young, smaller trees are causing the large-tree component to decline. This may occur slowly through insect/disease outbreaks, or more rapidly through large-scale fire events.

In addition to unhealthy conditions for large trees, mortality resulting from insect and disease outbreaks has created dead fuel build up. High levels of blowdown in some areas increase the fuel loadings. Some lodgepole pine stands have an overstory that is in poor condition, with heavy mistletoe in some cases. This poses a condition that could

impede development of a health understory.

In some parts of the project area, homes and personal property lie adjacent to Forest land, creating what is known as ''wildland-urban interface.'' There is a need to reduce hazardous fuels in those areas to increase the ability to control wildfire. This will improve safety for firefighters and residents and reduce the risk of high intensity fire destroying private property as well as important forest habitats.

Specifically, the purpose and need of the proposed action is to:

—Reduce stand density where it is too high to promote development of large tree structure.

—Reduce the level of hazardous fuels including ladder and surface fuels. Return fire to the ecosystem.

—Improve conditions in lodgepole pine where the overstory is in poor condition because of mistletoe or other diseases or insects.

—Maintain or improve late and old structured stands, and reduce the risk to the ecosystem posed by large-scale, catastrophic outbreaks of insects, disease, and fire.

—Address fire hazard in the wildland-urban interface by creating fuel breaks around subdivisions.

—Take advantage of opportunities resulting from vegetation management activities that offset costs and provide products to stimulate the economy.

Proposed Action. The proposed actions are intended to sustain, enhance, and protect long-term productivity and resiliency of the forest ecosystem, maintain and enhance wildlife habitat, recreational opportunities, and quality scenic values, and address concerns within the wildland/urban interface. Proposed actions include selection harvest, commercial thinning, small tree thinning and ladder fuels reduction, activity fuels treatments, and prescribed underburning to treat natural fuels.

Issues. The following is a list of concerns or issues related to the proposed action that the interdisciplinary team has identified. Other issues arise from public input. Where issues cannot be resolved through project design or mitigation, they may be the basis for developing alternatives to the Proposed Action.

• *Soil Productivity:* Maintenance of soil productivity is an important objective for management of National Forest lands.

• *Water Quality and Fish Habitat:* The Little Deschutes River is listed on the 2002 303(d) list as ''Water Quality Limited'' by the Oregon Department of Environmental quality. Activities proposed must improve conditions in the stream, or at least ensure that the conditions are not further degraded.

• *Wildlife Habitat:* Within the project area, treatment aimed at improving forest health conditions and reducing fuels have the potential to reduce certain attributes important to some species of wildlife habitat.

• *Special Forest Products:* The project area includes habitat and popular harvesting areas for matsutake mushrooms. Vegetation and/or fuels treatments have the potential to affect matsutake growing conditions, both beneficially and adversely.

Comment. Public comments about this proposal are requested in order to assist in identifying issues, determine how to best manage the resources, and to focus the analysis. Comments received to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 and 217. Additionally, pursuant to 7 CFR 1.279d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

A draft EIS will be filed with the Environmental Protection Agency (EPA) and available for public view by April, 2006. The EPA will publish a Notice of Availability (NOA) of the draft EIS in the **Federal Register**. The final EIS is scheduled to be available July, 2006.

The comment period on the draft EIS will be 45 days from the date the EPA publishes notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions [*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)]. Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts [*City of Angoon* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS of the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The Forest Service is the lead agency and the responsible official is the Forest Supervisor, Deschutes National Forest. The responsible official will decide where, and whether or not to thin stands, salvage excess dead and dying lodgepole pine, and apply natural fuels treatments. The responsible official will also decide how to mitigate impacts of these actions and will determine when and how monitoring of effects will take place.

The BLT Vegetation Project decision and the reasons for the decision will be documented in the record of decision. That decision will be subject to Forest Service Appeal Regulations (35 CFR part 215).

Dated: March 28, 2005.

Leslie A.C. Weldon,

Forest Supervisor, Deschutes National Forest.

[FR Doc. 05–6442 Filed 3–31–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Five Buttes Interface Vegetation Management Project, Deschutes National Forest, Deschutes and Klamath Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a proposed action to maintain and restore forest health conditions within the 160,000-acre planning area known as Five Buttes Interface. The planning area is located approximately 50 miles south of Bend, Oregon, south of Wickiup Reservoir, east of the Cascade Crest, and west of State Highway 97. The area is a combination of public lands (90%), managed by the Deschutes National Forest, and private lands (10%). The alternatives will include the proposed action, no action, and additional alternatives that respond to issues generated through the scoping process. The agency will give notice of the full environmental analysis and decision making process so interested and affected people may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by 30 days following the date that this notice appears in the **Federal Register.**

ADDRESSES: Send written comments to Phil Cruz, District Ranger, Crescent Ranger District, P.O. Box 208, Crescent, Oregon 97733.

FOR FURTHER INFORMATION CONTACT: Marcy Boehme, Environmental Specialist, Crescent Ranger District, P.O. Box 208, Crescent, Oregon 97733, phone (541) 433–3200. E-mail *mboehme@fs.fed.us.*

Responsible Official: The responsible official will be Leslie Weldon, Forest Supervisor, Deschutes National Forest, P.O. Box 1645 Hwy. 20 East, Bend, OR 97701.

SUPPLEMENTARY INFORMATION:

Purpose and Need. The Davis Late Successional Reserve Assessment found that the most immediate need within the Late Successional Reserve (LSR) was to reduce the risk of uncharacteristic loss of critical vegetative components in the existing late and old-structured stands that are imminently susceptible to insect attack or wildfire. This situation applies in much of the area outside the LSR as well.

In the mixed conifer dry plant association group the true fir component has increased dramatically in the last century. Because of the dry site conditions and the stand structure that provides ladder fuels from the ground to the crown, these stands are at the highest risk of being lost to a large-scale insect or disease attack or fire event. Large ponderosa pine and Douglas fir that would ordinarily be fire resistant are placed at risk because of increased competition with true fir and increased ladder fuels.

Across the landscape stands once dominated by large trees (greater than 21″ in diameter) have a steadily increasing amount of smaller trees. Due to these overstocked stand conditions and competition with younger, smaller trees, it is likely that the large tree component will continue to decline in these forests. High density understories consist mostly of true fir and lodgepole pine, while residual overstory trees are ponderosa pine, sugar pine, white pine, and Douglas fir. Not enough overstory trees of the right species exist to provide a seed source to adequately replace the larger trees that are being lost.

The decline in large-tree dominated stands affects habitat for the bald eagle and the northern spotted owl, species listed as Threatened under the Endangered Species Act. Habitat for both species has been reduced on the landscape by the Davis Fire, thereby increasing the importance of treatments that can help improve resistance of the large, old trees to insect and fire processes.

Fire exclusion has allowed wet areas and riparian zones in the planning area to experience encroachment by lodgepole pine to levels that significantly reduce the abundance and health of historic riparian vegetation.

The proposed action is designed to address opportunities for restoring ecosystems identified during watershed analysis and to implement the management strategy defined for the Davis LSR. Specifically, the purpose and need of the proposed action is to:

—Reduce the risk of large-scale loss of forest due to insects, disease, and/or uncharacteristically severe wildfires.

—Maintain and enhance existing late and old-structured forest stand characteristics through silvicultural treatments.

—Reduce high fuel loading across the project area, including the urban interface, to better protect communities and the forest.

—Reintroduce fire to fire-dependent ecosystems as a natural fuels reduction agent.

—Take advantage of opportunities resulting from vegetation management activities that offset costs and provide products to stimulate the economy.

Proposed Action. The proposed action includes a variety of vegetation management activities. These include: thin to create or maintain single story stands and culture large trees, thin to maintain multi-story canopy and large trees, combination thin to multi-story and single story, remove (salvage) excess dead and dying lodgepole pine; thin and burn lodgepole understory, and use prescribed fire in association with these activities to maintain or enhance fire-dependent ecosystems.

Issues. Preliminary issues identified include the potential effect of the proposed action on suitable nesting, roosting and foraging (NRF) habitat for the northern spotted owl. Treatments aimed at making these stands more resistant to insect, disease, and fire may also cause short-term degradation of habitat.

Comment. Public comments about this proposal are requested in order to assist in identifying issues, determine how to best manage the resources, and to focus the analysis. Comments received to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 and 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentially may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

A draft EIS will be filed with the Environmental Protection Agency (EPA) and available for public review by January, 2006. The EPA will publish a Notice of Availability (NOA) of the draft EIS in the **Federal Register**. The final EIS is scheduled to be available April, 2006.

The comment period on the draft EIS will be 45 days from the date the EPA

publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions [*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)]. Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts [*City of Angoon* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS of the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The Forest Service is the lead agency and the responsible official is the Forest Supervisor, Deschutes National Forest. The responsible official will decide where and whether or not to think stands, salvage excess dead and dying lodgepole pine, and apply natural fuels treatments. The responsible official will also decide how to mitigate impacts of these actions and will determine when and how monitoring of effects will take place.

The Five Buttes Interface decision and the reasons for the decision will be documented in the record of decision. That decision will be subject to Forest Service Appeal Regulations (35 CFR part 215).

Dated: March 28, 2005.

Leslie A.C. Weldon,

Forest Supervisor, Deschutes National Forest.

[FR Doc. 05–6445 Filed 3–31–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Misty Fiords Ranger District; Tongass National Forest; Alaska; Traitors Cove Timber Sale Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service will prepare an Environmental Impact Statement (EIS) to harvest timber in the Traitors Cove area of northern Revillagigedo Island on the Ketchikan Misty Fiords Ranger District, Tongass National Forest. This environmental impact statement combines the project areas from three formerly proposed timber harvest projects. These projects were scoped under the Francis Cove Timber Sale, SW Neets Timber Sale, and Rockfish Timber Sale projects. A determination was made that there was a possibility of significant cumulative effects on these project areas and therefore a decision was made to prepare an EIS. The proposed action would harvest about 16 million board feet (MMBF) of timber on approximately 1000 acres. The project would construct about eight miles of road.

DATES: Comments concerning the scope of the analysis must be received within 30 days of the date of this notice. The Draft Environmental Impact Statement is expected to be published November 2005 and will begin a 45-day public comment period. The Final Environmental Impact Statement and Record of Decision are expected in April 2006.

ADDRESSES: You may comment on the project in the following ways: Send or hand deliver written comments to the Ketchikan Misty Fiords Ranger District, Attn: Traitors Cove EIS, Tongass National Forest, 3031 Tongass Avenue, Ketchikan, AK 99901; telephone (907) 225–2148. The FAX number is (907) 225–8738. Send e-mail comments to: *comments-alaska-tongass-ketchikan-mistyfiord@fs.fed.us* with Traitors Cove EIS on the subject line. Include your name, address, and organization name if you are commenting as a representative.

FOR FURTHER INFORMATION CONTACT: For further information, mail correspondence to Lynn Kolund, District Ranger, Ketchikan Misty Fiords Ranger District, Tongass National Forest, 3031 Tongass Avenue, Ketchikan, AK 99901, telephone (907) 228–4100 or Jeannie Blackmore, Interdisciplinary Team Leader, Ketchikan Misty Fiords Ranger District, Tongass National Forest, 3031 Tongass Avenue, Ketchikan, AK 99901, telephone (907) 228–4120.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for the proposed action responds to the goals and objectives identified by the Tongass Land Management Plan, as amended, and helps move the area toward the desired conditions as described in the forest plan. The Forest Supervisor will decide whether or not to harvest timber from the Traitors Cove Timber Sale area, and if so, how this timber will be harvested. The decision will be based on the information that is disclosed in the environmental impact statement. The responsible official will consider comments, responses, the disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and will state that rationale in the Record of Decision.

The Forest Plan goals and objectives applicable to the Traitors Cove Project Area include:

1. Maintain and promote wood production from suitable timber lands, providing a suitable supply of wood to meet society's needs;

2. Seek to provide a stable supply of timber from the Tongass National Forest which meets the annual planning-cycle market demand, while managing these lands for sustained long-term yields and is consistent with sound multiple use and sustained yield objectives: and

3. Provide a diversity of opportunities for resource uses that contribute to the local and regional economies of Southeast Alaska to support a wide range of natural-resource employment opportunities within Southeast Alaska's communities.

The proposed action is to harvest approximately 1000 acres in 54 harvest units using shovel, cable, and/or helicopter logging systems and implementing four silvicultural prescriptions including, clearcut, clearcut with reserve, two age, and uneven age management. The proposed action would harvest approximately 16 MMBF of timber volume. Approximately eight miles of road would be constructed. Logs would be barged from three existing marine access

facilities located at Margaret Bay, SW Neets, and Fire Cove.

Land use designations (LUDs) identified in the project area are Modified Landscape and Timber Production; both of these LUDs allow timber harvest. None of the proposed timber harvest units or roads are within roadless areas. The Traitors Cove Project Area includes two small old-growth habitat reserves (OGRs) as designated the Forest Plan. They are located in Visual Comparison Unit (VCU) 7400 and VCU 7390. There are no plans for modification of either of these small OGRs.

Public Participation

Public participation has been a integral component of the study process and will continue to be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Tribal Governments, Federal, State, and local agencies, individuals and organizations that may be interested in, or affected by, the proposed activities. Scoping initially occurred on the Rockfish, SW Neets, and Francis Cove EAs in April 2004 and an updated scoping letter was mailed in November 2004.

In addition to this Notice of Intent, legal notices will be placed in the Juneau Empire and the Ketchikan Daily News. The Juneau Empire is the official newspaper of record for this project. Written scoping comments are being solicited through a scoping letter that was mailed to interested individuals and agencies on March 28, 2005. The scoping process includes: (1) Identification of potential issues; (2) identification of issues to be analyzed in depth; and (3) elimination of non-significant issues or those which have been covered by a previous environmental review. Based on results of scoping and the resource capabilities within the project area, alternatives including a ''no-action'' alternative will be developed for the Draft Environmental Impact Statement. Subsistence hearings, as provided for in Title VIII, Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), will be conducted, if necessary, during the comment period on the Draft Environmental Impact Statement. A Draft Environmental Impact Statement will be prepared for comment. The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft Environmental Impact Statement must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the Draft Environmental Impact Statement stage but that are not raised until after completion of the Final Environmental Impact Statement may be waived or dismissed by the courts, *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft Environmental Impact Statement. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within seven days.

Preliminary Issues

Previously identified issues for analysis in the project area include potential: (1) Cumulative effects to wildlife, (2) Effects to traditional and cultural hunting and gathering areas, (3) Road building costs, and (4) Timber sale economics.

Permits or Licenses Required

Permits required for implementation include the following:

1. U.S. Army Corp of Engineers
   —Approval of discharge of dredge or fill material into the waters for the United States under Section 404 of the Clean Water Act;
   —Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbor Act of 1899;
2. Environmental Protection Agency
   —General National Pollutant Discharge Elimination System for Log Transfer Facilities in Alaska;
   —Review Spill Prevention Control and Countermeasure Plan;
3. State of Alaska, Department of Natural Resources
   —Tideland Permit and Lease or Easement;
   —Certification of Compliance with Alaska Water Quality Standards (401 Certification) Chapter 20;
4. Office of Project Management & Permitting (DNR).
   —Coastal Zone Consistency Determination concurrence.

Responsible Official

Forrest Cole, Forest Supervisor, Tongass National Forest, Federal Building, 648 Mission Street, Ketchikan, Alaska 99901.

Nature of Decision To Be Made

The Forest Supervisor will decide:

1. The amount, location and method of timber harvest and vegetation treatment.

2. Whether there may be a significant restriction on subsistence uses .

The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations and policies in making the decision and

state his rationale in the Record of Decision.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section21)

Dated: March 24, 2005.

Olleke Rappe-Daniels,

Deputy Forest Supervisor.

[FR Doc. 05–6359 Filed 3–31–05; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products and services previously furnished by such agencies.

Comments Must Be Received On Or Before: May 1, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FUTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Product/NSN: Bottle, Oil Sample, 8125–01–193–3440,
NPA: East Texas Lighthouse for the Blind, Tyler, Texas.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Services

Service Type/Location: Custodial Services, Shasta Lake Ranger Station, 14225 Holiday Road, Redding, California,
NPA: Shasta County Opportunity Center, Redding, California.
Contracting Activity: USDA, Forest Service, Redding, Redding, California.

Service Type/Location: Custodial Services, U.S. Geological Survey—Office of Acquisition & Grants, 12201 Sunrise Valley Drive, Reston, Virginia.
NPA: Davis Memorial Goodwill Industries, Washington, DC.
Contracting Activity: DOI–USGS, Office of Acquisition and Grants, Reston, Virginia.

Service Type/Location: Grounds Maintenance, Bureau of Engraving and Printing, Washington, DC.
NPA: Davis Memorial Goodwill Industries, Washington, DC.
Contracting Activity: Bureau of Engraving and Printing, Washington, DC.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for deletion from the Procurement List.

End of Certification

The following products and services are proposed for deletion from the Procurement List:

Products

Product/NSN: Labels, Laser, Assorted Fluorescent, 7530–01–514–5944.
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.
Contracting Activity: Office Supplies & Paper Product Acquisition Center, New York, NY.

Product/NSN: Pen, Executive, In-Puria Tri-Wood, Rollerball, 7520–01–484–4576.
NPA: Tarrant County Association for the Blind, Fort Worth, Texas.
Contracting Activity: Office Supplies & Paper Product Acquisition Center, New York, NY.

Services

Service Type/Location: Commissary Shelf Stocking, Cecil Field Naval Air Station, Jacksonville, Florida.
NPA: CCAR Services, Inc., Green Cove Springs, Florida.
Contracting Activity: Defense Commissary Agency, Fort Lee, Virginia.

Service Type/Location: Commissary Shelf Stocking & Custodial, Defense Supply Center Richmond, 8000 Jefferson Davis Highway, Richmond, Virginia.
NPA: Goodwill Services, Inc., Richmond, Virginia.
Contracting Activity: Defense Commissary Agency, Fort Lee, Virginia.

Service Type/Location: Commissary Shelf Stocking & Custodial, Fort McClellan, Alabama.
NPA: Alabama Goodwill Industries, Inc., Birmingham, Alabama.
Contracting Activity: Defense Commissary Agency, Fort Lee, Virginia.

Service Type/Location: Commissary Shelf Stocking & Custodial, Naval Training Center Complex, 2500 Leahy Avenue, Orlando, Florida.
NPA: None currently authorized.
Contracting Activity: Defense Commissary Agency, Fort Lee, Virginia.

Service Type/Location: Commissary Shelf Stocking & Custodial, Roosevelt Roads Naval Station, Cieba, Puerto Rico.
NPA: Brevard Achievement Center, Inc., Rockledge, Florida.
Contracting Activity: Defense Commissary

Agency, Fort Lee, Virginia.

Service Type/Location: Janitorial/Custodial, Cecil Field Naval Air Station Commissary, Jacksonville, Florida.

NPA: CCAR Services, Inc., Green Cove Springs, Florida.

Contracting Activity: Defense Commissary Agency, Fort Lee, Virginia.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 05–6469 Filed 3–31–05; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Addition to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List services previously furnished by such agencies.

EFFECTIVE DATE: May 1, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703)603–0655, or e-mail *SKennerly@jwod.gov*.

SUPPLEMENTARY INFORMATION:

Addition

On February 4, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 5964) of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Custodial Services, Howard M. Metzenbaum United States Courthouse, 201 West Superior Avenue, Cleveland, Ohio.

NPA: VGS, Inc., Cleveland, Ohio.

Contracting Activity: GSA, PBS—5P, Chicago, Illinois.

Deletions

On February 4, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 F.R. 5964) of proposed deletions to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service Type/Location: Disassembly of Recorders, U.S. Geological Survey, Hydrologic Instrumentation Facility, Stennis Space Center, Mississippi.

NPA: South Mississippi Regional Center, Long Beach, Mississippi.

Contracting Activity: Department of Interior, Reston, Virginia.

Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Hoyt Avenue, Binghamton, New York.

NPA: Sheltered Workshop for the Disabled, Inc., Binghamton, New York.

Contracting Activity: Department of the Army, Fort Drum, New York.

Service Type/Location: Rehabilitation of Recorder Covers, U.S. Geological Survey, Bay St. Louis, Mississippi.

NPA: South Mississippi Regional Center, Long Beach, Mississippi.

Contracting Activity: Department of Interior, Reston, Virginia.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 05–6470 Filed 3–31–05; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

DATE AND TIME: Friday, April 8, 2005, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 9th Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda.

II. Approval of Minutes of March 18, 2005, meeting.

III. Announcements.

IV. Staff Director's Report.

V. Management and Operations.

VI. Report of the Working Group on Reform.

VIII. Program Planning.

- Consideration of proposals for projects to be undertaken by the Commission during FY 2005, 2006 and 2007.

VII. Future Agenda Items.

CONTACT PERSON FOR FURTHER INFORMATION: Kenneth L. Marcus, Press and Communications, (202) 376–7700.

Emma Monroig,

Solicitor.

[FR Doc. 05–6535 Filed 3–29–05; 4:50 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a joint meeting, followed by separate and concurrently held meetings of the Census Advisory Committees (CACs) on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations. The Committees will address issues related to the 2010 re-engineered decennial census, including the American Community Survey (ACS) and other related decennial programs. Last-minute changes to the schedule are possible, which could prevent advance notification.

DATES: April 25–27, 2005. On April 25, the meeting will begin at approximately 10 a.m. and end at approximately 5:15 p.m. On April 26, the meeting will begin at approximately 8:45 a.m. and end at approximately 4:30 p.m. On April 27, the meeting will begin at approximately 8:15 a.m. and end at approximately 12:30 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Office Building 3, Washington, DC 20233, telephone (301) 763–2070, TTY (301) 457–2540.

SUPPLEMENTARY INFORMATION: The CACs on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations are comprised of nine members each. The Committees provide an organized and continuing channel of communication between the representative race and ethnic populations and the Census Bureau. The Committees provide an outside-user perspective about how research and design plans for the 2010 re-engineered decennial census, the ACS, and other related programs realize goals and satisfy needs associated with these communities. The Committees also assist the Census Bureau on ways that census data can best be disseminated to diverse race and ethnic populations and other users. The Committees are established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, section10(a)(b)).

All meetings are open to the public. A brief period will be set aside at the meeting for public comment. However, individuals with extensive questions or statements must submit them in writing to Ms. Jeri Green at least three days before the meeting. Seating is available to the public on a first-come, first-served basis.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer as soon as possible, preferably two weeks prior to the meeting.

Dated: March 25, 2005.

Hermann Habermann,

Deputy Director and Chief Operating Officer, Bureau of the Census.

[FR Doc. 05–6412 Filed 3–31–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with § 351.213(2004) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than the last day of April 2005, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April for the following periods:

	Period
Antidumping Duty Proceedings	
FRANCE:	
Sorbitol A–427–001	4/1/04 - 3/31/05
NORWAY:	
Fresh and Chilled Atlantic Salmon A–403–801	4/1/04 - 3/31/05
THE PEOPLE'S REPUBLIC OF CHINA:	
Automotive Replacement Glass Windshields A–570–867	4/1/04 - 3/31/05
THE PEOPLE'S REPUBLIC OF CHINA:	
Brake Rotors A–570 -846	4/1/04 - 3/31/05
THE PEOPLE'S REPUBLIC OF CHINA:	
Non–Malleable Cast Iron Pipe Fittings A–570–875	4/1/04 - 3/31/05
TURKEY:	
Certain Steel Concrete Reinforcing Bars A–489–807	4/1/04 - 3/31/05
Countervailing Duty Proceedings	
NORWAY:	
Fresh and Chilled Atlantic Salmon C–403–802	1/1/04 - 12/31/04

	Period
Suspension Agreements	
None.	

In accordance with § 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order–by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 69 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *http://www.ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of April 2005. If the Department does not receive, by the last day of April 2005, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 23, 2005.

Holly A. Kuga,

Senior Office Director, Office 4 for Import Administration.

[FR Doc. E5–1470 Filed 3–31–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five–Year (''Sunset'') Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five–year (''sunset'') reviews of certain antidumping and countervailing duty orders and suspended investigation. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five–Year Review* which covers these same orders.

EFFECTIVE DATE: April 1, 2005.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce at (202) 482–5050, or Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3 - *Policies Regarding the Conduct of Five–Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Initiation of Reviews

In accordance with 19 CFR 351.218(c), we are initiating the sunset reviews of the following antidumping and countervailing duty orders and suspended investigation:

DOC Case No.	ITC Case No.	Country	Product
A–821–811	731–TA–856	Russia	Ammoniun Nitrate
A–351–603	731–TA–311	Brazil	Brass Sheet & Strip
C–351–604	701–TA–269	Brazil	Brass Sheet & Strip
A–122–601	731–TA–312	Canada	Brass Sheet & Strip
A–427–602	731–TA–313	France	Brass Sheet & Strip
C–427–603	701–TA–270	France	Brass Sheet & Strip
A–428–602	731–TA–317	Germany	Brass Sheet & Strip
A–475–601	731–TA–314	Italy	Brass Sheet & Strip
A–588–704	731–TA–379	Japan	Brass Sheet & Strip
A–580–839	731–TA–825	Korea	Polyester Staple Fiber

DOC Case No.	ITC Case No.	Country	Product
A–583–833	731–TA–826	Taiwan	Polyester Staple Fiber

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the Department's regulations regarding sunset reviews (19 CFR 351.218) and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists available to the public on the Department's sunset Internet Web site at the following address: *http://ia.ita.doc.gov/sunset/*.

All submissions in these sunset reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303. Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset website based on notifications from parties and participation in these reviews. Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required from Interested Parties

Domestic interested parties (defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in these sunset reviews must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15–day deadline, the Department will automatically revoke the orders without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order–specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the sunset review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order–specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: March 25, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–1435 Filed 3–31–05; 8:45 am]

Billing Code: 3510–DS–S

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 050309067–5067–01]

Voting Equipment Evaluations

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: In accordance with the provisions of the Help America Vote Act (HAVA), the National Institute of Standards and Technology (NIST) will be conducting research on voting equipment used in the 2004 elections. The NIST research is designed to: (1) Determine the realistic usability benchmarks for current voting system technology to support usability performance standards in next generation voluntary voting systems standards, and (2) develop usability test protocols for conformance testing of such standards. NIST may also examine relevant instructions, documentation and error messages, without doing any direct usability studies thereon. Manufacturers interested in participating in this research will be asked to execute a Letter of Understanding. Interested parties are invited to contact NIST for information regarding participation, Letters of Understanding and shipping.

DATES: Manufacturers who wish to participate in the program must submit a request and an executed Letter of Understanding by May 2, 2005, 5 p.m. Eastern Standard Time.

ADDRESSES: Letters of Understanding may be obtained from and should be submitted to Allan C. Eustis, National Institute of Standards and Technology, Information Technology Laboratory Office, Technology Building 225, Room B257, 100 Bureau Drive, Mail Stop 8901, Gaithersburg, MD 20899–8901. Letters of Understanding may be faxed to: Allan C. Eustis at (301) 840–1357.

FOR FURTHER INFORMATION CONTACT: For shipping and further information, you may telephone Allan C. Eustis at (301) 975–5099, or e-mail: *allan.eustis@nist.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Help America Vote Act (Public Law 107–252), the National Institute of Standards and Technology (NIST) will be conducting research on voting equipment used in the 2004 elections. The NIST research is in support of Technical Guidelines Development Committee Resolution 5–05 Human Performance-Based Standards and Usability Testing, and are designed to: (1) Determine the realistic usability benchmarks for current voting system technology to support usability performance standards in next generation voluntary voting systems

standards, and (2) develop usability test protocols for conformance testing of such standards. NIST may also examine relevant instructions, documentation and error messages, without doing any direct usability studies thereon.

Interested manufacturers should contact NIST at the address given above. NIST will supply a Letter of Understanding, which the manufacturer must execute and send back to NIST. NIST will then provide the manufacturer with shipping instructions for the manufacturer's equipment.

The equipment provided will be returned to the manufacturer after the NIST experiments, approximately one year from commencement of the experiments. Manufacturers should be aware that some of the testing could damage or destroy the equipment, although NIST expects only normal wear and tear associated with approximately 100 to 1,000 votes cast on the equipment by simulated voters. At the conclusion of the experiments, the equipment will be returned to the manufacturer in its post-testing condition. Neither NIST, nor the Election Assistance Commission, nor the Technical Guidelines Development Committee, will be responsible for the condition of the equipment when returned to the manufacturer. As a condition for participating in this program, each manufacturer must agree in advance to hold harmless all of these parties for the condition of the equipment.

Information acquired during the tests regarding potential usability problems will be reported to the respective manufacturer. Results for identifiable vendor equipment will not be released. Comparative information may be released in a blind manner. Performance standards benchmarks and conformance test procedures will be made publicly available.

Participating manufacturers should include or provide a technical tutorial on the setup and deployment of the equipment. NIST will pay all shipping costs, and there is no cost to the manufacturer for the testing. No modification to the equipment is permitted during the testing process.

Voting equipment used in the 2004 elections that will be accepted for the experiments includes Direct Recording Electronic, and Optical Scan systems used to cast and count votes as well as software used for ballot design and creation.

Dated: March 24, 2005.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 05–6479 Filed 3–31–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce. The inventions are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188, fax 301–869–2751, or e-mail: *mary.clague@nist.gov.* Any request for information should include the NIST Docket number and title for the invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the invention for purposes of commercialization. The inventions available for licensing are:

[NIST Docket Number: 01–022US]

Title: Miniature Frequency Standard Based nn All-Optical Excitation and a Micromachined Containment Vessel.

Abstract: This invention is jointly owned by NIST and the University of Colorado. A microwave frequency standard is provided which allows for miniaturization down to length scales of order one micron, comprising a modulated light field originating from a laser that illuminates a collection of quantum absorbers contained in a micro-machined cell. The frequency standard of the present invention can be based on all-optical excitation techniques such as coherent population trapping (CPT) and stimulated Raman scattering or on conventional microwave-excited designs. In a CPT-based embodiment, a photodetector detects a change in transmitted power through the cell and that is used to stabilize an external oscillator to correspond to the absorber's transition frequency by locking the laser modulation frequency to the transition frequency. In a stimulated Raman scattering (SRS) embodiment, a high-speed photodetector detects a laser field transmitted through the cell beating with a second field originating in the cell. Both the locked laser modulation frequency and the beat frequency are very stable as they are referenced directly to the atomic transition.

[NIST Docket Number: 02–002US]

Title: Low Cost Portable Refreshable Tactile Graphic Display.

Abstract: Pressure-based refreshable scanning tactile graphic display apparatus and methods are disclosed for localized sensory stimulation. The apparatus include a display array having stimulus points embedded in a matrix, an energy source applied at the stimulus points through a modulator, a control unit, and a position sensing and feedback unit or units (such as a mouse-type device or data glove, for example). The energy source is preferably stored and pressurized fluid with application to selected stimulus points (pins, for example) preferably directed at a microvalve array under the control of a computer-based control unit.

[NIST Docket Number: 03–006US]

Title: Optical Probes for Chemical and Biochemical Detection in Liquids.

Abstract: A class of optical sensors is provided for chemical and biochemical detection in liquids in which the sensing element is a low-loss optical resonator that requires or benefits from precision optical contacting in the fabrication process. Novel resonator designs can be created by contacting multiple components to form integral sensing elements with low-loss mechanically strong bonds between components. Stigmatic, weakly stigmatic and astigmatic Gaussian mode resonators and whispering gallery mode resonators are described which can be immersed in a liquid to detect chemical species through a change in optical properties. High-reflectivity coated surfaces are used to permit direct excitation of resonator modes by a propagating optical beam, while total internal reflection surfaces provide an evanescent wave for sampling the optical properties of the ambient medium. Resonators are described with vicinal input and output ports, which

facilitate the construction of compact, distal probes where input and output beams are introduced and accessed in close proximity.

[NIST Docket Number: 03–009US]

Title: Spectrally Tunable Solid-state Light Source.

Abstract: A radiometrically stable, spectrally tunable, solid-state source has been developed. The radiometric outputs of individually controlled, narrow bandwidth, solid-state sources with different spectral distributions are combined in an integrating sphere to approximate any desired spectral distribution. Utilizing a sufficient number of independent solid-state source channels, the source can be tuned to approximate the spectral distribution of any desired source distribution. A stable reference spectroradiometer that is integrated into the solid-state light source measures the spectral radiance and is used to adjust the output of the individual channels.

[NIST Docket Number: 04–003US]

Title: Controlled Vesicle Self-Assembly in Continuous Two Phase Flow Microfluidic Channels.

Abstract: It shows the formation of liposomes that encapsulate reagents in a continuous 2-phase flow planar microfluidic network with precision control of size, over the range of 100 nanometers to 300 nanomaters, by control of liquid flow rates. By creating a solvent-aqueous interfacial region in a microfluidic format that is homogenous and controllable on the length scale of a liposome, the fine control of liposome size and polydisperisity is facilitated.

Dated: March 25, 2005.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 05–6480 Filed 3–31–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.032405D]

Receipt of an Application for Incidental Take Permit (1528)

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

ACTION: Notice of availability.

SUMMARY: NMFS has received an application for an incidental take permit (Permit) from the North Carolina Division of Marine Fisheries (NCDMF) pursuant to the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, NCDMF's application includes a conservation plan designed to minimize and mitigate any such take of endangered or threatened species. The Permit application is for the incidental take of ESA-listed adult and juvenile sea turtles associated with otherwise lawful commercial fall gill net fisheries for flounder operating in Pamlico Sound, NC. The duration of the proposed Permit is for 6 years. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on this document. All comments received will become part of the public record and will be available for review.

DATES: Written comments from interested parties on the Permit application and Plan must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Eastern daylight time on May 2, 2005.

ADDRESSES: Written comments on this action should be addressed to Therese Conant, Marine Mammal and Turtle Division, NMFS Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD, 20910; or by fax (301) 427–2522, or by e-mail at: *NMFS.1528@noaa.gov*. The application is available for download and review at *http://www.nmfs.noaa.gov/prot__res/PR3/Permits/ESAPermit.html*.

FOR FURTHER INFORMATION CONTACT: Therese Conant (ph. 301–713–1401, fax 301–427–2522, e-mail *Therese.Conant@noaa.gov*; Dennis Klemm (ph. 727–824–5312, fax 727–824–5309, e-mail *Dennis.Klemm@noaa.gov*). Comments received will also be available for public inspection, by appointment, during normal business hours by calling 301–713–1401.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the ''taking'' of a species listed as endangered or threatened. The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in this Notice

The following species are included in the conservation plan and Permit application: Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles.

Background

NMFS issued Permit #1259 to NCDMF (65 FR 65840, November 2, 2000), Permit #1348 (66 FR 51023, October 5, 2001), and Permit #1398 (67 FR 67150, November 4, 2002) for managing the sea turtle interactions in certain factions of the commercial fall gill net fisheries for flounder in the southeastern portion of Pamlico Sound. On March 22, 2005, NCDMF submitted an application to NMFS for a Permit (#1528) authorizing incidental take of ESA-listed sea turtles associated with the shallow water fishery for the 2005 through 2010 fall fishing seasons. This application includes endangered Kemp's ridley, leatherback, and hawksbill sea turtles and the threatened green and loggerhead sea turtles. This fishery targets flounder. The proposed implementation of this fishery will allow for the continued commercial harvest of this species. This fishery is estimated to have a value of over one million dollars per year. This fishery supports fishermen and the local economy.

Conservation Plan

The conservation plan prepared by NCDMF describes measures designed to monitor, minimize, and mitigate the incidental takes of ESA-listed sea turtles. The conservation plan includes managing the shallow water large and small mesh gill net fishery which operates from April through December in areas adjacent to the Outer Banks and mainland in Pamlico Sound. Seven gill net restricted areas (GNRAs) will be designated for the eastern Pamlico Sound and one GNRA in the western Pamlico Sound along the mainland in Hyde and Pamlico Counties.

The seven eastern GNRAs consist of waters extending out from the barrier islands to a depth of less than 20 feet (6.1 m). The seven GNRAs from south to north are as follows: (1) the area from Wainwright Island bound by Core Banks; (2) the area surrounding Ocracoke Inlet; (3) the area north of Ocracoke Inlet to just south of Hatteras Inlet; (4) the area surrounding Hatteras Inlet; (5) the area north of Hatteras inlet to Avon; (6) the area north of Avon to south of Oregon Inlet; and (7) the area surrounding Oregon Inlet.

The eastern Pamlico Sound shallow water fishery operates from April through December in depths typically less than 3 feet (1.0 m). Vessels are usually open skiffs ranging from 15 to 25 feet (4.6 to 7.6 m) in length. Each fisherman sets 500 to 2000 yards (457 to 1,828 m) of large mesh (5.5 to 7.0 inch (14.0 to 17.8 cm)) or small mesh (3.5 to 4.5 inch (8.90 to 11.4 cm)) gill net, which are soaked overnight and retrieved by hand.

In addition to the eastern Pamlico Sound fisheries, a mainland based flounder gill net fishery occurs in the shallow water bays and along the shoreline of Hyde and Pamlico Counties. The GNRA consist of all mainland areas within 200 yards (183 m) of shore between 76°30′W and 75°42′W. The fishery operating in this area is similar to the Outer Banks fishery with the effort from April through December. Fishing depths are typically less than 3 feet (1.0 m), and each fisherman sets 500 to 2000 yards (457 to 1,828 m) of large mesh (5.5 to 7.0 inch (14.0 to 17.8 cm)), which are soaked overnight and retrieved by hand. This fishery did not operate during the 2001 fishing season due to the 2001 closure of Pamlico Sound (66 FR 50350, October 3, 2001).

Management measures identified in the Conservation Plan include tending requirements for small mesh gillnets; restrictions on the maximum net length per fishing operation; and prohibitions of large mesh gillnets in areas around the inlets. NCDMF will monitor sea turtle interactions through reports from fishery observers, fishermen, and NCDMF Marine Patrol.

The annual anticipated lethal and nonlethal incidental take of sea turtles is anticipated to be 100 and 320, respectively. Specifically, the anticipated lethal and nonlethal take by species is 25 and 80 Kemp's ridley, 50 and 160 green, and 25 and 80 loggerhead turtles. NCDMF is proposing to limit the commercial fall gill net fishery for flounder such that the incidental impacts on ESA-listed sea turtles will be minimized. NCDMF would use a variety of adaptive fishery management measures and restrictions through their state proclamation authority to reduce sea turtle mortality in the fall gill net fishery by 50 percent, compared to the mortality level indicated by strandings in 1999. NCDMF considered and rejected one other alternative, not applying for a permit and closing the fishery, when developing their conservation plan.

This notice is provided pursuant to section 10(c) of the ESA and the National Environmental Policy Act (NEPA) regulations (40 CFR 1506.6). NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the NEPA regulations and section 10(a) of the ESA. If it is determined that the requirements are met, a permit will be issued for incidental takes of ESA-listed sea turtles under the jurisdiction of NMFS. The final NEPA and permit determinations will not be completed until after the end of the 30–day comment period and will fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: March 28, 2005.

P. Michael Payne,

Chief, Marine Mammal and Turtle Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–6506 Filed 3–31–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031005A]

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2005 Georges Bank Cod Hook Sector Operations Plan and Agreement and Allocation of GB Cod Total Allowable Catch

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

ACTION: Notice; request for comments.

SUMMARY: Amendment 13 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) (Amendment 13) authorized allocation of up to 20 percent of the annual Georges Bank (GB) cod total allowable catch (TAC) to the GB Cod Hook Sector (Sector). Pursuant to that authorization, the Sector has submitted an Operations Plan and Sector Contract entitled, ''Amendment 1 to Georges Bank Cod Hook Sector Operations Plan and Agreement'' (together referred to as the Sector Agreement), and a Supplemental Environmental Assessment (EA), and has requested an allocation of GB cod, consistent with regulations implementing Amendment 13. This notice provides interested parties an opportunity to comment on the proposed Sector Agreement prior to final approval or disapproval of the Sector Operations Plan and allocation of GB cod TAC to the Sector for the 2005 fishing year.

DATES: Written comments must be received on or before April 18, 2005.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on GB Cod Hook Sector Operations Plan.'' Comments may also be sent via fax to (978) 281–9135, or submitted via e-mail to: *codsector@NOAA.gov*.

Copies of the Sector Agreement and the EA are available from the NE Regional Office at the mailing address specified above.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone (978) 281–9347, fax (978) 281–9135, e-mail *Thomas.Warren@NOAA.gov*.

SUPPLEMENTARY INFORMATION: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has made a preliminary determination that the Sector Agreement, which contains the Sector Contract and Operations Plan, is consistent with the goals of the NE multispecies FMP and other applicable law and is in compliance with the regulations governing the development and operation of a sector as specified under 50 CFR 648.87. The final rule implementing Amendment 13 (69 FR 22906, April 27, 2004) specified a process for the formation of sectors within the NE multispecies fishery and the allocation of TAC for a specific groundfish species (or Days-at-Sea (DAS)), implemented restrictions that apply to all sectors, authorized the GB Cod Hook Sector, established the GB Cod Hook Sector Area (Sector Area), and specified a formula for the allocation of GB cod TAC to the Sector.

The principal Amendment 13 regulations applying to the Sector specify that: (1) All vessels with a valid limited access NE multispecies DAS permit are eligible to participate in the Sector, provided they have documented landings of GB cod through valid dealer reports submitted to NMFS of GB cod during the fishing years 1996 to 2001 when fishing with hook gear (i.e., jigs, demersel longline, or handgear); (2) Membership in the Sector is voluntary, and each member would be required to remain in the Sector for the entire fishing year and could not fish outside the NE multispecies DAS program during the fishing year, unless certain conditions are met; (3) Vessels fishing in the Sector (participating vessels) would

be confined to fishing in the Sector Area, which is that portion of the GB cod stock area north of 39°00′ N. lat. and east of 71°40′ W. long; and (4) Participating vessels would be required to comply with all pertinent Federal fishing regulations, unless specifically exempted by a Letter of Authorization, and the provisions of an approved Operations Plan.

While Amendment 13 authorized the Sector, in order for GB cod to be allocated to the Sector and the Sector authorized to fish, the Sector must submit an Operations Plan and Sector Contract to the Regional Administrator annually for approval. The Operations Plan and Sector Contract must contain certain elements, including a contract signed by all Sector participants and a plan containing the management rules that the Sector participants agree to abide by in order to avoid exceeding the allocated TAC. An additional analysis of the impacts of the Sector's proposed operations may be required in order to comply with the National Environmental Policy Act. Further, the public must be provided an opportunity to comment on the proposed Operations Plan and Sector Contract. The regulations require that, upon completion of the public comment period, the Regional Administrator will make a determination regarding approval of the Sector Contract and Operations Plan. If approved by the Regional Administrator, participating vessels would be authorized to fish under the terms of the Operations Plan and Sector Contract.

The Sector was authorized for fishing year (FY) 2004 and, based upon the hook gear landings history of its 58 members, was allocated 371 mt of cod, which is 12.587 percent of the total 2004 GB cod TAC.

On March 3, 2005, the Sector Manager submitted to NMFS, Amendment 1 to the 2004 Sector Agreement and a supplemental EA entitled ''The Georges Bank Cod Hook Sector Operations Plan'' which analyzes the impacts of the proposed Sector Agreement.

With three substantive exceptions, the proposed 2005 Sector Agreement contains the same elements as the 2004 Sector Agreement. The first substantive modification to the 2004 Sector Agreement is the eligibility criteria for membership. The 2004 eligibility criteria for membership in the Sector specified issuance of a limited access NE multispecies DAS permit, and documented landings of GB cod by hook gear, during the qualifying period. Framework Adjustment 40–B, which is currently under review by NMFS, proposes to modify the eligibility criteria for the Sector and the basis upon which the TAC allocation is determined. If Framework 40–B is approved, the eligibility criteria will be expanded to include landings of GB cod by all gears (beginning in 2005), and the TAC allocated to the Sector would be based on the members' landings of GB cod using any gear rather than being based only on historic landings of GB cod by hook gear.

The second substantive modification proposed in the 2005 Sector Agreement is a change to the Penalty Schedule, which proposes more severe penalties for violations of the time or area restrictions. The third modification proposed is the removal of the current gear requirement limiting the number of bundles of hooks in set in the Sector's inshore gear restriction area (the maximum number of 4,500 hooks is the same).

The Sector Agreement would be overseen by a Board of Directors and a Sector Manager. The Sector Agreement specifies, in accordance with Amendment 13, that the Sector's GB cod TAC would be based upon the number of Sector members and their historic landings of GB cod. The GB cod TAC is a ''hard'' TAC, meaning that, once the TAC is reached, Sector vessels could not fish under a DAS, possess or land GB cod or other regulated species managed under the FMP (regulated species), or use gear capable of catching groundfish (unless fishing under charter/party or recreational regulations).

As of March 18, 2005, 52 prospective Sector members had signed the 2005 Sector Contract. Because a new method of TAC calculation could be implemented under Framework 40–B, two GB cod TAC allocations were calculated: One based upon historic cod landings by hook gear only (i.e., when fishing with jigs, demersal longline, or handgear), and a second allocation based upon landings by all gear. The allocation percentages were calculated by dividing the sum of total landings of GB cod by Sector members for the fishing years 1996 through 2001, by the sum of the total accumulated landings of GB cod harvested by all NE multispecies vessels for the same time period (113,278,842 lb). The resulting numbers are 11.32 percent and 11.65 percent, for hook gear and all gear, respectively. Based upon these 52 prospective Sector members, the Sector TACs of GB cod would be either 463 mt or 477 mt (11.32 or 11.65 percent times the fishery-wide GB cod target TAC of 4,090 mt, respectively). The fishery-wide GB cod target TAC of 4,090 mt is less than the GB cod target TAC specified in Amendment 13 (4,830 mt) because the 4,830 mt included Canadian catch. That is, the fishery-wide GB cod target TAC of 4,090 mt was calculated by subtracting the GB cod TAC specified for Canada under the U.S./Canada Resource Sharing Understanding for the 2005 fishing year (740 mt), from the overall GB cod target TAC of 4,830 mt specified in Amendment 13. If prospective members of the Sector change their minds after the publication of this notice and prior to a final decision by the Regional Administrator, it is possible that the total number of participants in the Sector and the TAC for the Sector may be slightly reduced from the numbers above.

The Sector Agreement contains procedures for the enforcement of the Sector rules, a schedule of penalties, and provides the authority to the Sector Manager to issue stop fishing orders to members of the Sector. Participating vessels would be required to land fish only in designated landing ports and would be required to provide the Sector Manager with a copy of the Vessel Trip Report (VTR) within 48 hours of offloading. Dealers purchasing fish from participating vessels would be required to provide the Sector Manager with a copy of the dealer report on a weekly basis. On a monthly basis, the Sector Manager would transmit to NMFS a copy of the VTRs and the aggregate catch information from these reports. After 90 percent of the Sector's allocation has been harvested, the Sector Manager would be required to provide NMFS with aggregate reports on a weekly basis. A total of 1/12 of the Sector's GB cod TAC, minus a reserve, would be allocated to each month of the fishing year. GB cod quota that is not landed during a given month would be rolled over into the following month. Once the aggregate monthly quota of GB cod is reached, for the remainder of the month, participating vessels could not fish under a NE multispecies DAS, possess or land GB cod or other regulated species, or use gear capable of catching regulated NE multispecies. Once the annual TAC of GB cod is reached, Sector members could not fish under a NE multispecies DAS, possess or land GB cod or other regulated species, or use gear capable of catching regulated NE multispecies for the rest of the fishing year. The harvest rules would not preclude vessels from fishing under the charter/party or recreational regulations, provided the vessel fishes under the applicable charter/party and recreational rules on separate trips. For each fishing trip, participating vessels would be required to fish under the NE multispecies DAS program to account

for any incidental groundfish species that they may catch while fishing for GB cod. In addition, participating vessels would be required to call the Sector Manager prior to leaving port. There would be no trip limit for GB cod for participating vessels. All legal-sized cod caught would be retained and landed and counted against the Sector's aggregate allocation. Participating vessels would not be allowed to fish with or have on board gear other than jigs, non-automated demersal longline, or handgear. Participating vessels would be limited to using 4,500 hooks within the inshore gear restriction area, but may use an unlimited number of hooks in the rest of the Sector Area. NE multispecies DAS used by participating vessels while conducting fishery research under an Exempted Fishing Permit during the 2005 fishing year would be deducted from that Sector member's individual DAS allocation. Similarly, all GB cod landed by a participating vessel while conducting research would count toward the Sector's allocation of GB cod TAC. Participating vessels would be exempt from the GB Seasonal Closure Area during the month of May.

The EA prepared for the Sector operations concludes that the biological impacts of the Sector will be positive because the hard TAC and the use of DAS will provide two means of restricting both the landings and effort of the Sector. Implementation of the Sector would have a positive impact on essential fish habitat and bycatch by allowing a maximum number of hook vessels to remain active in the hook fishery, rather than converting to (or leasing DAS to) other gear types that have greater environmental impacts. The analysis of economic impacts of the Sector concludes that Sector members would realize higher economic returns if the Sector were implemented. The EA asserts that fishing in accordance with the Sector Agreement rules enables more efficient harvesting of GB cod with hook gear than would be possible if the vessels were fishing in accordance with the common pool (non-Sector) rules. The social benefits of the Sector would accrue to both Sector members as well as the Chatham/Harwichport, MA, community, which is highly dependent upon groundfish revenues and is likely to be negatively affected by the reduced cod trip limit that was implemented under Amendment 13. The EA concludes that the self-governing nature of the Sector and the development of rules by the Sector enables stewardship of the cod resource by Sector members. The cumulative impacts of the Sector are expected to be positive due to a positive biological impact, neutral impact on habitat, and a positive social and economic impact. In contrast, the cumulative impact of the no action alternative is estimated to be neutral, with negative social and economic impacts.

Should the Regional Administrator approve the Sector Agreement as proposed, a Letter of Authorization would be issued to each member of the Sector exempting them, conditional upon their compliance with the Sector Agreement, from the GB cod possession restrictions and the requirements of the Gulf of Maine trip limit exemption program, limits on the number of hooks, and the GB Seasonal Closure Area, as specified in §§ 648.86(b), 648.80(a)(4)(v), and 648.81(g), respectively.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) require publication of this notification to provide interested parties the opportunity to comment on proposed TAC allocations and plans of operation of sectors.

Dated: March 29, 2005.

Alan D. Risenhoover,

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

[FR Doc. E5–1469 Filed 3–31–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031105C]

International Whaling Commission; 57th Annual Meeting; Announcement of Public Meeting

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

ACTION: Notice of meeting.

SUMMARY: This notice announces the date and location of the public meeting being held prior to the 57th annual International Whaling Commission (IWC) meeting.

DATES: The public meeting will be held May 10, 2005, at 1:30 pm.

ADDRESSES: The meeting will be held in the NOAA Science Center Room, 1301 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Cheri McCarty, 301–713–2322, Extension 114.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is chargedwith the responsibility of discharging the obligations of theUnited States under the International Convention for the Regulation of Whaling, 1946. The U.S. Commissioner has primary responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, Marine Mammal Commission, and by other agencies.

Once the draft agenda for the annual IWC meeting is completed, it will be posted on the IWC Secretariat's website at *http://www.iwcoffice.org/meetings/meeting2005.htm*.

Each year NOAA holds a meeting prior to the annual IWC meeting to discuss the tentative U.S. positions for the upcoming IWC meeting. Because the meeting discusses U.S. positions, the substance of the meeting must be kept confidential. Any U.S. citizen with an identifiable interest in U.S. whale conservation policy may participate, but NOAA reserves the authority to inquire about the interests of any person who appears at a meeting and to determine the appropriateness of that person's participation.

Persons who represent foreign interests may not attend. These stringent measures are necessary to protect the confidentiality of U.S. negotiating positions and are a necessary basis for the relatively open process of preparing for IWC meetings.

The meeting will be held at 1:30 pm at the NOAA Science Center Room, 1301 East West Highway, Silver Spring, MD 20910.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Cheri McCarty, 301–713–2322 by May 2, 2005.

Dated: March 28, 2005.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–6513 Filed 3–31–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Report/ Supplemental Environmental Impact Statement for the American River Watershed, California, Folsom Bridge Project, Sacramento County, CA

AGENCY: Department of the Army; U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) and the California Environmental Policy Act (CEQA), the U.S. Army Corps of Engineers (Corps), Sacramento District, and City of Folsom (City) are preparing a draft Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (SEIS/SEIR) to support a project for the construction of a permanent bridge spanning the American River near Folsom Dam, California. The permanent bridge is part of the American River Watershed Project and was authorized by Congress in the energy and Water Development Appropriations Act of 2004 (Pub. L. 108–137). The basic study authority for the American River Watershed study was provided under the Flood Control Act of 1962.

DATES: A public meeting will be held on April 27, 2005, at the Folsom Community Center from 4 p.m. to 6 p.m. and 7 p.m. to 9 p.m.

ADDRESSES: Send written comments and suggestions concerning this study to Ms. Jane Rinck, U.S. Army Corps of Engineers, Sacramento District, Attn: Planning Division (CESPK–PD–R), 1325 J Street, Sacramento, CA 95814. Requests to be placed on the mailing list should also be sent to this address. The public meeting address is Folsom Community Center, 52 Natoma Street, Folsom, CA.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Rinck, email at *Jane.L.Rinck@usace.army.mil*, telephone (916) 557–6715, or fax (916) 557–7856.

SUPPLEMENTARY INFORMATION:

1. *Public Involvement:* The Folsom Bridge Project is being coordinated between Federal., State, and local governments; local stake holders; special interest groups; and other interested individuals and organizations. Scoping meetings have been held to discuss the alternatives and effects to be evaluated in the SEIS/SEIR. The process provides an opportunity for the public to identify significant resources in the project area, as well as other issues of concern. To facilitate the process, the Corps and the City held three initial scoping meetings. The first meeting was held on March 9, 2004, in El Dorado Hills. The second meeting was held on March 10, 2004, in Granite Bay, and the third meeting was held on March 11, 2004, in Folsom. An additional public meeting will be held at the Folsom Community Center (*see* **DATES** and **ADDRESSES**). All comments received will be considered in the preparation of the draft SEIS/SEIR.

The Corps will announce availability of the draft supplemental document in the **Federal Register** and other media, and will provide the public, organizations, and agencies with an opportunity to submit comments, which will be addressed in the final SEIS/SEIR. A 45-day public review period will be provided for individuals and agencies to review and comment on the draft SEIS/SEIR. All interested parties are encouraged to respond to this notice and provide a current address if they wish to be notified of the draft SEIS/SEIR circulation.

2. *Project Information*: The American River Watershed Project provides a plan for flood protection along the main stem of the American River by modifying levees to increase conveyance capacity, as well as an ecosystem restoration plan at selected sites along the Lower American River. The American River Watershed Project also increases flood control storage at Folsom Reservoir by raising the dam. The project area for the permanent bridge is located within the city limits of Folsom, California, in Sacramento County.

As described in the final Supplemental Plan Formulation Report/EIS/EIR for the American River Watershed, California, Long-Term Study, February 2002, the Corps initially proposed the construction of a 2,400-foot-long temporary bridge downstream of the dam. The temporary bridge would have been provided a detour route across the American River during project-related construction when the Folsom Dam Road would be closed. After completion of the flood protection project, traffic would have been returned to the Folsom Dam Road. At the discretion of the U.S. Bureau of Reclamation (Bureau), the temporary bridge would have been dismantled or left in service to facilitate dam maintenance. However, this temporary bridge was replaced by a permanent bridge per Congressional direction in 2004.

3. *Proposed Action*: The proposed action is limited to construction of a permanent bridge and associated roadway across the American River in the vicinity of Folsom Dam.

4. *Alternatives*: The Corps will be evaluating various alignment alternatives for the bridge crossing and associated roadway. During evaluation of the preliminary alternatives, some parts of the alternatives may be modified or changed; some alternatives may be eliminated; and additional alternatives may be added. All alternatives would intersect Folsom Dam Road on the east, cross the areas between the dam and the Folsom State Prison, rise over the American River via the new bridge, and intersect with Folsom-Auburn Road on the west. Some potential alternatives include (1) No Action, (2) Alignment A—North Alignment through Bureau Facilities; (3) Alignment B—Alignment Between Bureau Facilities and Apartments Just South of Alignment A, (4) Alignment C—South Alignment Between the Apartments and Inwood Avenue South of Bureau Facilities.

Dated: March 23, 2005.

Ronald N. Light,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 05–6486 Filed 3–31–05; 8:45 am]

BILLING CODE 3710–EZ–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Programmatic Environmental Impact Statement (DPEIS) for the Onondaga Lake Watershed Management Plan (OLWMP), Feasibility Study, City of Syracuse, Onondaga County, Central New York State, and Onondaga Nation

AGENCY: Department of the Army; Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Onondaga Lake Watershed Management Plan (OLWMP) project has been initiated through the Onondaga Lake Partnership (OLP) to help coordinate and implement various improvement projects in the watershed to benefit the public. The project entails developing a multi-purpose/multi-objective evaluation of the Onondaga Lake watershed to (1) integrate existing projects/plans/studies; (2) assess program/project progress; and (3) plan future lake and watershed revitalization programs and projects into a comprehensive Onondaga Lake Watershed Management Plan. The final product will be used as a tool for the OLP to move toward the rehabilitation of the Onondaga Lake watershed.

Projects shall be consistent with the 1993 Onondaga Lake Management Plan and comply with the Amended Consent Judgment (ACJ) and the Project Labor Agreement (PLA) for the environmental restoration, conservation, and management of Onondaga Lake.

Within the framework of the OLWMP project, an integrated rehabilitation approach will be applied to recognize Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and National Resource Damage Assessment (NRDA) activities within the lake and watershed. While CERCLA and NRDA are pursued under those authorities (Superfund) and are not subject to NEPA, per se, processes are similar. The Onondaga Lake Watershed Management Plan reports will discuss and provide an overview of all pertinent on-going watershed programs and projects in appropriate relative detail.

Study efforts will include: Identification of various study/project authorities; identification of existing and anticipated lake and watershed conditions (including completed and ongoing projects); identification of lake and watershed water resources problems, needs, goals, and objectives; identification of considered alternatives; assessment of impacts of considered alternatives; evaluation (trade-off analyses) of alternatives and associated impacts (including required planning and environmental coordination and compliance, and consideration of agency and public views); and selection and pursuit of appropriate lake and watershed water resources alternatives/projects. Studies shall also provide tools, as appropriate, for continued study/project development, management, and monitoring purposes.

ADDRESSES: Correspondence should be addressed to: Mr. Tod Smith, U.S. Army Corps of Engineers, Buffalo District, Environmental Analyses Section, 1776 Niagara Street, Buffalo, New York 14207–3199.

FOR FURTHER INFORMATION CONTACT: Mr. Tod Smith at 716–879–4175.

SUPPLEMENTARY INFORMATION:

Authority: This study is being conducted under the authority of Section 573 of the Water Resources Development Act (WRDA) 1999.

Proposed Action: The study will involve a comprehensive evaluation of Onondaga Lake and watershed water resource problems, including studies and research necessary for the identification, integration, and implementation of projects and programs that will facilitate water resource improvements in the watershed.

Alternatives: The No Action (Without Project Conditions) alternative is always a consideration. Under this alternative, no study/project action would be taken. This serves as the basis of comparison for other alternatives.

Associated alternatives may include those relative to: institutional processes, water and land use management, HTRW (hazardous, toxic, radioactive waste) remediation, water quality sediment load reduction measures, water quality contamination control measures, water supply measures, water treatment measures, navigation measures, flood damage reduction measures, erosion protection measures, environmental restoration measures, recreational development, and transportation considerations.

Scoping Process: The Onondaga Lake Management Conference (OLMC) was conducted to discuss significant water resources problems and potential remedial actions for Onondaga Lake and developed the 1993 Onondaga Lake Management Plan (OLMP).

The Onondaga Lake Partnership (OLP) was formed in 1998 and was authorized to make revisions to the OLMP via Section 573 of the Water Resources Development Act (WRDA) 1999. Associated with these efforts, the Onondaga Lake Watershed Management Plan study has been initiated to further evaluate, formulate, and integrate beneficial water resources programs/projects in the watershed.

Coordination and meetings have already occurred relative to the Onondaga Lake Partnership activities and projects, as well as, for this Onondaga Lake Watershed Management Plan study. Public involvement processes include an outreach program, public meetings, written and verbal correspondence/coordination, and draft and final report review procedures. A study supplemental Scoping Fact Sheet is being coordinated with various Federal, State, and local agencies and interests, and the Onondaga Nation. Study teams will meet on a routine basis. Additional input from potentially affected Federal, Tribal, State, and local interests is sought by this notice. Information regarding the Onondaga Lake Partnership is available at *http://www.onlakepartners.org/.*

Significant Issues: The primary issues of this study include the substantial water resource problems in Onondaga Lake and its watershed and the effective formulation and integration of their existing and potential remedial actions. These significant water resource problems adversely affect the optimal use of and economic growth in the watershed.

Scoping Meeting: Federal, Tribal, State, and local interests have already been involved with initiation of the Onondaga Lake Partnership and this project (OLWMP) and coordination is already being conducted. At least one new formal scoping meeting is anticipated with the specific date, time, and location to be determined.

Availability: It is expected that the Draft Programmatic Environmental Impact Statement (DPEIS) (a programmatic plan development and implementation overview documentation) will be made available to agencies, tribes, interests, and the public about May 2007.

Dated: March 23, 2005.

Timothy B. Touchette,

Lieutenant Colonel, Corps of Engineers, District Engineer.

[FR Doc. 05–6485 Filed 3–31–05; 8:45 am]

BILLING CODE 3710–GP–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

U.S. Patent number 6,317,694 entitled ''Method and Apparatus for Selecting a Sand Pack Mesh for a Filter Pack and a Well Casing Slot size for a Well.'' U.S. Patent number 6,305,878 entitled ''Adjustable Depth Air Sparging Well.'' U.S. Patent number 6,644,230 entitled ''Locking Marine Bitt.''

ADDRESSES: Requests for copies of the patent applications cited should be directed to Kurt Buehler, NFESC, Code 423, 1100 23rd Ave, Port Hueneme, CA 93043–4370, and must include the U.S. Patent number.

FOR FURTHER INFORMATION CONTACT: Kurt Buehler, Office of Research and Technology Applications, NFESC, Code 423, 1100 23rd Ave, Port Hueneme, CA, 93043–4370, telephone 805–982–4897.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: March 25, 2005.

I. C. Le Moyne Jr.,

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

[FR Doc. 05–6452 Filed 3–31–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Assure Bioassay Controls, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Assure Bioassay Controls, Inc., a revocable, nonassignable, exclusive license in the United States to practice the Government-Owned invention(s) described in U.S. Patent No. 5,840,572 entitled ''Bioluminescent Bioassay System'' and U.S. Patent No. 5,565,360 entitled ''Bioluminescent Bioassay System.''

DATES: Anyone wishing to object to the granting of this license has (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Patent Counsel, Space and Naval Warfare Systems Center, Code 20012, 53510 Silvergate Ave., Room 103, San Diego, CA 92152–5765.

FOR FURTHER INFORMATION CONTACT: Mr. Michael A. Kagan, Space and Naval Warfare Systems Center, Code 20012, 53510 Silvergate Ave., Room 103, San Diego, CA 92152–5765, telephone 619–553–3001.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.7(a))

Dated: March 28, 2005.

I.C. Le Moyne, Jr.,

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

[FR Doc. 05–6446 Filed 3–31–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License to Autoliv Inc.; Correction

AGENCY: Department of the Navy, DoD.

ACTION: Notice; Correction.

SUMMARY: The Department of the Navy published a notice in the **Federal Register** of March 16, 2005, announcing intent to grant a partially exclusive license with Autoliv, Inc. The notice contained an incorrect type of license to be granted and an incorrect company name.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code CAB, 101 Strauss Avenue, Indian Head, MD 20640–5035, telephone 301–744–6111.

Correction

In the **Federal Register** of March 16, 2005, Vol. 70, on page 12855, in the third column, correct the subject heading to read:

Notice of Intent To Grant Non-Exclusion License; Autoliv ASP, Inc.

Correct the **SUMMARY** caption to read:

The Department of the Navy gives notice of its intent to grant Autoliv ASP Inc., a revocable, nonassignable, non-exclusive license, in the field of use in airbag inflators, in the United States to practice the Government-Owned invention, U.S. Patent Number 6,562,160 B2 entitled ''Airbag Propellant.''

Dated: March 25, 2005.

I. C. Le Moyne Jr.,

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

[FR Doc. 05–6453 Filed 3–31–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Office of Environmental Management; Notice of Availability of Draft Section 3116 Determination for Salt Waste Disposal at the Savannah River Site

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of a draft Section 3116 determination for the disposal of separated, solidified, low-activity salt waste at the Savannah River Site (SRS) near Aiken, South Carolina. The determination was prepared pursuant to Section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 3116 authorizes the Secretary of Energy, in consultation with the Nuclear Regulatory Commission (NRC), to determine that certain waste from reprocessing is not high-level waste (HLW) and that it may instead be disposed of as low-level waste (LLW) if it meets the provisions set forth in Section 3116. Although not required by the Act, DOE is making the draft waste determination available for public review and comment.

DATES: The comment period will end on May 16, 2005. Comments received after this date will be considered to the extent practicable.

ADDRESSES: The draft waste determination is available on the Internet at *http://apps.em.doe.gov.swd*, and is publicly available for review at the following locations: U.S. Department of Energy, Public Reading Room, 1000 Independence Avenue, SW., Washington, DC 20585, Phone: (202) 586–5955, or Fax: (202) 586–0575; and U.S. Department of Energy, Savannah River Operations Office, Public Reading Room, 171 University Parkway, Aiken, SC 29801, Phone: (803) 641–3320, or Fax: (803) 641–3302. Written comments should be addressed to: Mr. Randall Kaltreider, U.S. Department of Energy, Office of Environmental Management, EM–20, 1000 Independence Avenue, SW., Washington, DC 20585. Alternatively, comments can be filed electronically by e-mail to *saltwastedetermination@hq.doe.gov*, or by Fax at (202) 586–4314.

SUPPLEMENTARY INFORMATION: There are presently 36.4 million gallons (Mgal) of liquid radioactive waste stored in underground waste storage tanks at SRS. The waste consists of two distinct kinds of material: approximately 2.6 Mgal of sludge, comprised primarily of metals that settled at the bottom of the tanks; and approximately 33.8 Mgal of salt waste, which is comprised of concentrated salt solution (supernate) and crystallized saltcake.

DOE's plans call for stabilizing and disposing of retrieved sludge in a deep geologic repository for spent nuclear fuel and high-level radioactive waste. This will be done by stabilizing the HLW in a borosilicate glass matrix through vitrification in a facility known as the Defense Waste Processing Facility (DWPF). This process has been ongoing since 1996.

Regarding the salt waste, DOE contemplates removing fission products and actinides from these materials using a variety of technologies, combining the removed fission products and actinides with the sludge being vitrified in DWPF, and solidifying the remaining low-activity salt stream into a grout matrix, known as saltstone grout, suitable for disposal in vaults at the Saltstone

Disposal Facility at SRS. The disposal of this low-activity salt stream is the subject of this draft waste determination.

DOE is separating the salt waste to segregate the low-activity fraction using a two-phase, three-part process. The first phase will involve two parts to treat the lower activity salt waste: (1) Beginning in 2005, DOE will process a minimal amount of the lowest-activity salt waste through a process involving deliquification, dissolution, and adjustment (DDA) of the waste; and (2) beginning in approximately 2007, DOE will process a minimal amount of additional salt waste with slightly higher activity levels using an Actinide Removal Process and a Modular Caustic Side Solvent Extraction Unit, along with deliquification and dissolution of the saltcake. The second, and longer-term phase, which is scheduled to begin in approximately 2009, involves the separation and processing of the remaining (and by far the majority) of the salt waste using a Salt Waste Processing Facility (SWPF), augmented as necessary by the Actinide Removal Process. This second phase will begin as soon as the Salt Waste Processing Facility is constructed, permitted by the State of South Carolina, and operational.

DOE believes that this two-phase, three-part approach to processing and disposing of the salt waste at SRS will enable it to complete cleanup and closure of the tanks years earlier and maximize reduction of the potential risks that the tank wastes pose to the environment, the public, and SRS workers. Taken together, the various technologies that will be used are expected to result in the removal and vitrification through the Defense Waste Processing Facility of approximately 98% to 99% of the total radioactivity currently contained in the salt waste, while minimizing the time that waste will be stored in the underground tanks, some of which have a known history of leaks.

Final Determination: DOE will issue a final salt-waste determination following the completion of consultation with the NRC, and consideration of any public comments.

Issued in Washington, DC, on March 28, 2005.

Charles Anderson,

Environmental Management.

[FR Doc. 05–6459 Filed 3–31–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–237–000]

Algonquin Gas Transmission, LLC; Notice of Proposed Changes in FERC Gas Tariff

March 25, 2005.

Take notice that on March 21, 2005, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Second Revised Sheet No. 615 and First Revised Sheet No. 615A, to be effective April 21, 2005. Algonquin states that the purpose of this filing is to delete the tariff provisions related to the CIG/Granite State policy from section 45.3 of the General Terms and Conditions of its FERC Gas Tariff.

Algonquin states that copies of this filing have been served upon all affected customers of Algonquin 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 § 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 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–1462 Filed 3–31–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–137]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

March 25, 2005.

Take notice that on March 23, 2005, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval a negotiated rate agreement between CEGT and ANR Pipeline Company.

CEGT states that it has entered into an agreement to provide firm transportation service to this shipper under Rate Schedule FT and requests the Commission accept and approve the transaction to be effective June 1, 2005.

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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–1459 Filed 3–31–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–238–000]

East Tennessee Natural Gas, LLC; Notice of Proposed Changes in FERC Gas Tariff

March 25, 2005.

Take notice that on March 21, 2005, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 391A, to be effective April 21, 2005. East Tennessee states that the purpose of this filing is to delete the tariff provisions related to the CIG/Granite State policy from section 41.4 of the General Terms and Conditions of its FERC Gas Tariff.

East Tennessee states that copies of this filing have been served upon all affected customers of East Tennessee 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 § 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 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–1463 Filed 3–31–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–241–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 25, 2005.

Take notice that on March 22, 2005, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, effective April 1, 2005:

Seventieth Revised Sheet No. 8A
Sixty-Second Revised Sheet No. 8A.01
Sixty-Second Revised Sheet No. 8A.02
Twenty-Second Revised Sheet No. 8A.04
Sixty-Fifth Revised Sheet No. 8B
Fifty-Eighth Revised Sheet No. 8B.01
Fourteenth Revised Sheet No. 8B.02

FGT states that the tariff sheets listed above are being filed pursuant to section 27.A.2.b of the General Terms and Conditions of FGT's Tariff, which provides for flex adjustments to FGT's Base Fuel Reimbursement Charge Percentage.

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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–1466 Filed 3–31–05; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. RP05–239–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

March 25, 2005.

Take notice that on March 21, 2005, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 305A, to be effective April 21, 2005. Maritimes states that the purpose of this

filing is to delete the tariff provisions related to the CIG/Granite State policy from section 27.4 of the General Terms and Conditions of its FERC Gas Tariff.

Maritimes states that copies of this filing have been served upon all affected customers of Maritimes 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 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–1464 Filed 3–31–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket RP05–233–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 25, 2005.

Take notice that on March 18, 2005, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Fourth Revised Sheet No. 304, with an effective date of April 18, 2005.

Northern states that it is filing the above-referenced tariff sheet in connection with the Commission's Order on Remand in Williston Basin Interstate Pipeline Co. issued March 3, 2005, to eliminate tariff language implementing the CIG/Granite State discount policy.

Northern further states that copies of the filing have been mailed to each of its 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 § 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 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–1460 Filed 3–31–05; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. RP05–240–000]

Texas Eastern Transmission, LP Notice of Proposed Changes in FERC Gas Tariff

March 25, 2005.

Take notice that on March 21, 2005, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, Fourth Revised Sheet No. 644 and First Revised Sheet No. 644A, to be effective April 21, 2005. Texas Eastern states that the purpose of this filing is to delete the tariff provisions related to the CIG/Granite State policy from section 28.3 of the General Terms and Conditions of its FERC Gas Tariff.

Texas Eastern states that copies of this filing have been served upon all affected customers of Texas Eastern 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 § 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 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–1465 Filed 3–31–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–236–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

March 25, 2005.

Take notice that on March 18, 2005, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fifth Revised Sheet No. 372 and Third Revised Sheet No. 373, to become effective April 17, 2005.

Transco states that the purpose of the instant filing is to delete from its tariff section 40.2 of the General Terms and Conditions, Portability of Discounts.

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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–1461 Filed 3–31–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–177–001]

Wyoming Interstate Company, Ltd.; Notice of Compliance Filing

March 25, 2005.

Take notice that on March 21, 2005, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets to become effective March 6, 2005:

Fifth Revised Sheet No. 42,
First Revised Sheet No. 42A,
Eighth Revised Sheet No. 63,
Fifth Revised Sheet No. 89.

WIC states the tariff sheets are revised to comply with the Commission's March 4, 2005 order to update the procedures for the prospective sale of available capacity by removing one exemption applicable to the sale of capacity timeline and by adding a right of first refusal limitation for the sale of certain future capacity.

WIC states that copies of the filing were served on parties on the official service list in the above-captioned proceedings.

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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–1467 Filed 3–31–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–125–004, et al.]

New York Independent System Operator, Inc., et al.; Electric Rate and Corporate Filings

March 23, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New York Independent System Operator Inc.

[Docket No. EL02–125–004]

Take notice that on March 14, 2005, the New York Independent System Operator Inc. tendered for filing its final status report on training seminars as

provided in the settlement approved by the Commission's order issued August 20, 2004 in Docket Nos. EL02–125–000 and 001, 108 FERC ¶ 61,201 (2004).

Comment Date: 5 p.m. eastern time on April 4, 2005.

2. California Independent System Operator Corporation

[Docket No. ER02–1656–025]

Take notice that on March 15, 2005, the California Independent System Operator Corporation (CAISO) submitted its Comprehensive Design Proposal for Inter-Scheduling Coordinator Trades under the CAISO's Market Redesign and Technology Upgrade.

CAISO states that the filing has been served on the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, all parties with Scheduling Coordinator Agreements under the CAISO tariff, and all parties on the official services lists for Docket Nos. ER02–1656–000 and EL04–108–000. In addition, the CAISO states that the filing has been posted on its Home Page.

Comment Date: 5 p.m. eastern time on April 12, 2005.

3. PJM Interconnection, L.L.C.

[Docket Nos. ER04–742–004, EL04–105–002]

Take notice that on March 17, 2005, PJM Interconnection, L.L.C. (PJM) submitted revisions to the PJM Open Access Transmission Tariff (PJM Tariff) and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) to incorporate added language specified by the Commission's March 7, 2005 Order in this proceeding, 110 FERC ¶ 61,254 (March 7 Order).

PJM states that copies of this filing were served upon all persons on the service list in these dockets, as well as all PJM members, and each state electric utility regulatory commission in the PJM region.

Comment Date: 5 p.m. eastern time on April 7, 2005.

4. California Independent System Operator Corporation

[Docket No. ER05–416–002]

Take notice that on March 17, 2005, the California Independent System Operator Corporation (CAISO) submitted a second errata to its December 30, 2004 filing regarding CAISO's revised transmission access charge rates effective January 1, 2005 to implement the revised Transmission Revenue Balancing Accounts of the current Participating Transmission Owners.

The ISO states that this filing has been served upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, the Participating Transmission Owners, and upon all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff. The ISO further explains that it is posting the filing on the ISO Home Page.

Comment Date: 5 p.m. eastern time on April 4, 2005.

5. American Electric Power Service Corporation

[Docket No. ER05–681–000]

Take notice that on March 4, 2005, American Electric Power Service Corporation, on behalf of the American Electric Power operating companies (AEP), submitted an executed Second Power Supply Agreement between AEP and Northeast Texas Electric Cooperative, Inc. and East Texas Electric Cooperative, Inc.

Comment Date: 5 p.m. eastern time on April 6, 2005.

6. Southern California Edison Company

[Docket No. ER05–712–000]

Take notice that on March 17, 2005, Southern California Edison Company (SCE) submitted for filing an amended Interconnection Facilities Agreement, Service Agreement No. 121 and an amended Service Agreement for Wholesale Distribution Service, Service Agreement No. 22 under SCE's Wholesale Distribution Access Tariff, FERC Electric Tariff, First Revised Volume No. 5, between SCE and BP West Coast Products LLC (BP) to reflect a five year extension of service; the name change from Atlantic Richfield Company to BP; and provide for BP's execution of the Western Electricity Coordinating Council's Reliability Management System Agreement.

SCE states that copies of the filing were served upon the Public Utilities Commission of the State of California and BP.

Comment Date: 5 p.m. eastern time on April 7, 2005.

7. KRK Energy

[Docket No. ER05–713–000]

Take notice that on March 17, 2005, KRK Energy (KRK) petitioned the Commission for acceptance of KRK Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

KRK states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. KRK further states it is not in the business of generating or transmitting electric power.

Comment Date: 5 p.m. eastern time on April 7, 2005.

8. Hawkeye Power Partners, LLC

[Docket No. ER98–2076–007]

Take notice that on March 17, 2005, Hawkeye Power Partners, LLC (Hawkeye) submitted a compliance filing pursuant to *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,277 (2003), requiring that sellers with market-based rates that have not previously amended their tariffs to include the market behavior rules do so upon the filing of a three-year market-based rate update. In addition, Hawkeye is making a filing in compliance with the Commission Order No. 652, *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority* issued February 10, 2005. 110 FERC ¶ 61,097 (2005).

Hawkeye states that copies of the filing were served on parties on the official service list in the above-captioned proceeding and the Florida Public Service Commission.

Comment Date: 5 p.m. eastern time on April 7, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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

This filing is accessible on-line at *http://www.ferc.gov*, using the

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

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–1468 Filed 3–31–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6661–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements filed March 21, 2005, through March 25, 2005, pursuant to 40 CFR 1506.9.

EIS No.050128, Draft EIS, AFS, ID, Porcupine East, 9 Allotment Grazing Analysis Project, Authorizing Livestock Grazing, Caribou-Targhee National Forest, Dubois Ranger District, Cenntenial Mountains, Clark County, ID, Comment Period Ends: May 9, 2005, Contact: Shane Q. Jacobson (208) 374–5422. The above NOA EIS should have appeared in the 03/25/2005 **Federal Register**. The 45-Day Comment Period is Calculated from 03/25/2005.

EIS No. 050129, Final EIS, AFS, UT, Duck Creek Fuels Treatment Analysis, To Reduce Fuels, Enhance Fire-Tolerant Vegetation and Provide Fuel Breaks, Dixie National Forest, Cedar City Ranger District, Kane County, UT, Wait Period Ends: May 2, 2005, Contact: David Swank (435) 865–3700.

EIS No. 050130, Final EIS, AFS, WI, Lakewood/Laona Plantation Thinning Project, To Implement Vegetation Management Activities, Chequamegon-Nicolet National Forest, Lakewood Ranger District, Forest, Langlade and Oconto Counties, WI, Wait Period Ends: May 2, 2005, Contact: Anne F. Archie (715) 362–1300.

EIS No. 050131, Draft EIS, FHW, VA, Tri-County Parkway Location Study, Construction of a New North-South Transportation Link to Connect the City of Manassas with I–66, Funding and U.S. COE Section 404 Permit, Prince William, Fairfax and Loudoun Counties, VA, Comment Period Ends: May 23, 2005, Contact: Ed Sundra (804) 775–3338.

EIS No. 050132, Final EIS, BLM, CA, West Mojave Plan, Habitat Conservation Plan and Federal Land Use Plan Amendment, Implementation, California Desert Conservation Area, Portions of San Bernardino, Kern, Inyo, and Los Angeles Counties, CA Wait Period Ends: May 2, 2005, Contact: Alan Stein (951) 697–5382.

EIS No. 050133, Draft EIS, AFS, OH, Wayne National Forest, Proposed Revised Land and Resource Management Plan, Implementation, Several Counties, OH, Comment Period Ends: June 30, 2005, Contact: Bob Gianniny (740) 753–0101.

EIS No. 050134, Draft EIS, AFS, ID, UT, WY, Caribou Travel Plan Revision, Determine the Motorized Road and Trail System, Implementation, Caribou-Targhee National Forest, Westside, Soda Spring and Montpelier Ranger Districts, Bannock, Bear River, Bonneville, Caribou, Franklin, Oneida and Power Counties, ID; Box Elder and Cache Counties, UT and Lincoln County, WY, Comment Period Ends: May 16, 2005, Contact: Deb Tiller (208) 524–7500.

EIS No. 050135, Draft Supplement, COE, FL, Herbert Hoover Dike Major Rehabilitation Evaluation Study, Proposed to Reduce the Probability of a Breach of Reach One, Lake Okeechobee, Martin and Palm Beach Counties, FL, Comment Period Ends: May 16, 2005, Contact: Rebecca Weiss (904) 232–1577.

EIS No. 050136, Draft EIS, AFS, CO, Dry Fork Federal Coal Lease-by-Application (COC–67232), Leasing Additional Federal Coal Lands for Underground Coal Resource, Special-Use-Permits and U.S. Army COE Section 404 Permit, Grand Mesa, Uncompahgre and Gunnison National Forests, Gunnison County, CO, Comment Period Ends: May 16, 2005, Contact: Liane Mattson (970) 844–6697.

EIS No. 050137, Draft EIS, AFS, VT, Green Mountain National Forest, Propose Revised Land and Resource Management Plan, Implementation, Forest Plan Revision, Addison, Bennington, Rutland, Washington, Windham and Windsor Counties, VT, Comment Period Ends: June 30, 2005, Contact: Jay Strand (802) 767–4261.

EIS No. 050138, Draft Supplement, NIH, MA, National Emerging Infectious Disease Laboratories, Additional Information on Two Alternatives, Construction of National Biocontainment Laboratory, BioSquare Research Park, Boston University Medical Center Campus, Boston, MA, Comment Period Ends: May 18, 2005, Contact: Valerie Nottingham (301) 496–7775.

Amended Notices

EIS No. 050063, Final EIS, AFS, UT, Monticello and Blanding Municipal Watershed Improvement Projects, Implementation, Manti-La Sal National Forest, Monticello Ranger District, San Juan County, UT, Due: March 21, 2005, Contact: Greg T. Montgomery (435) 636–3348. Published FR—02–18–05—Retracted due to noncompliance of Section 1506.9 of the Council on Environmental Quality Regulations.

EIS No. 050111, Draft EIS, AFS, CA, Power Fire Restoration Project, To Reduce Long-Term Fuel Loading for the Purpose of Reducing Future Severity and Resistance to Control, Amador Ranger District, Eldorado National Forest, Amador County, CA, Comment Period Ends: May 9, 2005, Contact: Patricia Ferrell (530) 642–5146. Revision of FR Notice Published on 3/25/2005: Correction to CEQ Comment Period from March 9, 2005 to May 9, 2005.

Dated: March 29, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–6490 Filed 3–31–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6662–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7146.

Summary of Rating Definitions

Environmental Impact of the Action

LO—Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC—Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO—Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EO—Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1—Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2—Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3—Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

Draft EISs

ERP No. D–COE–C32036–NY Rating EC2, Hudson River at Athens, New York Navigation Project, Design and Construction of a Spur Navigation Channel, Hudson River, New York City, NY.

Summary: EPA expressed concerns about the project's economic viability, the scope of the project's dredging and sediment disposal, the impacts to water quality, fish and wildlife species and habitat, and the indirect and cumulative impacts, and requested that additional information, especially Habitat Impairment Test results, be presented in the Final EIS to address these issues.

ERP No. D–COE–E11055–NC Rating LO, Fort Bragg Headquarters for XVIII Airborne Corps and Army Special Operations Command, To Fully Integrate the Overhill Tract Training Program, Cumberland and Harnett Counties, NC.

Summary: EPA has no objections to the proposed project. ERP No. D–FHW–F40428–OH Rating EC2, OH–823, Portsmouth Bypass Project, Transportation Improvements, Funding and U.S. Army COE Section 404 Permit, Appalachian Development Highway, Scioto County, OH.

Summary: EPA has environmental concerns about the proposed project related to upland forest habitat losses, forest fragmentation, and potential for stream sedimentation. EPA also recommends additional analysis of the cumulative impacts related to forest fragmentation be included in the FEIS.

ERP No. D–FRC–G03024–TX Rating EC2, Vista del Sol Liquefied Natural Gas (LNG) Terminal Project, Construct, Install and Operate an LNG Terminal and Natural Gas Pipeline Facilities, Vista del Sol LNG Terminal LP and Vista del Sol Pipeline LP, TX.

Summary: EPA identified environmental concerns that may require changes to the preferred alternative and mitigation measures to reduce environmental impact. EPA requested additional information to be included in the FEIS, including information regarding wetland impacts, mitigation, contaminant testing and the suitability of dredged material for beneficial use.

Final EISs

ERP No. F–FAA–K51039–CA, Los Angeles International Airport Proposed Master Plan Improvements, Alternative D Selected, Enhanced Safety and Security Plan, Los Angeles County, CA.

Summary: EPA continues to express environmental concerns about potential effects to air quality, and requested additional mitigation measures to reduce airport-related emissions of particulate matter and air toxic. ERP No. FS–BIA–A65165–00 Programmatic EIS—Navajo Nation 10–Year Forest Management Plan, Selected Preferred Alternative Four, Chuska Mountain and Defiance Plateau Area, AZ and NM.

Summary: EPA has continuing concerns regarding cumulative impacts to water quality and riparian habitat from existing impaired conditions, including exceedances of Navajo Nation Water Quality Standards.

Dated: March 29, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–6491 Filed 3–31–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIONMENTAL PROTECTION AGENCY

[OPP–2005–0090; FRL–7707–5]

EFED Exposure Modeling Work Group; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces an April meeting of the Exposure Modeling Work Group (EMWG). The EMWG meetings are sponsored by the Office of Pesticide Programs' Environmental Fate and Effects Division (EFED). The theme for this meeting is ''pesticides in air'' and will include presentations on pesticide volatilization from soil, pesticide spray drift and pesticide in rain water. The purpose of the meetings is to update those in the pesticide regulatory community on advances in estimating pesticide concentrations in media of concern through computer simulation. Improvements in estimation of pesticide exposure lead directly to improvements in estimation of risk both to the environment and to human health.

DATES: The meeting will be held on April 11, 2005 from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at 1126 Crystal Mall #2, 1801 S. Bell St., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Ronald Parker, Environmental Fate and Effects Division (7507C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5505, fax number: (703) 305–6309; e-mail address: *parker.ronald@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be interested in this meeting if you perform exposure risk assessments for pesticides. This action may, however, be of interest to persons who are pesticide industry scientists, government regulatory scientists, or environmental group scientists. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

This listing is not intended to be exhaustive, but rather provides a guide for readers. If you have any questions regarding the applicability of this information for a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1.*Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0090. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

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

II. Background

Exposure Modeling Work Group Meetings are sponsored by EFED, and are held quarterly. The purpose of the meetings is to stimulate discussion on the subject of pesticide environmental fate and transport computer modeling, with the objective of improving the science and practice of estimating exposure to pesticides. Media of concern include surface water, ground water, soil, air, items that may serve as food for wildlife and items that may be food for human consumption. Presentations are sometimes focused around a theme.

The agenda for the meeting follows:

1. Welcome and Introductions – (9 a.m. – 9:05 a.m.)

2. Old Action Items – (9:05 a.m. – 9:15 a.m.)

3. Brief Updates (9:15 a.m. – 9:45 a.m.)

- PRZM3.12.2 Evaluation (J. Hetrick)
- EXPRESS (R. Parker)
- Carbamate Cumulative Assessment (N. Thurman)

4. Major Topics

Morning Session

9:45 a.m.–10:15 a.m. – Soil Fumigant Critical Input Parameter Selection for Air Dispersion Modeling, Ian van Wesenbeeck, Ph.D. Dow AgroSciences

10:15 a.m.–10:45 a.m. – Fumigant Exposure Modeling System (FEMS): David Sullivan – - Sullivan Consulting

10:45 a.m.–11 a.m. – Break

11 a.m.–11:30 a.m. – Probabilistic Exposure and Risk model for Fumigants (PERFUM): Rick Reiss Sciences International

11:30 a.m.–12 noon – Predicting Soil Fumigant Acute, Sub-chronic, and Chronic Air Concentrations Under Diverse Agronomic Practices: An overview of the SOFEA(c) System. Steve Cryer, Ph.D. - Dow AgroSciences

12 noon–1 p.m. – Lunch Break

Afternoon Session

1 p.m.–1:30 p.m. – Environmental and Agricultural Factors Controlling Pesticide Volatilization, Transport, and Deposition. Laura McConnell, Ph.D. USDA/ARS Beltsville, MD

1:30 p.m.–1:45 – EFED Spray Drift Modeling Activities: Norm Birchfield, Ph.D - OPP/EFED

1:45 p.m.–2:05 – Drift Reducing Technology Project: 2:05 p.m.–2:20 p.m. Norm Birchfield

2:20 p.m.–2:45 p.m. – AgDrift/AgDisp Modeling Issues: Dave Valcore, Ph.D. - Dow AgroSciences

2:45 p.m.–3 p.m. – Wrap-Up.

Next Meeting - R. Parker

List of Subjects

Environmental protection, Pesticide exposure assessment, Pesticide risk assessment, Pesticide volatilization, Pesticide spray drift, Pesticide environmental fate and transport computer modeling.

Dated: March 22, 2005.

Elizabeth M. Leovey,

Acting Director, Environmental Fate and Effects Division, Office of Pesticide Programs

[FR Doc. 05–6625 Filed 3–31–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0067; FRL–7708–2]

Sulfuryl Fluoride; Notice of Filing a Pesticide Petition to Establish Tolerances for a Certain Pesticide Chemical in or on Food; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of March 4, 2005, concerning the initial filing of a pesticide petition proposing the establishment of regulations for residues of sulfuryl fluoride in or on various food commodities with a 30–day public comment period. That comment period will end on April 4, 2005. This document is extending the comment period for an additional 15 days.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0067 must be received on or before April 19, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the March 4, 2005 **Federal Register** document.

FOR FURTHER INFORMATION CONTACT: Suku Oonnithan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0368; e-mail address:*oonnithan.suku@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0067. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the March 4, 2005 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA Taking?

This document extends the public comment period established in the **Federal Register** of March 4, 2005 (70 FR 10621) (FRL–7701–8) for the sulfuryl fluoride notice of filing. The original comment period will expire on April 4, 2005. EPA is hereby extending the comment period an additional 15 days so that the new comment period ends on April 19, 2005.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 28, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 05–6500 Filed 3–31–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 30, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 31, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918 or via the Internet at *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0980.

Title: Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (Procedural Rules); Implementation of the Satellite Home Viewer Improvement Act of 1999 (Broadcast Signal Carriage Issues, Retransmission Consent Issues) CS Docket Nos. 00–96 and 99–363.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 9,600.

Estimated Time per Response: 1–5 hours.

Frequency of Response: On occasion reporting requirement; Third Party Disclosure Requirement.

Total Annual Burden: 14,800 hours.

Total Annual Cost: $260,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On March 28, 2005, the Commission adopted rules in compliance with requirements in the Satellite Home Viewer Extension and Reauthorization Act of 2004 (''SHVERA''). In December 2004, Congress passed and the President signed the SHVERA, which amends the 1988 copyright laws and the Communications Act of 1934 to further aid competition in the multichannel video programming distribution market and provide more video programming options for satellite subscribers. The SHVERA is the third statute that addresses satellite carriage of television broadcast stations. Section 202 of the SHVERA requires the Commission to implement the new section 340(h), which prescribes rules for carriage elections on a county basis, unified retransmission consent negotiations, and notifications by satellite carriers to local broadcasters concerning carriage of significantly viewed signals. We also adopt two additional procedural rule changes mandated by sections 205 and 209 of the SHVERA. Section 205 amends section 338 of the Communications Act to add subsection 338(h), which requires the Commission to revise its rules for satellite carriers' notices to station licensees when the carrier is going to initiate new local service. Section 209 of the SHVERA amends section 339(c)(4) of the Communications Act to require the Commission to exempt satellite carriers from the signal testing requirements mandated by this section when local-into-local service is available. We are amending the rules without providing prior public notice and comment because these amendments merely implement provisions of the SHVERA that direct the Commission to revise its rules as specified in the legislation.

In 1988, Congress passed the Satellite Home Viewer Act (''1988 SHVA''), which established a statutory copyright license for satellite carriers to offer broadcast programming to subscribers who could not receive the signal of a broadcast station over the air (''unserved households''). In the 1999 Satellite Home Viewer Improvement Act (''SHVIA''), Congress expanded on the 1988 SHVA by amending both the 1988 copyright laws and the Communications Act to permit satellite carriers to retransmit local broadcast television signals directly to their subscribers without requiring that they live in ''unserved households.''

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–6597 Filed 3–31–05; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise

noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 25, 2005.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Evolve Financial Group, Inc., Memphis, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Parkin Bancorp, Inc., Parkin, Arkansas, and thereby indirectly acquire First State Bank, Parkin, Arkansas.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Independent Bank Group Central Texas, Inc., McKinney, Texas, and CTB Holdings Delaware, Inc., Wilmington, Delaware; to merge with First FSB Bancshares, Inc., Mount Calm, Texas, and thereby indirectly acquire First State Bank, Italy, Texas, and First State Bank, Mount Calm, Texas.

Board of Governors of the Federal Reserve System, March 28, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–6406 Filed 3–31–05; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0058]

Information Collection; Federal Management Regulation; Standard Form 151, Deposit Bond, Annual Sale of Government Personal Property

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding Standard Form 151, Deposit Bond, Annual Sale of Government Personal Property. A request for public comments was published at 69 FR 63387, November 1, 2004. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: May 2, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Iris Wright-Simpson, Property Disposition Specialist, Personal Property Center, by telephone at (703) 305–7011 or via email to *iris.wright-simpson@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0058; Standard Form 151, Deposit Bond, Annual Sale of Government Personal Property.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 151 is used by bidders participating in sales of Government personal property whenever the sales invitation permits an annual type of deposit bond in lieu of cash or other form of deposit.

B. Annual Reporting Burden

Respondents: 1000
Responses Per Respondent: 1
Total Responses: 1000
Hours Per Response: .25
T*otal Burden Hours:* 250
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0058, Standard Form 151, Deposit Bond, Annual Sale of Government Personal Property, in all correspondence.

Dated: March 24, 2005

Michael W. Carleton,

Chief Information Officer.

[FR Doc. 05–6414 Filed 3–31–05; 8:45 am]

BILLING CODE 6820–89–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0057]

Information Collection; Standard Form 150, Deposit Bond-Individual Invitation, Sale of Government Personal Property

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding Standard Form 150, Deposit Bond-Individual Invitation, Sale of Government Personal Property.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: May 31, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Iris Wright-Simpson, Property Disposition Specialist, Personal Property Center, at (703) 305–7011 or via email at *iris.wright-simpson@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0057, Standard Form 150, Deposit Bond-Individual Invitation, Sale of Government Personal Property, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0057, concerning Deposit Bond Individual-Sale of Government Personal Property. This form is used by bidders participating in sales of Government personal property whenever the sales invitation permits an individual type of

deposit bond in lieu of cash or other form of bid deposit.

B. Annual Reporting Burden

*Respondents:*1000
*Responses Per Respondent:*1
Total Responses: 1000
Hours Per Response: .25
Total Burden Hours: 250
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0057, Standard Form 150, Deposit Bond-Individual Invitation, Sale of Government Personal Property, in all correspondence.

Dated: March 24, 2005

Michael W. Carleton,

Chief Information Officer.

[FR Doc. 05–6415 Filed 3–31–05; 8:45 am]

BILLING CODE 6820–89–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interagency Committee on Smoking and Health: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the charter for the Interagency Committee on Smoking and Health (ICSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services, has been renewed for a 2-year period through March 20, 2007.

For further information, contact Dana Shelton, Executive Secretary, Interagency Committee on Smoking and Health, Centers for Disease Control Prevention, of the Department of Health and Human Services, CDC, 4770 Buford Highway, NE., M/S K–50, Atlanta, Georgia 30341–3717, telephone 770–488–5709 or fax 770/488–5767.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 25, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–6450 Filed 3–31–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Federal Allotments to State Developmental Disabilities Councils and Protection and Advocacy Formula Grant Programs for Fiscal Year 2006

AGENCY: Administration on Developmental Disabilities (ADD), Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of Fiscal Year 2006 Federal Allotments to State Developmental Disabilities Councils and Protection and Advocacy Formula Grant programs.

SUMMARY: This notice sets forth Fiscal Year (FY) 2006 individual allotments and percentages of the total appropriation to States administering the State Developmental Disabilities Councils and Protection and Advocacy programs, pursuant to Section 122 and Section 142 of the Developmental Disabilities Assistance and Bill of Rights Act (Act). The allotment amounts are based on the FY 2006 President's Budget request and are contingent on congressional appropriations for FY 2006. If the Congress enacts a different appropriation amount in FY 2006, these allotments will be adjusted accordingly. The State allotments are available on the ADD homepage on the Internet: *http://www.acf.hhs.gov/programs/add/*.

EFFECTIVE DATE: October 1, 2005.

FOR FURTHER INFORMATION CONTACT: Catherine Wade, Grants Financial Management Specialist, Office of Grants Management, Office of Administration, Administration for Children and Families, telephone (202) 401–5798.

SUPPLEMENTARY INFORMATION: Section 122(a)(2) of the Act requires that adjustments in the amounts of State allotments shall be made not more often than annually and that States must be notified no less than six (6) months before the beginning of the fiscal year in which such adjustment is to take effect. The Catalog of Federal Domestic Assistance (CFDA) number is 93.630. In relation to the State Developmental Disabilities Council allotments, the descriptions of service needs were reviewed in the State plans and are consistent with the results obtained from the data elements and projected formula amounts for each State (Section 122(a)(5)).

The Administration on Developmental Disabilities has updated the following data elements for issuance of Fiscal Year 2006 allotments for both of the Developmental Disabilities formula grant programs.

A. The number of beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program are from Table 5.J10 of the ''Annual Statistical Supplement, 2003, to the Social Security Bulletin'' issued by the Social Security Administration;

B. State data on Average Per Capita Income are from Table B—Per Capita Personal Income, 2001–2003 of the ''Survey of Current Business,'' September, 2004, issued by the Bureau of Economic Analysis, U.S. Department of Commerce. The most recent comparable data for the Territories were obtained from the Department of Commerce September 2004; and

C. State data on Total Population is based on ''State Population Estimates: July 1, 2004'' issued December 2004 by the U.S. Census Bureau. The State working population (ages 18–64) is based on the ''Estimate of Resident Population of the U.S. by Selected Age Groups and Sex, July 1, 2003'' issued September 2004 by the U.S. Census Bureau. Total population estimates for the Territories are based on ''Global Population Profile: 2002'' data issued March 2004 by the U.S. Census Bureau. The Territories working population is based on ''Population and Housing Profile: 2000'' issued by the U.S. Census Bureau from Census 2000 data.

TABLE 1.—FY 2006 ALLOTMENTS; ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

	Developmental disabilities councils	Percentage of total appropriation
Total	$72,496,000	100.000000

TABLE 1.—FY 2006 ALLOTMENTS; ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

	Developmental disabilities councils	Percentage of total appropriation
Alabama	1,303,749	1.798374
Alaska	461,733	.636908
Arizona	1,273,254	1.756309
Arkansas	798,009	1.100763
California	6,732,793	9.287124
Colorado	828,370	1.142642
Connecticut	684,377	.944020
Delaware	461,733	.636908
District of Columbia	461,733	.636908
Florida	3,607,497	4.976132
Georgia	1,886,710	2.602502
Hawaii	461,733	.636908
Idaho	461,733	.636908
Illinois	2,645,112	3.648632
Indiana	1,499,994	2.069071
Iowa	773,202	1.066544
Kansas	615,537	.849063
Kentucky	1,214,354	1.675063
Louisiana	1,373,991	1.895265
Maine	461,733	.636908
Maryland	1,016,990	.402822
Massachusetts	1,355,070	1.869165
Michigan	2,517,456	3.472545
Minnesota	1,031,889	1.423374
Mississippi	940,145	1.296823
Missouri	1,372,365	1.893022
Montana	461,733	.636908
Nebraska	461,733	.636908
Nevada	461,733	.636908
New Hampshire	461,733	.636908
New Jersey	1,574,549	2.171912
New Mexico	517,026	.713179
New York	4,224,169	5.826761
North Carolina	1,970,887	2.718615
North Dakota	461,733	.636908
Ohio	2,864,776	3.951633
Oklahoma	906,308	1.250149
Oregon	778,013	1.073181
Pennsylvania	3,084,849	4.255199
Rhode Island	461,733	.636908
South Carolina	1,122,357	1.548164
South Dakota	461,733	.636908
Tennessee	1,503,287	2.073614
Texas	4,731,591	6.526693
Utah	597,250	.823839
Vermont	461,733	.636908
Virginia	1,510,032	2.082918
Washington	1,185,511	1.635278
West Virginia	765,293	1.055635
Wisconsin	1,297,635	1.789940
Wyoming	461,733	.636908
American Samoa	240,458	.331685
Guam	240,458	.331685
Northern Mariana Islands	240,458	.331685
Puerto Rico	2,503,776	3.453675
Virgin Islands	240,458	.331685

TABLE 2.—FY 2006 ALLOTMENTS; ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

	Protection and advocacy	Percentage of total appropriation
Total	[1] $37,346,820	100.000000
Alabama	616,974	1.652012
Alaska	365,940	.979842
Arizona	593,445	1.589011
Arkansas	379,748	1.016815
California	3,183,331	8.523708

TABLE 2.—FY 2006 ALLOTMENTS; ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

	Protection and advocacy	Percentage of total appropriation
Colorado	408,703	1.094345
Connecticut	376,728	1.008728
Delaware	365,940	.979842
District of Columbia	365,940	.979842
Florida	1,751,019	4.688536
Georgia	934,345	2.501806
Hawaii	365,940	.979842
Idaho	365,940	.979842
Illinois	1,281,999	3.432686
Indiana	722,342	1.934146
Iowa	368,535	.986791
Kansas	365,940	.979842
Kentucky	567,565	1.519714
Louisiana	629,491	1.685528
Maine	365,940	.979842
Maryland	478,650	1.281635
Massachusetts	602,505	1.613270
Michigan	1,164,400	3.117802
Minnesota	492,891	1.319767
Mississippi	436,384	1.168464
Missouri	660,742	1.769206
Montana	365,940	.979842
Nebraska	365,940	.979842
Nevada	365,940	.979842
New Hampshire	365,940	.979842
New Jersey	749,910	2.007962
New Mexico	365,940	.979842
New York	1,931,732	5.172414
North Carolina	984,385	2.635793
North Dakota	365,940	.979842
Ohio	1,350,619	3.616423
Oklahoma	420,929	1.127081
Oregon	391,212	1.047511
Pennsylvania	1,417,757	3.796192
Rhode Island	365,940	.979842
South Carolina	541,043	1.448699
South Dakota	365,940	.979842
Tennessee	718,684	1.924351
Texas	2,243,796	6.007997
Utah	365,940	.979842
Vermont	365,940	.979842
Virginia	726,148	1.944337
Washington	564,196	1.510694
West Virginia	388,931	1.041403
Wisconsin	611,617	1.637668
Wyoming	365,940	.979842
American Samoa	195,775	.524208
Guam	195,775	.524208
Northern Mariana Islands	195,775	.524208
Puerto Rico	1,090,269	2.919309
Virgin Islands	195,775	.524208
DNA People Legal Services [2]	195,775	.524208

[1] In accordance with Public Law 106–402, Section 142(a)(6)(A), $762,180 has been withheld to fund technical assistance. The statute provides for spending up to two percent (2%) of the amount appropriated under Section 142 for this purpose. Unused funds will be reallotted in accordance with Section 122(e) of the Act.

[2] American Indian Consortiums are eligible to receive an allotment under Section 142(a)(6)(B) of the Act.

Dated: March 29, 2005.

Patricia A. Morrissey,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 05–6483 Filed 3–31–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0515]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Device Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 2, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Device Labeling Regulations—21 CFR Parts 800, 801, and 809 (OMB Control Number 0910–0485)—Extension

Section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352), among other things, establishes requirements for the label or labeling of a medical device so that it is not misbranded and subject to regulatory action. Certain provisions of section 502 of the act require that manufacturers, importers, and distributors of medical devices disclose information about themselves or their devices on the labels or labeling of the devices. Section 502(b) of the act requires that, if the device is in a package, the label must contain the name and place of business of the manufacturer, packer, or distributor and an accurate statement of the quantity of the contents. Section 502(f) of the act provides that the labeling of a device must contain adequate directions for use. FDA may grant an exemption from the adequate directions for use requirement, if FDA determines that adequate directions for use are not necessary for the protection of the public health.

FDA regulations in parts 800, 801, and 809 (21 CFR parts 800, 801, and 809) require manufacturers, importers, and distributors of medical devices to disclose to health professionals and consumers specific information about themselves or their devices on the label or labeling of their devices. FDA issued these regulations under the authority of sections 201, 301, 502, and 701 of the act (21 U.S.C. 321, 331, 352, and 371). Most of the regulations in parts 800, 801, and 809 derive from the requirements of section 502 of the act, which provides, in part, that a device shall be misbranded if, among other things, its label or labeling fails to bear certain required information concerning the device, is false or misleading in any particular way, or fails to contain adequate directions for use.

Section 800.12 requires that packages of contact lens cleaning solutions include a tamper-resistant feature to prevent malicious adulteration. Sections 800.10(a)(3) and 800.12(c) require that the label of contact lens cleaning solutions contain a prominent statement alerting consumers to the tamper-resistant feature.

Section 800.10(b)(2) requires that the labeling of liquid ophthalmic preparations packed in multiple-dose containers include information as to duration of use and necessary warnings to afford adequate protection from contamination during use.

Section 801.1 requires that the label of a device in package form contain the name and place of business of the manufacturer, packer, or distributor.

Section 801.5 requires that the labeling of devices include directions under which the layman can use a device safely and for the purposes for which it is intended. Section 801.4 defines ''intended use''. Where necessary, the labeling should include: (1) Statements of all conditions, purposes, or uses for which the device is intended, unless the device is a prescription device subject to the requirements of § 801.109; (2) quantity of dose; (3) frequency of administration or application; (4) duration of administration or application; (5) time of administration, e.g. in relation to meals, onset of symptoms, etc.; (6) route of method or application; and (7) preparation for use.

Section 801.61 requires that the principal display panel of an over-the-counter (OTC) device in package form must include a statement of the identity of the device. The statement of the identity of the device must include the common name of the device followed by an accurate statement of the principal intended actions of the device.

Section 801.62 requires that the label of an OTC device in package form must include a declaration of the net quantity of contents. The label must express the net quantity in terms of weight, measure, numerical count, or a combination of numerical count and weight, measure, or size.

Section 801.109 establishes labeling requirements for prescription devices. A prescription device is defined as a device which, because of its potential for harmful effect, the method of its use or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed by law to use the device and, therefore, for which adequate directions for use by a layperson cannot be developed.

The label of the device must include: (1) The statement ''Caution: Federal law restricts this device to sale by or on the order of a '_____' ''. The blank is to be filled in by a term such as ''physician,'' ''dentist,'' or other appropriate term; and (2) the method of its application or use.

Labeling must include information for use, including indications, effects, routes, methods, frequency and duration of administration, and any relevant hazards, contraindications, side effects, and precautions under which practitioners licensed by law to administer the device can use the device safely and for the purpose for which it is intended, including all purposes for which it is advertised or represented.

Information may be omitted from the dispensing package if, but only if, the article is a device for which directions, hazards, warnings, and other information are commonly known to practitioners licensed by law to use the device.

Section 801.110 establishes a labeling requirement for a prescription device delivered to the ultimate purchaser or user upon the prescription of a licensed practitioner. The device must be accompanied by labeling bearing the name and address of the licensed

practitioner and the directions for use and cautionary statements, if any, contained in the order.

Section 801.405 establishes labeling requirements for articles intended for lay use in repairing and refitting dentures. The labeling must: (1) Limit directions for use for denture repair kits to emergency repair pending unavoidable delay in obtaining professional reconstruction of the denture; (2) limit directions for use for denture reliners, pads, and cushions to temporary refitting pending unavoidable delay in obtaining professional reconstruction of the denture; and (3) contain the word ''emergency'' preceding and modifying each indication-for-use statement for denture repair kits and the word ''temporary'' preceding and modifying each indication-for-use statement for reliners, pads, and cushions.

Section 801.410(f) requires that results of impact tests and description of the test method and apparatus be kept for a period of 3 years.

Section 801.410(f) is designed to protect the eyeglass wearer from potential eye injury resulting from shattering of ordinary eyeglass lenses and requires that eyeglasses and sunglasses be fitted with impact-resistant lenses. Examination of data available on the frequency of eye injuries resulting from the shattering of ordinary crown glass lenses indicates that the use of such lenses constitutes an avoidable hazard to the eye of the wearer. According to the Vision Council of America, 60 percent of the population, or 161 million Americans, wear prescription eyewear; 81 percent have eyeglasses, 3 percent have contact lenses only; and 16 percent have both eyeglasses and contact lenses.

Section 801.420(c) requires that the manufacturers or distributors of hearing aids develop a User Instructional Brochure, which accompanies the device and is provided to the prospective user by the dispenser of the hearing aid. The brochure must contain detailed information on the use and maintenance of the hearing aid.

Section 801.421(b) requires the hearing aid dispenser to provide the prospective user a copy of the User Instructional Brochure and an opportunity to review the comments with him/her orally or in the predominant method of communication used during the sale.

Section 801.421(c) requires the hearing aid dispenser to provide, upon request, to the prospective purchaser of any hearing aid (s)he dispenses, a copy of the User Instructional Brochure or the name and address of the manufacturer or distributor from whom the brochure may be obtained.

Section 801.421(d) requires the hearing aid dispenser to retain copies of all physician statements or any waivers of medical evaluation for 3 years from the time of dispensing.

Section 801.435 requires condom manufacturers to include an expiration date in the labeling of the condom. The manufacturer must support the expiration date by data from quality control tests demonstrating physical and mechanical integrity of three random lots of the same product which were stored under accelerated and real time conditions.

Section 809.10(a) provides that a label for an in vitro diagnostic product must contain the following information:

1. The proprietary and established name;
2. The intended use or uses of the product;
3. For a reagent, a declaration of the established name, if any, and the quantity, proportion, and concentration of each reactive ingredient;
4. A statement of warnings and precautions for users;
5. For a reagent, appropriate storage instructions;
6. For a reagent, a means by which the user may be assured that the product meets the appropriate standards of identity, strength, quality, and purity;
7. For a reagent, a declaration of the net quantity of contents;
8. Name and place of business of the manufacturer, packer, and distributor; and
9. A lot or control number.

Section 809.10(b) provides that the labeling (package insert) accompanying the device must contain the following:

1. Proprietary name and established name, if any;
2. The intended use or uses;
3. A summary and explanation of the test;
4. The chemical, physical, physiological, or biological principles of the procedure;
5. Information about the reagents;
6. Information about the instruments;
7. Information about the specimen collection and preparation for analysis;
8. Information about the procedure;
9. Information about the results;
10. Information about the limitations of the procedure;
11. Expected values;
12. Specific performance characteristics;
13. A bibliography of pertinent references; and
14. Date of issuance of the last revision of the labeling.

Section 809.10(d) provides that the labeling for general purpose laboratory reagents may be exempt from the labeling requirements in § 809.10(a) and (b), if the labeling contains the following:

1. The proprietary name and established name of the reagent;
2. The established name and the quantity, proportion, and concentration of the reagent ingredient;
3. A statement of the purity and quality of the reagent;
4. A statement of warnings and precautions for users;
5. Appropriate storage instructions;
6. A declaration of the net quantity of contents;
7. Name and place of business of the manufacturer, packer, or distributor; and
8. A lot or control number.

Section 809.10(e) requires manufacturers of analyte specific reagents to include the following in the labeling:

1. The proprietary name and established name, if any, of the reagent;
2. A declaration of established name, if any, and quantity, proportion or concentration of the reagent ingredient;
3. A statement of the purity and quality of the reagent;
4. A statement of warnings or precautions for users;
5. Appropriate storage instructions;
6. A declaration of the net quantity of contents;
7. Name and place of business of the manufacturer, packer, or distributor;
8. A lot or control number; and
9. The statement, ''For analyte specific reagent use only. Analytical and performance characteristics are not established.''

Section 809.10(f) requires that the labeling for OTC test sample collection systems for drugs of abuse testing bear the following information in a language appropriate for the intended users:

1. Adequate instructions for specimen collection and handling;
2. An identification system to ensure that specimens are not mixed up or otherwise misidentified at the laboratory;
3. The intended use or uses of the product;
4. A statement that confirmatory testing will be conducted on all samples that initially test positive;
5. A statement of warnings or precautions for users;
6. Adequate instructions on how to obtain test results from a person who can explain their meaning, including the probability of false positive and false negative results, as well as how to contact a trained health professional if additional information on interpretation of test results or followup counseling is desired; and

7. Name and place of business of the manufacturer, packer, or distributor.

Section 809.30(d) requires that manufacturers of analyte specific reagents (ASRs) assure that advertising and promotional materials for ASRs:

1. Include the identity and purity of the ASR and the identity of the analyte; and

2. Do not include any statement regarding analytical or clinical performance.

These estimates are based on FDA's registration and listing database for medical device establishments, agency communications with industry, and FDA's knowledge of and experience with device labeling. We have not estimated a burden for those requirements where the information to be disclosed is information that has been supplied by FDA. Also, we have not estimated a burden for that information that is disclosed to third parties as a usual and customary part of a medical device manufacturer, distributor, or importer's normal business activities. We do not include any burden for time that is spent designing labels to improve the format or presentation.

In the **Federal Register** of December 14, 2004 (69 FR 74529), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Responses Per Respondent	Total Annual Responses	Hours per Response	Total Hours
800.10(a)(3) and 800.12(c)	4	10	40	1	40
800.10(b)(2)	4	10	40	40	1,600
801.1	30,000	3.5	105,000	0.1	10,500
801.5	5,000	3.5	17,500	22.35	391,125
801.61	5,000	3.5	17,500	1	17,500
801.62	1,000	5	5,000	1	5,000
801.109	18,000	3.5	63,000	17.77	1,119,510
801.110	10,000	50	500,000	0.25	125,000
801.405(b)	40	1	40	4	160
801.420(c)	275	5	1,375	40	55,000
801.421(b)	10,000	160	1,600,000	0.30	480,000
801.421(c)	10,000	5	50,000	0.17	8,500
801.435	135	1	135	96	12,960
809.10(a) and (b)	1,700	6	10,200	80	816,000
809.10(d)	300	2	600	40	24,000
809.10(e)	300	25	7,500	1	7,500
809.10(f)	20	1	20	100	2,000
809.30(d)	300	25	7,500	1	7,500
Total Burden Hours					3,083,895

[1] There are no capital costs or operating and maintenance costs associated with this information collection.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total hours
801.410(f)	30	769,000	23,070,000	641	19,225
801.421(d)	10,000	160	1,600,000	0.25	400,000
Total Hours					419,225

[1] There are no capital costs or operating and maintenance costs associated with this information collection.

Dated: March 25, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–6405 Filed 3–31–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0117]

International Conference on Harmonisation; Guidance on E2E Pharmacovigilance Planning; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''E2E Pharmacovigilance Planning.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance describes a method for summarizing the important potential and identified risks of a drug. It proposes a structure for a pharmacovigilance plan and sets out principles of good practice for the design and conduct of observational studies. The guidance is intended to aid in planning pharmacovigilance activities, especially in preparation for the early postmarketing period of a new drug.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Send one self-addressed adhesive label to assist the office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Paul Seligman, Center for Drug Evaluation and Research (HFD–030), Food and Drug Administration, Rockville, MD 20857, 301–827–6276, or M. Miles Braun, Center for Biologics Evaluation and Research (HFM–220), 1401 Rockville Pike, Rockville, MD 20852, 301–827–3974.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of March 30, 2004 (69 FR 16579), FDA published a notice announcing the availability of a draft tripartite guidance entitled ''E2E Pharmacovigilance Planning.'' The notice gave interested persons an opportunity to submit comments by May 19, 2004.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in November 2004.

The document provides guidance on summarizing the important identified risks of a drug, important potential risks, and important missing information, including the potentially at-risk populations and situations where the product is likely to be used that have not been studied prior to approval. The guidance proposes a structure for a pharmacovigilance plan and sets out principles of good practice for the design and conduct of observational studies.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/ohrms/dockets/*

default.htm, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/publications.htm*.

Dated: March 25, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–6472 Filed 3–31–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1035, 1 Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400.

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917.

Diagnostic Services Inc., dba DSI, 12700 Westlinks Dr., Fort Myers, FL 33913, 239–561–8200 / 800–735–5416.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2661/800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories*, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609.

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302, 319–377–0500.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.).

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927 / 800–873–8845, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Rd., Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Dr., Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.).

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register,** July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS certified laboratories and participate in the NLCP certification maintenance program.

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734.
MAXXAM Analytics Inc.*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700, (Formerly: NOVAMANN (Ontario) Inc.).
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244.
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Dr., Minneapolis, MN 55417, 612–725–2088.
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.
Northwest Toxicology, a LabOne Company, 2282 South Presidents Drive, Suite C, West Valley City, UT 84120, 801–293–2300/800–322–3361, (Formerly: LabOne, Inc., d/b/a Northwest Toxicology; NWT Drug Testing, NorthWest Toxicology, Inc.; Northwest Drug Testing, a division of NWT Inc.).
One Source Toxicology, Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134.
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7897 x7.
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627.
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750, (Formerly: Associated Pathologists Laboratories, Inc.).
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories).
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories).
Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130.
Sciteck Clinical Laboratories, Inc., 317 Rutledge Rd., Fletcher, NC 28732, 828–650–0409.
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276.
Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–364–7400, (Formerly: St. Lawrence Hospital & Healthcare System).
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.
US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 05–6341 Filed 3–31–05; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–20718]

National Boating Safety Advisory Council; Charter Renewal

AGENCY: Coast Guard, DOT.

ACTION: Notice of charter renewal.

SUMMARY: The Secretary of Homeland Security has renewed the charter of the National Boating Safety Advisory Council (NBSAC) for 2 years from January 17, 2005, until January 17, 2007. NBSAC is a committee under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that advises the Coast Guard on the need for Federal regulations and other major boating safety matters.

ADDRESSES: You may request a copy of the charter by writing to Commandant (G–OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001; by calling 202–267–1077; or by faxing 202–267–4285. This notice and the charter are available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Cappel, Executive Director of NBSAC, telephone 202–267–0988, fax 202–267–4285.

Dated: March 24, 2005.

James W. Underwood,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 05–6478 Filed 3–31–05; 8:45 am]

BILLING CODE 4910–15–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 request 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: Flood Mitigation Assistance (eGrants) and Grant Supplemental Information.

OMB Number: 1660–0072.

Abstract: FEMA uses the FMA program eGrants application, evaluation, and award process to provide Federal grant assistance to grantees for three types of grants—Planning, Project, and Technical Assistance. FMA Planning Grants are available to States, National Flood Insurance Program (NFIP) participating communities, and Indian tribal governments to prepare Flood Mitigation Plans. FMA Project Grants are available to States, NFIP participating communities, and Indian tribal governments to implement measures to reduce flood losses. Ten percent of the Project Grant is made available to States, NFIP participating communities, Indian tribal governments, and communities in non-participating States as a Technical Assistance Grant. The National Flood Insurance Reform Act (42 U.S.C. 1366), as amended by the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, (Pub. L. 108–264) authorizes the Flood Mitigation Assistance program. The FMA program is designed to award grants to States, NFIP participating communities, and Indian tribal governments so that measures can be taken to reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other structures insurable under the National Flood Insurance Program. FEMA encourages the use of FMA eGrants applications described in this notice; however, applicants may also use the Agency's grant administration paper-based forms currently under OMB control number 1660–0025 to apply.

Affected Public: State, local or tribal government and not for profit institutions.

Number of Respondents: 56 States.

Number of Responses: 280.

Estimated Time per Respondent: FEMA has estimated the burden associated with this information collection request as follows: Flood Mitigation Assistance (FMA) Program eGrants—Grant Supplemental Information—Sub-grant applications.

- Benefit Cost Determination—5 hours per response.
- Environmental Review—7.5 hours per response.
- Project Narrative—12 hours per response.

Estimated Total Annual Burden Hours: 4,088.

Frequency of Response: On occasion and quarterly.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security/Emergency Preparedness and Response Directorate/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 May 2, 2005.

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, 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 22, 2005.

George S. Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–6436 Filed 3–31–05; 8:45 am]

BILLING CODE 9110–41–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 request 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: Pre-Disaster Mitigation (PDM) Grant Program/eGrants.

OMB Number: 1660–0071.

Abstract: FEMA uses the PDM program eGrants application, evaluation, and award process to provide Federal grant assistance to grantees (State and federally-recognized tribal government) who administer grant awards for sub-grantee applicants (State-level agencies, federally recognized Indian Tribal governments, local governments, public colleges and universities, tribal colleges and universities, and regional planning districts and councils of governments). Private-non-profit (PNP) organizations and private colleges and universities are not eligible sub-applicants; however, a relevant State agency or local government may apply to the grant applicant for assistance on their behalf. The grant assistance must be used to: develop mitigation plans in accordance with section 322 of the Disaster Mitigation Act of 2000, implement pre-disaster mitigation projects that reduce the risks of natural and technological hazards on life and property, and provide information and technical assistance on cost-effective mitigation activities.

Affected Public: State, local or tribal government.

Number of Respondents: 56 States.

Number of Responses: 1,176.

Estimated Time per Respondent: FEMA has estimated the burden associated with this information collection request as follows:

Pre-Disaster Mitigation (PDM) Program eGrants—Grant Supplemental Information—Sub-grant applications.

- Benefit Cost Determination—5 hours per response.
- Environmental Review—7.5 hours per response.
- Project Narrative (including PDM Evaluation Information Questions)—12 hours per response.

Estimated Total Annual Burden Hours: 50,887.

Frequency of Response: On occasion and quarterly.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security/Emergency Preparedness and Response Directorate/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 May 2, 2005.

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, 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 22, 2005.

George S. Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–6437 Filed 3–31–05; 8:45 am]

BILLING CODE 9110–41–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; 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, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revised information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the collection of information from States and local communities seeking flood insurance premium discounts through the Community Rating System Program (CRS).

SUPPLEMENTARY INFORMATION: The National Flood Insurance Act of 1968 (Public Law 90–488 as amended) created the National Flood Insurance Program (NFIP) whose central element is the promotion and implementation of sound local floodplain management in an effort to reduce loss of property and life. Participation in the NFIP is contingent on communities' adoption of minimum floodplain management standards. The Community Rating System was designed by FEMA to encourage States and communities to undertake activities that will mitigate flooding and flood damage beyond the minimum standards for NFIP participation. Under this system, communities apply for activity points, leading up to a CRS rating and commensurate flood insurance premium discounts. This information collection consists of the NFIP/CRS Coordinator's Manual, which describes the floodplain management and insurance benefits available to qualifying communities that undertake additional activities and contains the application worksheets and required documentation. The National Flood Insurance Reform Act of 1994 codified the CRS.

Collection of Information

Title: Community Rating System (CRS) Program Application Worksheets and Commentary.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0022.

Form Numbers: None.

Abstract: The Community Rating System (CRS), designed by the Federal Emergency Management Agency as part of the National Flood Insurance Program (NFIP), provides flood insurance premiums discounts to communities that undertake activities that will mitigate flooding and flood damage beyond the minimum standards required by the NFIP. Communities select approved activities they want to get credit for either as a first time or continuing participant.

Affected Public: State, local or tribal governments.

Estimated Total Annual Burden Hours: 11,280 hours.

TABLE 1.—ANNUAL BURDEN HOURS

Project/activity (survey, form(s), focus group, etc.)	Number of respondents (A)	Frequency of responses (B)	Burden hours per respondent (C)	Annual respnses (A × B)	Total annual burden hours (A × B × C)
Application (first time)	240	1	31	240	7,440
Maintenance (continuing)	960	1	4	960	3,840
TOTAL	1,200	1		1,200	11,280

Estimated Cost: $308,346.00

TABLE 2.—ANNUAL COST TO RESPONDENTS

Program	Burden hours	Median hour rate ($)	Average cost per hour per respondent ($)	Annualized cost all respondents ($)
Application	7,440	27.38	849.00	203,707.00
Maintenance	3,840	27.38	110.00	105,139.00
Grand Total	11,280			308,346.00

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be

collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Bret Gates, CRS Program Manager, Mitigation Division at 202–646–4133 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

Dated: March 18, 2005.

George S. Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–6438 Filed 3–31–05; 8:45 am]

BILLING CODE 9110–11–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: Flood Awareness, Attitude and Usage Study.

OMB Number: 1660–NEW7.

Abstract: The Flood Awareness, Attitude and Usage Survey is the evaluative tool of the NFIP's FloodSmart marketing campaign. The study assesses the overall impact of the campaign elements (*i.e.* advertising recall, media exposure, etc.) on property owners' perceptions of flood insurance. Data findings are combined with additional program data to measure the sale and retention of flood insurance policies in meeting the program's goal of a 5 percent net growth annually. Findings will be used primarily to plan for the subsequent 2005 campaign, and will be combined with additional program metrics for further performance evaluation.

Affected Public: Individuals or households.

Number of Respondents: 800 respondents.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 264 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 May 2, 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 18, 2005.

George S. Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–6439 Filed 3–31–05; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-day notice of information collection under review; Guam Visa Waiver Agreement; Form I–760.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 31, 2005.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Guam Visa Waiver Agreement.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–760. U.S. Citizenship and Immigration Services.

(4) *Affected Public Who Will Be Asked or Required To Respond, as Well as a*

Brief Abstract: Primary: Business or other for-profit. Public Law 99–396 provides for certain aliens to be exempt from the nonimmigrant visa requirements if seeking entry into and stay on Guam as a visitor under certain conditions. This form is the agreement between the carrier of the alien and the United States.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent To Respond:* 5 responses at 15 minutes per response.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* 1 annual burden hour.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–272–8377.

Dated: March 29, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–6481 Filed 3–31–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4912–N–12]

Notice of Finding of No Significant Impact for the Proposed Refinements to the World Trade Center Memorial and Redevelopment Plan in the Borough of Manhattan, City of New York, NY

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD gives notice to the public, agencies, and Indian tribes that it has made a Finding of No Significant Impact (FONSI) for the Proposed Refinements to the World Trade Center Memorial and Redevelopment Plan (Proposed Refinements). This notice is given on behalf of the Lower Manhattan Development Corporation (LMDC). LMDC is a subsidiary of the Empire State Development Corporation (a political subdivision and public benefit corporation of the State of New York). As the recipient of HUD Community Development Block Grant funds appropriated for the World Trade Center disaster recovery and rebuilding efforts, LMDC acts, pursuant to 42 U.S.C. 5304(g), as the responsible entity for compliance with the National Environmental Policy Act (NEPA) in accordance with 24 CFR 58.4. LMDC also acts under its authority as lead agency in accordance with the New York State Environment Quality Review Act (SEQRA). The environmental assessment (EA) and FONSI have been prepared in cooperation with The Port Authority of New York and New Jersey (Port Authority). This notice is given in accordance with the Council on Environmental Quality regulations at 40 CFR parts 1500–1508.

DATES: *Comment Due Date:* All interested agencies, groups and persons may submit written comments for consideration at the following address: Lower Manhattan Development Corporation, Attention: Comments on WTC Plan EA, One Liberty Plaza, 20th Floor, New York, NY 10006. Comments must be received by 5 p.m. Eastern Daylight Time (EDT) on May 2, 2005. Comments received after 5 p.m. EDT on May 2, 2005, will not be considered. Comments may also be submitted until 5 p.m. EDT on May 2, 2005, by e-mailing comments to *wtcenvironmental@renewnyc.com*.

FOR FURTHER INFORMATION CONTACT: Further information and a copy of the EA and FONSI may be obtained by contacting: William H. Kelley, Planning Project Manager, Lower Manhattan Development Corporation, One Liberty Plaza, 20th floor, New York, NY 10006; Telephone: (212) 962–2300; Fax: (212) 962–2431; e-mail: *wtcenvironmental@renewnyc.com*. Further information and a copy of the EA and FONSI are also available on LMDC's Web site: *http://www.renewnyc.com* in the ''Planning, Design & Development'' section. A copy of the EA and FONSI is also available for public review at the following locations:

Chatham Square Library, 33 East Broadway, New York, NY 10007
Humanities and Social Sciences Library, 476 Fifth Avenue, New York, NY 10028
Hudson Park Library, 66 Leroy Street, New York, NY 10007
Manhattan Community Board 2, 3 Washington Square Park, New York, NY 10012
New Amsterdam Library, 9 Murray Street, New York, NY 10002
Hamilton Fish Library, 415 East Houston Street, New York, NY 10002
Manhattan Community Board 1, 49–51 Chambers Street, #715, New York, NY 10007
Manhattan Community Board 3, 59 East 4th Street, New York, NY 10003

SUPPLEMENTARY INFORMATION: LMDC, as lead agency, in cooperation with HUD and the Port Authority, released the Draft Generic Environmental Impact Statement on January 23, 2004 (69 FR 3382) and the Final Generic Environmental Impact Statement (FGEIS) on April 27, 2004 (69 FR 22866) for the World Trade Center Memorial and Redevelopment Plan (Approved Plan). On July 8, 2004 (69 FR 42178) LMDC published the Record of Decision and the Findings Statement for the Approved Plan and adopted the General Project Plan (GPP) for LMDC's World Trade Center Memorial and Cultural Program. Implementation of the Approved Plan began with the formal groundbreaking for Freedom Tower on July 4, 2004.

As implementation proceeded, LMDC, working in cooperation with HUD, the Port Authority, the City of New York, and Silverstein Properties, Inc. and its affiliates as the Port Authority's Net Lessees, has continued to develop the Approved Plan. Because the Approved Plan was generic, preliminary design and engineering led to certain adjustments and refinements based on aesthetics, commercial viability, cost, and practical considerations. Many of these refinements are described in the proposed GPP amendments preliminarily adopted by LMDC on December 16, 2004 (Proposed GPP Amendments). LMDC released the Proposed GPP Amendments for public review on December 27, 2004, and held a public hearing on the Proposed GPP Amendments on January 26, 2005, at St. John's University in Lower Manhattan to receive public comments. The public comment period remained open until March 10, 2005.

The Proposed Refinements would introduce several refinements to the physical forms and operational aspects of the Approved Plan, including the relocation of the entrance ramp for the underground vehicular network from the north side of Liberty Street adjacent to the World Trade Center (WTC) Memorial to the south side of Liberty Street, raising Liberty Park above grade by 20 to 30 feet to accommodate the relocation, increasing the at-grade separation of Freedom Tower and the Performing Arts Complex, shifting office space square footage within the Project Site, as defined below, specifying streetwall heights and setbacks, and changing certain pedestrian and vehicular circulation, parking, street direction, open space boundaries and street and sidewalk widths. Alternatives considered include allowing left turns out of the vehicular ramp onto Liberty Street westbound, locating the vehicular

ramp on Route 9A between Cedar and Liberty Streets and locating the cultural/museum complex at the northeast corner of Liberty Street and Route 9A.

Located in Lower Manhattan, the Project Site includes both the World Trade Center (WTC) Site and the Southern Site. The WTC Site is bounded by Route 9A, Vesey, Church, and Liberty Streets. The Southern Site is immediately to the south of the WTC Site and comprises two adjacent city blocks, one bounded by Liberty, Washington, Albany, and Greenwich Streets, and the other bounded by Liberty Street, Route 9A, and Cedar and Washington Streets. The Southern Site includes those properties commonly known as 130 Liberty Street, 140 Liberty Street, and 155 Cedar Street. Also included in the Southern Site are subsurface portions of Liberty Street from the eastern side of Route 9A to the western side of Greenwich Street; Washington Street from the northern side of Cedar Street to the southern side of Liberty Street; and subsurface portions of Cedar Street from the eastern side of Route 9A to the eastern side of Washington Street.

An EA for the Proposed Refinements has been prepared by LMDC, as lead agency, in cooperation with HUD and the Port Authority. Based on this assessment, LMDC has determined that the Proposed Refinements will not, either individually or cumulatively, have a significant impact on the quality of the human environment or a significant adverse environmental impact not already analyzed and disclosed in the FGEIS for the Proposed Action. Therefore, a supplemental environmental impact statement will not be undertaken under NEPA or SEQRA. LMDC will not take any administrative action on the Proposed Refinements prior to the expiration of the comment period.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Dated: March 24, 2005.

William H. Eargle, Jr.,

Deputy Assistant Secretary for Operations.

[FR Doc. E5–1455 Filed 3–31–05; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–13]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: April 1, 2005.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 24, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 05–6220 Filed 3–31–05; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4665–N–23]

Meeting of the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Manufactured Housing Consensus Committee (the Committee). The meeting is open to the public and the site is accessible to individuals with disabilities.

DATES: Meetings will be held on Tuesday, April 26, 2005, 8 a.m.–5 p.m.; Wednesday, April 27, 2005, 8 a.m.–5 p.m.; and Thursday, April 28, 2005, 8 a.m.–11 a.m.

ADDRESSES: These meetings will be held at the Holiday Inn Select Chantilly-Dulles-Expo, 4335 Chantilly Shopping Center, Chantilly, Virginia, telephone (703) 815–6060.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Manufactured Housing Program, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–8000, telephone (202) 708–6409 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2) and 41 CFR 102–3.150. The Manufactured Housing Consensus Committee was established under section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000, 42 U.S.C. 4503(a)(3). The Consensus Committee is charged with providing recommendations to the Secretary to adopt, revise, and interpret manufactured housing construction and safety standards and procedural and enforcement regulations, and with developing proposed model installation standards.

Tentative Agenda

A. Welcome and Introductions

B. Departmental Status Reports

C. Installation Standards—Anchor test protocols

D. Full Committee meeting—By-law changes/processes and procedures/timelines

E. Regulatory Enforcement—Subpart I

F. Accessibility—Universal Design—Visit ability

G. Universal Design Presentation

H. Public Testimony

I. Reports and Actions on Committee work

J. Adjourn

Dated: March 28, 2005.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E5–1454 Filed 3–31–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Scientific Earthquake Studies Advisory Committee

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 106–503, the Scientific Earthquake Studies Advisory Committee (SESAC) will hold its tenth meeting. The meeting location is the U.S. Geological Survey Menlo Park Science Center, Building 3, 345 Middlefield Road, Menlo Park, California 94025. The Committee is comprised of members from academia, industry, and State government. The Committee shall advise the Director of the U.S. Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program.

The Committee will review the overall direction of the U.S. Geological Survey's Earthquake Hazards Program in the current and next fiscal years with particular focus on the Program's activities in earthquake physics and earthquake effects research.

Meetings of the Scientific Earthquake Studies Advisory Committee are open to the public.

DATES: April 13, 2005, commencing at 9 a.m. and adjourning at 5 p.m. on April 14, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. David Applegate, U.S. Geological Survey, MS 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–6714.

Dated: March 24, 2005.

Kathleen M. Johnson,

Acting Associate Director for Geology.

[FR Doc. 05–6441 Filed 3–31–05; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–1610–DP]

Notice of Availability for the Proposed West Mojave Plan and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA) and Bureau of Land Management (BLM) management policies, the BLM announces the availability of the Proposed West Mojave Plan (WMP) and Final Environmental Impact Statement (EIS). This planning activity encompasses approximately 3.3 million acres of public lands administered by the BLM's California Desert District, located in Inyo, Kern, Los Angeles and San Bernardino Counties in southern California.

The Proposed WMP is being prepared in collaboration with State and local governments. This collaborative process is taking into account local, regional and national needs and concerns. The conservation strategy to be implemented on public lands includes measures that would be compatible with the development of a habitat conservation plan on 3.0 million acres of private and local government lands within the planning area.

DATES: BLM Planning Regulations (43 CFR 1610.5–2) state that any person who participated in the planning process, and has an interest that may be adversely affected, may protest. The protest must be filed within 30 days of the date that the Environmental Protection Agency (EPA) publishes this notice in the **Federal Register**. More specific instructions and requirements for protests are contained in the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: Copies of the Proposed WMP and Final EIS are available upon request from the District Manager, California Desert District Office, located at 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553. Copies may be examined at the BLM's California Desert District Office in Moreno Valley, and at BLM's Ridgecrest Field Office, located at 33S Richmond Road, Ridgecrest CA 93555, and Barstow Field Office located at 2601 Barstow Road, Barstow CA 92311, during regular business hours from 7:45 a.m. to 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to the BLM's mailing list, contact Linda Hansen, California Desert District Manager, at (909) 697–5207.

SUPPLEMENTARY INFORMATION: The Proposed WMP addresses the management of 3.3 million acres of public lands administered by the BLM in eastern Kern County, southern Inyo County, northern Los Angeles County and western San Bernardino County, all of which are within the State of California. The BLM's Ridgecrest and Barstow Field Offices administer most of these public lands. A small amount of acreage administered by the BLM's Needles and Palm Springs Field Offices is also affected. All public lands are within the California Desert Conservation Area (CDCA), and all lie within the jurisdiction of the BLM's California Desert District.

The Proposed WMP is being prepared collaboratively with local jurisdictions, State and other Federal agencies. The purpose of the WMP is to develop conservation strategies for over 100 Federal and state-listed plant and animal species that are found within the western Mojave Desert, including the federally listed as threatened desert tortoise (Gopherus agassizii) and the state-listed Mojave Ground Squirrel (*Spermophilus mohavensis*), and to simplify procedures for complying with the Endangered Species Act of 1974 as amended, and the California Endangered Species Act. Other issues addressed include the development of a motorized vehicle access network for public lands in the region, and effects of the program on regional economics, growth-inducing impacts, livestock grazing, mining, cultural resources and recreation. The WMP would be implemented on public lands through amendments to the BLM's CDCA Plan.

The Final EIS considers and analyzes seven (7) alternatives (A–G), including a No Action Alternative, with Alternative A identified as the BLM's Proposed Alternative. These Alternatives have been developed based on extensive public input following an initial round of scoping meetings in January 1992, extensive biological and field survey work in the late 1990's, nearly 50 ''task group'' meetings attended by representatives of the participating agencies and jurisdictions and the general public between December 1999 and May 2002, numerous other public meetings, a final round of scoping meetings in June and July 2002 and January 2003, and seven public hearings

held in June and July 2003 during the public review of the Draft EIS. The proposed action and alternatives were based on comments and suggestions offered during those meetings, hearings, and surveys.

The seven alternatives analyzed provide for a wide array of land use allocations and management direction. The alternatives provide for variable levels of commodity production, resource protection, special areas, and authorized land and resource uses, including endangered species conservation, motorized vehicle access to public lands, livestock grazing and various forms of recreation. Necessary amendments to the BLM's CDCA Plan are addressed.

The planning process includes an opportunity for administrative review through a plan protest to the BLM Director should a previous commentator on the Draft WMP/Draft EIS believe that the decision has been issued in error. Only those persons or organizations that participated in the planning process may protest. Protests from parties having no previous involvement will be denied without further review. A protesting party may raise only those issues that were submitted for the record during the planning process. New issues raised during the protest period should be directed to the BLM, California Desert District Manager, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553 for consideration in plan implementation, as potential plan amendments, or as otherwise appropriate. The period for filing protests begins when the EPA publishes in the **Federal Register** its Notice of Receipt of the Final EIS containing the Proposed WMP. To be considered ''timely'', the protest must be postmarked no later than the last day of the 30-day protest period. Also, although not a requirement, it is recommended that the protest be sent by certified mail, return receipt requested. E-mail and faxed protest will not be accepted as valid protest unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the e-mail or faxed protest as an advanced copy, and the protest will receive full consideration. If the protestor wishes to provide the BLM with such advanced notification, faxed protests should be directed to the BLM Protest Coordinator at 202–452–5112, and e-mail to the attention of *Brenda_Hudgen-Williams@blm.gov.* Please direct the follow-up letter to the appropriate address provided below.

Protest must be filed in writing to: Director (210), Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035, or by overnight mail to: Director (210), Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036. In order to be considered complete, the protest must contain, at minimum, the following information:

1. The name, mailing address, telephone number, and interest of the person filing the protest.

2. A statement of the issue or issues being protested.

3. A statement of the part or parts of the plan being protested. To the extent possible, this should be done by reference to specific pages, paragraphs, sections, tables, maps, etc. included in the Final EIS.

4. A copy of all documents addressing the issue or issues that were submitted during the planning process or a reference to the date the issue or issues were discussed by the person participating for the record.

5. A concise statement explaining why the decision of the BLM California State Director is believed to be incorrect. This is a critical part of the protest. Take care to document all relevant facts. As much as possible, reference or cite the planning documents, environmental analysis documents, and available planning records (*i.e.*, meeting minutes or summaries, correspondence, *etc.*). A protest that merely expresses disagreement with the proposed decision, in the absence of supporting data, will not provide additional basis for the BLM Director's review of the decision.

Please note that comments, including names and street addresses of respondents, are available for public review an/or release under the Freedom of Information Act (FOIA). Individual respondents may request confidentiality. Respondents who wish to withhold their name and/or street address from public review or from disclosure under FOIA, must state this prominently at the beginning of their written comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

The Director will promptly render a decision on the protest. The decision will be in writing and will be sent to the protesting party by certified mail, return receipt requested. The decision of the Director will be the final decision of the Department of the Interior.

J. Anthony Danna,

Deputy State Director, Natural Resources Division.

[FR Doc. 05–6399 Filed 3–31–05; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that the National Park System Advisory Board will meet April 15–16, 2005, in Cathedral City, California. On April 15, the Board will tour Joshua Tree National Park and will be briefed regarding environmental, education and partnership programs. The Board will convene its business meeting on April 16 at 8:30 a.m., EST, in the Vista Room of the Doral Vista Desert Princess Resort-Palm Springs, 67967 Vista Chino, Cathedral City, California, telephone 760–322–7000. The meeting will be adjourned at 2:30 p.m. The Board will be addressed by National Park Service Director Fran Mainella and Pacific West Regional Director Jonathan Jarvis; and will receive the reports of its Partnerships Committee, Health and Recreation Committee, National Parks Science Committee, and Committee on Federal Historic Rehabilitation Tax Credit.

Other officials of the National Park Service and the Department of the Interior may address the Board, and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Board meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board also may permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Mr. Loran

Fraser, Office of Policy, National Park Service; 1849 C Street, NW., Room 7250; Washington, DC 20240; telephone 202–208–7456.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 7252, Main Interior Building, 1849 C Street, NW., Washington, DC.

Dated: March 18, 2005.

Loran Fraser,

Chief, Office of Policy.

[FR Doc. 05–6516 Filed 3–31–05; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the American Museum of Natural History, New York, NY. The human remains were collected from the Mescalero Indian Reservation, Otero County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by American Museum of Natural History professional staff in consultation with representatives of the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico.

In 1900, human remains representing a minimum of one individual were collected from the Mescalero Indian Reservation, Otero County, NM, by Dr. McLutterell, identified in the Museum's catalog as ''the agent.'' The American Museum of Natural History obtained the remains as a gift from Dr. Ales Hrdlicka. No known individual was identified. No associated funerary objects are present.

This individual has been identified as Native American based on the Museum's catalog identification of the remains as Mescalero Apache. The human remains originate from the Mescalero Reservation. The presence of desiccated soft tissue indicates that the human remains may be of relatively recent age.

Although the lands from which the human remains originate are currently under the jurisdiction of the U.S. Department of the Interior, Bureau of Indian Affairs, the American Museum of Natural History has control of the human remains since their removal from tribal land predates the permit requirements established by the Antiquities Act of 1906.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024-5192, telephone (212) 769-5837, before May 2, 2005. Repatriation of the human remains to the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico that this notice has been published.

Dated: February 11, 2005.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–6461 Filed 3–31–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Field Museum of Natural History, Chicago, IL. The human remains and associated funerary objects were removed from Duke Island, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains and associated funerary objects was made by Field Museum of Natural History professional staff in consultation with representatives of the Angoon Community Association, Cape Fox Corporation, Central Council of the Tlingit & Haida Indian Tribes, Chilkat Indian Village (Klukwan), Chilkoot Indian Association (Haines), Craig Community Association, Douglas Indian Association, Hoonah Indian Association, Ketchikan Indian Corporation, Klawock Cooperative Association, Organized Village of Kake, Organized Village of Saxman, Petersburg Indian Association, Sitka Tribe of Alaska, Wrangell Cooperative Association, and Yakutat Tlingit Tribe.

In July 1897, human remains representing a minimum of one individual were removed from a grave house on Duke Island, near Old Tongass, AK, by George A. Dorsey for the Field Museum of Natural History. The 1896–1897 Annual Report of the Director to the Board of Trustees describes a four-month trip that assistant curator of anthropology George A. Dorsey and museum photographer Edward Allen made ''among the Indians of the far West,'' that included a visit to the ''Tlingit'' tribe. The report states that a single skeleton of a shaman was secured from the Tlingit tribe. No known individual was identified. The nine associated funerary objects are a bentwood box with lid, a fringed and painted apron, a decorated and fringed leather pouch, a fringed leather pouch, an inlaid pipe, a knife, a stick, a labret, and a peg.

The human remains have been identified as Native American, based on the specific cultural and geographic attribution in Field Museum of Natural History records. The records identify the human remains as a female Tlingit shaman from ''Duke Island, near Old Tongas, Alaska.'' Scholarly publications and consultation information provided

by the Cape Fox Corporation indicate that Duke Island is considered to be within the traditional territory of the Tongass Tlingit of southern Alaska. The Tongass Tlingit are represented by the Cape Fox Corporation.

Officials of the Field Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Field Museum of Natural History also have determined that, pursuant to 25 U.S.C. (3)(A), the nine objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Field Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Cape Fox Corporation.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Helen Robbins, Repatriation Specialist, Field Museum of Natural History, 1400 S. Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7317, before May 2, 2005. Repatriation of the human remains and associated funerary objects to the Cape Fox Corporation may begin after that date if no additional claimants come forward.

The Field Museum is responsible for notifying the Angoon Community Association, Cape Fox Corporation, Central Council of the Tlingit & Haida Indian Tribes, Chilkat Indian Village (Klukwan), Chilkoot Indian Association (Haines), Craig Community Association, Douglas Indian Association, Hoonah Indian Association, Ketchikan Indian Corporation, Klawock Cooperative Association, Organized Village of Kake, Organized Village of Saxman, Petersburg Indian Association, Sitka Tribe of Alaska, Wrangell Cooperative Association, Yakutat Tlingit Tribe that this notice has been published.

Dated: February 11, 2005.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–6464 Filed 3–31–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS. The human remains and cultural items were removed from archeological sites near Tupelo, MS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the superintendent of the Natchez Trace Parkway.

This notice corrects the number and types of associated funerary objects that were recovered from three of the five archeological sites reported in a notice of inventory completion published in the **Federal Register** on January 8, 2002, as well as the total number of associated funerary objects for the five sites. A review of Natchez Trace Parkway collections resulted in the identification of 27 additional associated funerary objects from the Alton's Chickasaw Village site, 1 incorrectly identified associated funerary object from the Ackia Village site, and 614 additional associated funerary objects from the Bynum Mounds site, all culturally affiliated with the same tribe as described in the original notice.

In the **Federal Register** of January 8, 2002, FR Doc. 02-385, pages 909 to 910, paragraph numbers 4, 5, 6, 8, and 12 are corrected by substituting the following paragraphs:

Paragraph 4 is corrected by substituting the following paragraph:

The 50 human remains and 5,894 associated funerary objects described below were recovered from 5 different sites.

Paragraph 5 is corrected by substituting the following paragraph:

In 1939, human remains representing 13 individuals were recovered from Alton's Chickasaw Village during a legally authorized National Park Service excavation to gather information on historic Chickasaw sites. No known individuals were identified. The 2,201 associated funerary objects are 2,132 glass beads and 1 bag of beads, 55 kettle fragments, 2 brass buckles, 2 ear plugs, 2 boxes of wood, 2 boxes of cloth fragments, 1 animal bone fragment, 1 bell, 1 iron hoe, 1 metal spring, and 1 box of cane fragments.

Paragraph 6 is corrected by substituting the following paragraph:

In 1940, human remains representing 26 individuals were recovered from the Ackia Village site during a legally authorized National Park Service excavation to gather information on historic Chickasaw sites. No known individuals were identified. The 88 associated funerary objects are 28 musket balls, 16 metal spring fragments and 1 whole metal spring, 12 buttons, 7 pieces of worked bone, 5 gunflints, 4 flake tools, 2 projectile points, 2 knife fragments, 2 bracelets, 1 glass bead, 1 shell bead, 1 brass bell, 1 nail, 1 box of metal fragments, 1 stone biface, 1 scraper, 1 cup, and 1 tobacco pipe.

Paragraph 8 is corrected by substituting the following paragraph:

In 1947 and 1948, human remains representing seven individuals were recovered from the Bynum Mounds site during a legally authorized project. No known individuals were identified. The 2,628 associated funerary objects are 2,522 glass beads, 27 metal fragments, 9 silver spoons, 9 flintlock fragments, 4 cloth fragments and 2 boxes of cloth fragments, 5 metal files, 4 metal knives, 5 wire fragments, 4 copper earrings, 4 ornaments, 4 bells, 3 metal cups, 2 shell gorgets, 2 musket balls, 2 rivets, 2 blades, 2 utensils, 1 tobacco pipe, 1 gunflint, 1 whetstone, 1 silver brooch, 1 silver crown, 1 metal spike, 1 metal spring, 1 button, 1 snuffbox, 1 powder flask, 1 ground stone, 1 polishing stone, 1 basket fragment, 1 worked antler, 1 metal screw, and 1 bag of unidentified objects.

Paragraph 12 is corrected by substituting the following paragraph:

Based on the above-mentioned information, the superintendent of Natchez Trace Parkway has determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 50 individuals of Native American ancestry. The superintendent of Natchez Trace Parkway also has determined that, pursuant to 43 CFR 10.2 (d)(2), the 5,894 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of a death rite or ceremony. Lastly, the

superintendent of Natchez Trace Parkway has determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects recovered from Ackia Village, Alton's Chickasaw Village, Beldin's Ridge, the historic component of the Bynum Mounds site, and the Futorian Furniture Company site, and the Chickasaw Nation, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the associated funerary objects should contact Wendell Simpson, Superintendent, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, MS 38804, telephone (662) 680-4005, before May 2, 2005. Repatriation of the associated funerary objects to the Chickasaw Nation, Oklahoma may proceed after that date if no additional claimants come forward.

Natchez Trace Parkway is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Eastern Shawnee Tribe of Oklahoma; Jena Band of Choctaw Indians, Louisiana; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Mississippi Band of Choctaw Indians, Mississippi; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; Shawnee Tribe, Oklahoma; Thlopthlocco Tribal Town, Oklahoma; Tunica-Biloxi Indian Tribe of Louisiana; and United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–6462 Filed 3–31–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: New York State Museum, Albany, NY

AGENCY: National Park Service.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the New York State Museum, Albany, NY. The human remains were removed from the Parker Farm site, Schuyler County, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by New York State Museum professional staff in consultation with representatives of the Cayuga Nation of New York and the Seneca-Cayuga Tribe of Oklahoma.

In 1915, human remains representing one individual were removed during sand and gravel mining from the Parker Farm site (NYSM site no. 2190), Hector Township, Schuyler County, NY, by employees of the State Commission of Highways. The human remains were donated to the New York State Museum by Irving J. Morris, Secretary of the State Commission of Highways, the same year. No known individual was identified. No associated funerary objects are present.

At an unknown date between 1915 and 1924, human remains representing seven individuals were removed from disturbed contexts at the Parker Farm site by Perry City town supervisor Dr. J.M. Townsend. Dr. Townsend donated the human remains to the New York State Museum in 1924. No known individuals were identified. No associated funerary objects are present.

The Parker Farm site is located between Cayuga Lake and Owasco Lake, NY. It is a habitation site and cemetery that was possibly palisaded. The types of ceramics recovered during excavation indicate that the site was inhabited circa A.D. 1525-1550. Archeological evidence and oral history indicate that Native American communities in this region in the 16th century are ancestral to the present-day Cayuga Indians.

Officials of the New York State Museum have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of eight individuals of Native American ancestry. Officials of the New York State Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Cayuga Nation of New York and the Seneca-Cayuga Tribe of Oklahoma

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Lisa M. Anderson, NAGPRA Coordinator, New York State Museum, 3122 Cultural Education Center, Albany, New York 12230, telephone (518) 486-2020, before May 2, 2005. Repatriation of the human remains to the Cayuga Nation of New York and the Seneca-Cayuga Tribe of Oklahoma may proceed after that date if no additional claimants come forward.

The New York State Museum is responsible for notifying the Cayuga Nation of New York and the Seneca-Cayuga Tribe of Oklahoma that this notice has been published.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–6463 Filed 3–31–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA. The human remains and associated funerary objects were removed from locations in Barnstable and Plymouth Counties, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains and funerary objects was made by the Robert S. Peabody Museum of Archaeology professional staff in consultation with representatives of the Wampanoag Repatriation Confederation representing the Wampanoag Tribe of

Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

In 1930, human remains representing a minimum of one individual were removed from the Herring Weir site (19-PL-249/250), Mattapoisett, Plymouth County, MA, by Ralph Metcalf. The site was located at the top of a bank adjacent to a stream emptying into Mattapoisett Bay. In 1945, Maurice Robbins obtained the human remains and donated them to the Robert S. Peabody Museum of Archaeology in 1950. No known individual was identified. The 23 associated funerary objects are 12 fragments of organic materials, including matting, animal skin, and an animal tooth; 4 copper fragments; 4 animal bones; 2 pyrite fragments; and 1 lot of bark fragments.

Other burials at the Herring Weir site contained objects of Euroamerican manufacture. Based on artifact typologies, the Herring Weir Site is dated to the Late Woodland/Early Contact period (circa A.D. 1000-1650).

In 1945 and 1949, human remains representing a minimum of three individuals were removed from the Taylor Hill site (19-BN-106), in Wellfleet, Barnstable County, MA, by Howard Torrey and Ripley Bullen and were donated to the Robert S. Peabody Museum of Archaeology at an unknown time. No known individuals were identified. The eight associated funerary objects are one harpoon point, two mollusk shells, one deer-bone awl, two lots of animal bones, one projectile point, and one biface fragment.

Based on artifact characteristics and radiocarbon dating, the Taylor Hill site is dated to the Late Middle Woodland to Late Woodland period (circa A.D. 500-1500). Deer bone that was associated with the human remains from the site has been dated to A.D. 976-1010 (calibrated).

In 1935, human remains representing a minimum of one individual were removed from the Indian Cove Bluff site (19-BN-104), in Wellfleet, Barnstable County, MA, by Howard Torrey and were donated to the Robert S. Peabody Museum of Archaeology at an unknown time. No known individual was identified. No associated funerary objects are present

Based on artifact characteristics and radiocarbon dating, the Indian Cove Bluff site is dated to the Late Middle Woodland to Late Woodland periods (circa A.D. 500-1500).

In 1915, human remains representing a minimum of two individuals were removed from the Corn Hill site (19-BN-144/45), in Truro, Barnstable County, MA, by Warren K. Moorehead and Fred Luce. Shortly afterwards, Mr. Luce donated the human remains to the Haverhill Historical Society. In 1993, the Haverhill Historical Society transferred the human remains and funerary objects to the Robert S. Peabody Museum of Archaeology. No known individuals were identified. The 53 associated funerary objects are 1 metal blade, approximately 50 iron fragments, 1 lot of soil stained with ochre, and 1 lot of wood and bark fragments stained with ochre.

Corn Hill is an historically documented Contact period site (post-A.D. 1500).

Increased frequency and longer-term use of coastal areas by Native American people in the outer Cape Cod and Buzzards Bay, MA, area began in the Middle Woodland period. This pattern continued and intensified into the Contact Period. With the formation of highly productive and more stable salt-marsh and estuary environments, long-term occupation became a viable settlement option. The locally focused, year-round exploitation of this environmental diversity first becomes visible in late Middle Woodland sites and continued to characterize Wampanoag subsistence patterns and apparent social organization throughout the Late Woodland/Contact periods. Concomitant with this evidence for year-round occupation are mortuary data that indicate a significantly different pattern than that evident on earlier sites in the same region. Wampanoag descendents are today represented by the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of seven individuals of Native American ancestry. Officials of the Robert S. Peabody Museum of Archaeology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 84 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, and there is a cultural relationship between the Native American human remains and associated funerary objects and the Mashpee Wampanoag Tribe (a nonfederally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Malinda S. Blustain, Director, Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA 01810, telephone (978) 749-4490, before May 2, 2005. Repatriation of the human remains and associated funerary objects to the Wampanoag Repatriation Confederation on behalf of the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group) may proceed after that date if no additional claimants come forward.

The Robert S. Peabody Museum of Archaeology is responsible for notifying the Wampanoag Repatriation Confederation, Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, the Mashpee Wampanoag Tribe (a nonfederally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group) that this notice has been published.

Dated: February 11, 2005.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–6460 Filed 3–31–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the

possession of the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The 25 cultural items are 21 copper beads and 2 brass beads strung on cordage, 1 whale bone spoon, and 1 clay pipe fragment.

At an unknown date, a string of 21 copper and 2 brass beads was collected from the Swansea Burial site during excavations undertaken by Maurice Robbins. The site is located in Swansea, Bristol County, MA. In 1941, Mr. Robbins donated the beads to the Robert S. Peabody Museum of Archaeology.

Based on the funerary objects present at the site, the Swansea Burial site is considered to date to the postcontact period (post-A.D. 1500). Based on geographical, archeological, ethnographic, and historical evidence, a clear relationship of shared group identity can be demonstrated between the Swansea Burial site and the Wampanoag, who are today represented by the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

In 1955, human remains representing two individuals were removed from the Slocum River site in Dartmouth, Bristol County, MA, by Douglas S. Byers and Frederick Johnson under the auspices of the Robert S. Peabody Museum of Archaeology. The human remains were transferred to the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, in 1956. One whale bone spoon and a clay pipe fragment that were associated with these individuals are in the possession of the Robert S. Peabody Museum of Archaeology.

Based on artifact typology, the Slocum River site is dated to the Late Woodland/Early Contact period (post-A.D. 1500).

The Peabody Museum of Archaeology and Ethnology included the two individuals from the Slocum River site in a notice of inventory completion published in the **Federal Register** on August 14, 2003 (FR Doc. 03-20754, pages 48626-48634). The human remains were repatriated to the Wampanoag Repatriation Confederation on behalf of the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Tribe (a nonfederally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group) on December 4, 2003.

The material culture of Native American settlements dating from the Middle Woodland period through the Historic period in southeastern Massachusetts in the area between Buzzards Bay and Narragansett Bay, where the Slocum River site and the Swansea Burial site are located, display many similar traits. Cultural continuity is reflected in settlement and subsistence patterns, material culture, and burial practices. While patterns and practices have changed over time, it is clear that the changes occurred within the original culture and were not results of migration of new groups. The Wampanoag people developed out of these earlier cultures. The Wampanoag are today represented by the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 25 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Robert S. Peabody Museum of Archaeology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, and there is a cultural relationship between the unassociated funerary objects and the Mashpee Wampanoag Tribe (a nonfederally recognized Indian group) and the Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Malinda S. Blustain, Director, Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA 01810, telephone (978) 749–4490, before May 2, 2005. Repatriation of the unassociated funerary objects to the Wampanoag Repatriation Confederation on behalf of the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group) may proceed after that date if no additional claimants come forward.

The Robert S. Peabody Museum of Archaeology is responsible for notifying the Wampanoag Repatriation Confederation, Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group) that this notice has been published.

Dated: February 11, 2005.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–6466 Filed 3–31–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of an associated funerary object in the possession of the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA. The associated funerary object was removed from McCurtain County, OK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American associated funerary object. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the associated funerary object was made by Robert S. Peabody Museum of Archaeology professional staff in consultation with representatives of the

Caddo Nation of Oklahoma and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco and Tawakonie), Oklahoma.

In 1913, a Hudson Engraved ceramic vessel was collected from a site whose locality is described as ''Sec 7 TP6S, R23E'' in McCurtain County, OK, by E.S. Byington. Mr Byington was temporarily employed by W.K. Moorehead of the Robert S. Peabody Museum. Museum records indicate that human remains and the ceramic vessel were collected by Mr. Byington for the Robert S. Peabody Museum of Archaeology, although the excavator is identified as T.H. Rogers. Both men were employees of the Texas, Oklahoma and Eastern Railroad Company. In 1963, the Robert S. Peabody Museum of Archaeology donated the human remains to the Peabody Museum of Archaeology and Ethnology, Harvard University. The human remains associated with the funerary object are in the custody of the Peabody Museum of Archaeology and Ethnology at Harvard University and were described in a notice of inventory completion published in the **Federal Register** on August 16, 2000 (FR Doc. 00-20823).

Based on geographical, historic, and archeological evidence, the associated funerary object is culturally affiliated with the Caddo Nation of Oklahoma. Hudson Engraved ceramics are related to the McCurtain phase (A.D.1450-1600), and historic evidence indicates that Hudson Engraved ceramics were produced by Caddoan peoples circa A.D. 1500-1730. Although the exact site from which the human remains and the associated funerary object were removed is not known, the site is located in the historic territory of the Caddo tribe; other sites in the area have produced Hudson Engraved or closely related vessels, some of which have been found in association with European trade items.

Officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the one object described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Officials of the Robert S. Peabody Museum of Archaeology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American associated funerary object and the Caddo Nation of Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the associated funerary object should contact Malinda Blustain, Director, Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA 01810, telephone (978) 749-4490, before May 2, 2005. Repatriation of the associated funerary object to the Caddo Nation of Oklahoma may proceed after that date if no additional claimants come forward.

The Robert S. Peabody Museum of Archaeology is responsible for notifying the Caddo Nation of Oklahoma and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco and Tawakonie), Oklahoma that this notice has been published.

Dated: February 2, 2005.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–6467 Filed 3–31–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: The University Museum, University of Arkansas, Fayetteville, AR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of The University Museum, University of Arkansas, Fayetteville, AR. The human remains were removed from sites in Conway, Pulaski, and Yell Counties, AR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by University of Arkansas professional staff in consultation with representatives of the Osage Tribe, Oklahoma; Quapaw Tribe of Indians, Oklahoma; and Tunica-Biloxi Indian Tribe of Louisiana.

On an unknown date, human remains representing a minimum of one individual were removed during a museum-sponsored excavation at the Keo site in Pulaski County, AR. The human remains became part of the University of Arkansas collection by 1964. No known individual was identified. No associated funerary objects are present.

On an unknown date, human remains representing a minimum of two individuals were removed during museum-sponsored excavations from the Point Remove site (3CN4), located south of Morrilton, Conway County, AR. The human remains became part of the University of Arkansas collection in 1931 and 1966. No known individuals were identified. No associated funerary objects are present. Diagnostic artifacts found at the Point Remove site indicate that the human remains were probably buried during the Mississippian period (A.D. 900-1541).

On an unknown date, human remains representing a minimum of one individual were removed from an unspecified site in Conway County, AR. The human remains became part of the University of Arkansas collection in 1929. No known individual was identified. The one associated funerary object is a ceramic water bottle with incised decoration. The associated funerary object indicates that the human remains were probably buried during the Mississippian period (A.D. 900-1541).

On an unknown date, human remains representing six individuals were removed during a museum-sponsored excavation at the Carden Bottoms site (3YE14) in Yell County, AR. The human remains became part of the University of Arkansas collection in 1927 and 1931. No known individuals were identified. No associated funerary objects are present. Diagnostic artifacts found at the Carden Bottoms site (3YE14) indicate that these human remains were probably buried during the Mississippian period (A.D. 900-1541).

On an unknown date, human remains representing one individual were removed during a museum-sponsored excavation at the Delaware Creek site (3YE6) in Yell County, AR. The human remains became part of the University of Arkansas collection in 1967. No known individual was identified. No associated funerary objects are present. Diagnostic artifacts found at the Delaware Creek site indicate that these human remains were probably buried during the Mississippian period (A.D. 900-1541).

On an unknown date, human remains representing one individual were removed from an unspecified site in Yell County, AR. The human remains became part of the University of Arkansas collection in 1928. No known individual was identified. No associated funerary objects are present.

Physical examination of the human remains reveals skeletal and dental morphological traits common in Native American populations. The human remains and associated funerary object are believed to be associated with the Carden Bottoms complex, a Mississippian period archeological manifestation common along the Lower Arkansas River, including the area of Conway, Pulaski, and Yell Counties, Arkansas. The identity of the Carden Bottoms complex descendents is controversial. In 1542 and 1673, European travelers recorded the names of towns along the lower Arkansas River that appear to be derived from the Tunica language. Carden Bottoms complex ceramic traditions are similar to ceramic wares recovered from known 18th-century Tunica sites. Quapaw oral traditions describe their late arrival and expulsion of the Tunica from the lower Arkansas River area. The Quapaw tribe dominated that area when sustained European occupation of the lower Arkansas River began around 1700. The Osage tribe seasonally hunted the Ozark Highlands north of the Arkansas River Valley in the 18th century and traveled along the Arkansas River. In 1808. the Osage ceded the area north of the Arkansas River, including the area of Conway County, to the United States. In 1818, the Quapaw ceded the area south of the Arkansas River, including the area of Pulaski and Yell Counties, to the United States.

Officials of the University of Arkansas have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of 12 individuals of Native American ancestry. Officials of the University of Arkansas also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the one object described above is reasonably believed to have been placed with or near human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Arkansas have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and the Quapaw Tribe of Indians, Oklahoma and the Tunica-Biloxi Indian Tribe of Louisiana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Mary Suter, Curator of Collections, The University Museum, University of Arkansas, Biomass Research Center, Fayetteville, AR 72701, telephone (479) 575-3456, before May 2, 2005. Repatriation of the human remains to the Quapaw Tribe of Indians, Oklahoma and the Tunica-Biloxi Indian Tribe of Louisiana may proceed after that date if no additional claimants come forward.

The University of Arkansas is responsible for notifying the Osage Tribe, Oklahoma; Quapaw Tribe of Indians, Oklahoma; and Tunica-Biloxi Indian Tribe of Louisiana that this notice has been published.

Dated: February 4, 2005.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–6465 Filed 3–31–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—AAF Association, Inc.

Notice is hereby given that, on March 10, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), AAF Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Profound Effects, Middleton, WI; and Curious Rabbit Software, Livermore, CA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AAF Association, Inc. intends to file additional written notification disclosing all changes in membership.

On March 28, 2000, AAF Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on December 22, 2004. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5481).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–6494 Filed 3–31–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronics Engineers

Notice is hereby given that, on March 8, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Institute of Electrical and Electronics Engineers (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, four new standards have been initiated and six existing standards are being revised. More detail regarding these changes can be found at *http://standards.ieee.org/bearer/sba/03–04–05.html.*

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published as notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on January 14, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 11, 2005 (70 FR 7307).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–6492 Filed 3–31–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mobile Enterprise Alliance, Inc.

Notice is hereby given that, on March 17, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Mobile Enterprise Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Addesso Systems, Inc., Boston, MA; Aeroprise, Inc., Mountain view, CA; Mobile and RFID Data Systems, Inc., Markham, Ontario, CANADA; Visto Corporation, Redwood City, CA; Antenna Software, Jersey City, NJ; and Cingular Wireless LLC, Atlanta, GA have been added as parties to this venture. Also, Telefonica Data, Miami, FL has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Mobile Enterprise Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On June 24, 2004, Mobile Enterprise Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 23, 2004 (69 FR 44062).

The last notification was filed on September 30, 2004. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 29, 2004 (69 FR 69397).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–6495 Filed 3–31–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on March 16, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Portland Cement Association (''PCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Heartland Cement Company, Tulsa, OK; Hercules Cement Company, Stockertown, PA; River Cement Company, Festus, MO; and Signal Mountain Cement Company, Chattanooga, TN are now divisions of Buzzi Unicem USA, Inc., Bethlehem, PA and are no longer listed as separate members. Also, Glenn Falls Cement Company, Glenn Falls, NY has been acquired by Lehigh Cement Company, Allentown, PA and is no longer listed as a separate member.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on January 10, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5487).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–6493 Filed 3–31–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Notice of Charter Renewal

In accordance with the provisions of the Federal Advisory Committee Act title 5, United States Code, Appendix, and Title 41, Code of Federal Regulations, Section 101–6.1015, with the concurrence of the Attorney General, I have determined that the continuance of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB) is in the public interest. In connection with the performance of duties imposed upon the FBI by law, I hereby give notice of the renewal of the APB Charter, effective January 31, 2005.

The APB provides me with general policy recommendations with respect to the philosophy, concept, and operational principles of the various criminal justice information systems managed by the FBI's CJIS Division.

The APB includes representatives from state and local criminal justice agencies; members of the judicial, prosecutorial, and correctional segments of the criminal justice community; a representative of federal agencies participating in the CJIS systems; and representatives of criminal justice professional associations (*i.e.,* the American Probation and Parole Association, American Society of Crime Laboratory Directors, International Association of Chiefs of Police, National District Attorneys Association, National Sheriffs' Association, Major Cities Chiefs Association, Major County Sheriffs' Association, and a representative from a national professional association representing the courts or court administrators nominated by the Conference of Chief Justices). All members of the APB are appointed by the FBI Director.

The APB functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. The Charter has been filed in accordance with the provisions of the Act.

Dated: March 21, 2005.

Robert S. Mueller, III,

Director.

[FR Doc. 05–6440 Filed 3–31–05; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,666]

Aim Nationalease Old Fort, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 2, 2005 in response to a petition filed on by a company official on behalf of

workers of Aim Nationalease, Old Fort, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 16th day of March, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1439 Filed 3–31–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,655]

BASF Corporation, Agricultural Products, Beaumont, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 28, 2005 in response to a worker petition filed by a company official on behalf of workers at BASF Corporation, Agricultural Products, Beaumont, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 14th day of March, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1441 Filed 3–31–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,167]

CIGNA Healthcare Service Operations Chattanooga, TN; 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 CIGNA HealthCare, Service Operations, Chattanooga, Tennessee. 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–56,167; CIGNA HealthCare, Service Operations Chattanooga, Tennessee (March 14, 2005).

Signed at Washington, DC, this 22nd day of March, 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–1438 Filed 3–31–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,598]

Electrolux Home Products Refrigeration, Division Greenville, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 18, 2005 in response to a worker petition filed by a company official on behalf of workers at Electrolux Home Products, Refrigeration Division, Greenville, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 22nd day of March, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1445 Filed 3–31–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,660]

GE Security Including Leased Workers From Express and Spherion Gladwater, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 2, 2005 in response to a petition filed by a company official on behalf of workers at GE Security, Gladewater, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 21st day of March, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1440 Filed 3–31–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W 56,648]

Hamilton Sundstrand Grand Junction, CO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 28, 2005, in response to a petition filed by a company official on behalf of workers at Hamilton Sundstrand, Grand Junction, Colorado.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 14th day of March, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1442 Filed 3–31–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,667]

Industrial Distribution Group, Oldham Site, West Jefferson, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 3, 2005 in response to a worker petition filed by a company official on behalf of workers at Industrial Distribution Group, Oldham Site, West Jefferson, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 22nd day of March, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1443 Filed 3–31–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,616]

R.J. Reynolds Tobacco, Richmond, VA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 21, 2005 in response to petition filed by a company official on behalf of workers at R.J. Reynolds Tobacco Company, located in Richmond, Virginia.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

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

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1444 Filed 3–31–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of March 2005.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–56,360; Wrigley Manufacturing Co., a div. of The WM. Wrigley Jr. Company, Phoenix Plant, Phoenix, AZ

TA–W–56,481; Morton Metalcraft Co. of South Carolina, including on-site leased workers of Employment Staffing, Honea Path, SC

TA–W–56,407; Meadwestvaco Research, subsidiary of Meadwestvaco Corp., Laurel, MD

TA–W–56,180; Bristol-Myers Squibb Company, Technical Operations, East Syracuse, NY

TA–W–56,353; Lear Corp., Marshall, MI

TA–W–56,412; Tiro Industries, LLC, including leased workers from Excel Staffing, Fridley, MN

TA–W–56,451; Alloy Engineering and Casting Co., Counter Gravity Casting Div., Champaign, IL

TA–W–56,276; Trinity Marine Products, Inc., Marine Div., Burly, LA

TA–W–56,355 and A; Braham Steel Corp., Reinforcing Steel Div., Kirkland, WA, Structural Steel Div., Kirkland, WA

TA–W–56,477; Gardner Shoe Co., West Plains, MO

TA–W–56,484; Renee's Manufacturing, Inc., San Francisco, CA

TA–W–56,518; Standard Textile Thomaston, Inc., Thomaston, GA

TA–W–56,357 & A; Westpoint Stevens, Inc., Middletown Plant, including on-site Leased workers of PRO Resources, Middletown, IN and Anderson Warehouse, including on-site leased workers of PRO Resources, Anderson, IN

TA–W–56,388; Westpoint Stevens, Inc., Daleville Div. Office, Daleville, IN

TA–W–56,448; LM Services LLC, Cumberland, MD

TA–W–56,374; Napco Window Systems, Sarver, PA

TA–W–56,383; CFM, Home Products Div., Joplin, MO

TA–W–56,286; Duracell, a div. of The Gillette Co., Lexington, NC: ''Workers engaged in the production of high power lithium film camera

batteries are denied eligibility to apply for adjustment assistance.''

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–56,466; Information Resources, Inc., a div. of IRI Holdings, Inc., Chicago, IL

TA–W–56,403; Kulicke & Soffa Industries, Inc., Accounts Receivable Department, Willow Grove, PA

TA–W–56,574; Skillsoft, Nashua, NH

TA–W–56,457; Swenco, Inc., d/b/a Posi-Products, Poplar Bluff, MO

TA–W–56,160; Kennametal, Inc., MSSG Advertising, Latrobe, PA

TA–W–56,486; Lucent Technologies, Inc., Imerge Software Development and Testing Group, Phoenix, AZ

TA–W–56,454; GE Engine Services-Dallas LP, Dallas, TX

TA–W–56,463; Santa's Best, Lubbock Distribution Center, Lubbock, TX

TA–W–56,303; Alcatel USA Resources, VND Signaling Systems Products Div., Plano, TX

TA–W–56,400; Sprint Corp., United Telephone Company of North Carolina, Wake Forest Repair Service and Evaluation Center, Wake Forest, NC

TA–W–56,453; SBC Communications, formerly known as Southwestern Bell, Consumer Markets, Jonesboro, AR

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–56,541; Osram Sylvania, Inc., St. Marys, PA

TA–W–56,586; Lawson-Hemphill Sales, Inc., Spartanburg, SC

TA–W–56,531; Facility Management Engineering, Inc., St. George, UT

TA–W–56,428; General Chemical Industrial Products, Manistee, MI

TA–W–56,433A; Armstrong World Industries, Lancaster Floor Plant, Sheet Div., Lancaster, PA

The investigation revealed that criterion (a)(2)(A)(I.B) (Sales or production, or both, did not decline) and (a) (2)(B)(II.B) (has shifted production to a county not under the free trade agreement with U.S.) have not been met.

TA–W–56,335; Takata Seat Belts, Inc., San Antonio, TX

TA–W–56,452; Sanmina—SCI Corporation, San Jose, CA

TA–W–56,487; Fraser Papers, Park Falls, WI

TA–W–56,368; Invista S.A.R.L., a div. of Koch Industries, Victoria, TX

TA–W–56,558; Ben Mar Hosiery, Ft. Payne, AL

TA–W–56,536 & A, B; Butler Manufacturing Co., subsidiary of Bluescope Steel, Ltd, Buildings Div., Wall and Roof Panels Production, Galesburg, IL, Trim and Components Production, Galesburg, IL and Secondaries Production, Galesburg, IL

TA–W–56,603; ATK—Ordnance Systems, a Unit of Alliant Techsystems, Janesville, WI

The investigation revealed that criteria (3)(A) has not been met. The workers' firm (or subdivision) is not a supplier and the component parts it supplied to trade-affected companies did not account for at least 20 percent of the production or sales of the workers' firm.

TA–W–56,200; Multi-Plastics, including leased workers of M-Ploy Temporaries, Saegertown, PA

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–56,505; FB Johnston Graphics, Hillsborough, NC

The investigation revealed that criteria (a)(2)(A) (I.C) increased imports and (II.C) (has shifted production to a foreign country) have not been met.

TA–W–56,493; Keopplingers Bakery, Inc., Oak Park, MI

TA–W–56,439 & A, B; Dietrich Industries, Inc., Plant #14, Hammond, IN, Plant #18, Hammond, IN and Laporte, IN

TA–W–56,511; Quantegy, Inc., Opelika, AL

The investigation revealed that criteria (a)(2)(A) (I.B) (Sales or production, or both did not decline) and (II.C) (has shifted production to a foreign country) have not been met.

TA–W–56,354; Flambeau, inc., Baraboo Blow Molding Div., Baraboo, WI

The investigation revealed that criteria (a)(2)(A) (I.B) (Sales or production, or both did not decline) and (II.A) (No employment decline) has shifted production to a foreign country) have not been met.

TA–W–56,432; Freescale Semiconductor, Inc., Motorola Business Group Services, formerly Motorola SPS, Inc., Tempe, AZ

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a) (2) (A) (increased imports) of Section 222 have been met.

TA–W–56,309; Kane Magnetics Acquisitions LLC, Kane, PA: February 14, 2005.

TA–W–54,952; VF Intimates, LP, Johnstown, PA: May 18, 2003.

TA–W–56,236; Potlatch Corporation, Administrative/Accounting Office, Cloquet, MN: December 3, 2003.

TA–W–56,430; QAP, Inc., West New York, NJ: January 27, 2004.

TA–W–56,300; OBY, Inc., including on-site leased workers of Brickforce, Newark, NJ: January 7, 2004.

TA–W–56,459; MMG Corporation, St. Louis, MO: February 1, 2004.

TA–W–56,504; England, Inc., Booneville, MS: January 31, 2004.

TA–W–56,433; Armstrong World Industries, Lancaster Floor Plant, Tile Div., Lancaster, PA: February 3, 2005.

TA–W–56,428 & A; Magneti Marelli Powertrain USA, LLC, Sanford, NC and Michigan Office, Farmington Hills, MI: January 3, 2004.

TA–W–56,409; Daikin Clutch Corporation, including on-site leased workers from Corporate Personnel Services, S & K Group, and Adecco Employment Services, Belleville, MI: January 24, 2004.

TA–W–56,258; Collins and Aikman Products Co., Division 016, Roxboro, NC: December 13, 2003.

TA–W–56,513; Cannon Equipment, Cannon Melrose Div., including leased workers of Joule Staffing Services, Tuttle Agency of New Jersey, and Brickforce Staffing, Passaic, NJ: February 7, 2004.

TA–W–56,559; Flexible Technologies, including leased workers of MGA Contracting, Honea Path, SC: February 8, 2004.

TA–W–56,534; Anchor Glass Container Co., Zanesville Mould Div., Zanesville, OH: February 7, 2004.

TA–W–56,509; Barrow Manufacturing Co., Inc., including leased workers of Skilstaf, Inc., Winder, GA: February 3, 2004.

TA–W–56.502; Gertrude Davenport, a div. of The Tog Shop, Inc., Americus, GA: February 4, 2004.

TA–W–56,421; Crane Pumps and Systems, Deming Div., Salem, OH: January 25, 2004.

TA–W–56,478; Peerless Premier Appliance Company, Belleville, IL: February 1, 2004.

TA–W–56,473; Glenoit LLC/Ex-Cell Home Fashions, Inc., Administrative Office, New York, NY: January 12, 2004.

TA–W–56,499; Wallace Packaging, Inc., Bay Shore, NY: February 4, 2004.
TA–W–56,613; Valtex, LLC, including Onsite Leased Workers of Skilstaf, Scottsboro, AL: February 18, 2004.
TA–W–56,572; Hickory Finishing, Inc., Hickory, NC: February 12, 2004.
TA–W–56,554; Boling Furniture Co., Mount Olive, NC: February 10, 2004.
TA–W–56,427; Ja-Mar Apparel Manufacturing Co., Inc., Irwindale, CA: January 21, 2004.
TA–W–56,425; Avalanche Industries, a subsidiary of Synergy Manufacturing, including leased workers of Staffing Solutions, Colorado Springs, CO: January 27, 2004.
TA–W–56,417; Pride Manufacturing Co. LLC, including leased workers of BDL/Allies, Guilford, ME: January 19, 2004.
TA–W–56,414; Ego Beltex, LLC, Belmont, NC: January 21, 2004.
TA–W–56,346; RPI, Inc., d/b/a Oxford, Automotive, Prudenville, MI: January 6, 2004.
TA–W–56,386; Eagle Family Foods, Inc., including on-site leased workers of Snelling, Wellsboro, PA: January 6, 2004.
TA–W–56,556; Pitt Service, Ltd, Working at Unifi-Kinston, LLC, Kinston, NC: February 8, 2004.
TA–W–56,548; Reed City Tool and Die, a div. of Martinrea Industries, Inc., Reed City, MI: February 9, 2004.
TA–W–56,533; Owens and Hurst Lumber Co., Inc., Eureka, MT: February 7, 2004.
TA–W–56,485; Anchor Hocking Co., a div. of Global Home Products, Monaca, PA: January 31, 2004.
TA–W–56,469; Blackstone Manufacturing, Blackstone, VA: February 1, 2004.
TA–W–56,450; Quality Apparel, Inc., Dillon, SC: May 9, 2004.
TA–W–56,377; Culp Weaving, a div. of Culp, Inc., Pageland Plant, Pageland, SC: January 18, 2004.
TA–W–56,575; Eljer Plumbingware, Inc., Verona, MS: February 4, 2004.
TA–W–55,522; Clayton Marcus Co., Inc., Plant #9, a subsidiary of L-Z-Boy, Hickory, NC: February 7, 2004.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–56,399; Stillman Seals Corporation, Carlsbad, CA: January 7, 2004.
TA–W–56,309A; Kane Magnetics Acquisitions LLC, Galeton, PA: March 15, 2005.
TA–W–56,549; Finisar Corporation, Sunnyvale, CA: January 26, 2004.
TA–W–56,366; Singulus Technologies, Inc., Shell Manufacturing Plant, including on-site leased workers of Temploy, Irvine, CA: December 17, 2003.
TA–W–56,405; Nagel/US Hanger, Wire Drawing/Hanger Manufacturing Div., Caldwell, TX: January 13, 2004.
TA–W–56,404; Dunlop Slazenger Manufacturing LLC, a subsidiary of Dunlop Sports Group America, Inc. including leased workers of Ranstad, Westminster, SC: January 15, 2004.
TA–W–56,444; JDS Uniphase Corporation, Melbourne, FL: January 28, 2004.
TA–W–56,482; Gebo Corporation USA, Packaging Systems Div., a div. of Sidel, including on-site leased workers from Express Personnel Service and Accounting Principals, Bradenton, FL: February 1, 2004.
TA–W–56,528; Hussmann Corporation, Bridgeton, MO: February 7, 2004.
TA–W–56,467; Kimberly Clark Corporation, Feminine Care Division, Conway, AR: January 20, 2004.
TA–W–56,148; Ozark Electronics Cullman Alabama, Inc., a subsidiary of Ozark Electronics Repair, Inc., including on-site Temporary Workers of Cullman Employment Center, Cullman, AL: December 2, 2003.
TA–W–54,614A; Tim Englehart Corp., d/b/a Conduflor, Grand Haven, MI: March 27, 2003.
TA–W–56,651; Profile Metal Forming, Tullahoma Plant Div., including on-site leased workers of Randstad, Tullahoma, TN: February 24, 2004.
TA–W–56,640; ATS Precision Components Texas, Inc., a div. of Precision Components Group, McAllen, TX: February 23, 2004.
TA–W–56,494; Kimberly-Clark Corp., Ballard Medical Products Div., Draper, UT: February 3, 2004.
TA–W–56,476; Miss Elaine, Inc., Ste. Genevieve, MO: January 28, 2004.
TA–W–56,519; North Valley Operations, a div. of The Weyerhaeuser Co., Lebanon, OR: February 3, 2004.
TA–W–56,607; Superior Uniform Group, Inc., Mississippi Uniform Div., Lexington, MS: February 16, 2004.
TA–W–56,588; Guy Brown Products, Laser Cartridge Div., Chatsworth, CA: February 16, 2004.
TA–W–56,581; General Aluminum Manufacturing Co., including leased workers of Seek, Inc., Cedarburg, WI: February 15, 2004.
TA–W–56,577; Becton Dickinson and Company, BD Consumer Healthcare Div., including leased onsite workers of Kelly Services, Seneca, SC: February 15, 2004.
TA–W–56,573; Charleston Hosiery, Amherst Div., Biscoe, NC: February 12, 2004.
TA–W–56,468; Alexander Technologies USA, Inc., Mason City, IA: February 1, 2004.
TA–W–56,585; Latronics Corp., Latrobe, PA: February 10, 2004.
TA–W–56,629; Datex-Ohmeda, Inc., a subsidiary of GE Healthcare, including leased workers of Kelly Services, Louisville, CO: February 22, 2005.
TA–W–56,286; Duracell, a div. of The Gillette Co., Lexington, NC: Workers engaged in packaging zinc air hearing aid batteries who became totally or partially separated on employment on or after December 30, 2003.
TA–W–56,543; Evans Rule Co., Inc., a div. of L.S. Starrett Co., Inc., including leased workers of Hammes Staffing Services and Extra Help Personnel Services, Charleston, SC: December 10, 2004.
TA–W–56,390; Eimo Technologies, Fort Worth, TX: January 3, 2004.
TA–W–56,389 & A, B, C; Coats American, Inc., a div. of Coats North American, Sevier Plant, Marion, NC, El Paso Distribution Center & Customer Service Center, El Paso, TX, Sparks Distribution Center, Sparks, NV and Old Fort Transportation & Distribution Center, Old Fort, NC: January 21, 2004.
TA–W–56,609; Celanese Acetate LLC, including on-site leased workers of Venturi Staffing, Rock Hill, NC: February 18, 2004.
TA–W–56,564; Lab-Line Instruments, Inc., a div. of Barnstead International, including on-site leased workers of Aeroteck, Sterling Engineering and Manpower, Melrose Park, IL: February 3, 2004.
TA–W–56,553; SJP Corp., Also Known As Simmons Juvenile Products, Wooden Children's Furniture Div., New London, WI: September 6, 2004.
TA–W–56,532; Stant Manufacturing, Inc., Connersville, IN: February 1, 2004.
TA–W–56,507; Augusta Sportswear, Inc., Grovetown, GA: February 2, 2004.
TA–W–56,547; Seton Company, Saxton Leather Div., including leased workers of Spherion, Saxton, PA: August 14, 2004.
TA–W–56,530; United Engine and Machine Co., Inc., Carson City, NV: February 3, 2004.
TA–W–56,461; Teradyne, Inc., Teradyne Connection Systems (TCS),

Connectors and Backplane Assemblies Facility, including leased workers of Microtech Staffing Group, TAC Worldwide and Technical Needs, Nashua, NH and Printed Circuit Board Facility, including leased workers of Microtech Staffing Group, TAC Worldwide and Technical Needs, Nashua, NH: January 31, 2004.

The following certifications have been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–56,028; Munters Corporation, including leased workers of Remedy Intelligent Staffing, Phoenix, AZ: November 12, 2003.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)3)ii) have not been met for the reasons specified.

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–56,513; Cannon Equipment, Cannon Melrose Div., including leased workers of Joule Staffing Services, Tuttle Agency of New Jersey, and Brickforce Staffing, Passaic, NJ

TA–W–56,258; Collins and Aikman Products Co., Division 016, Roxboro, NC

TA–W–56,409; Daikin Clutch Corp., including on-site leased workers from Corporate Personnel Services, S & K Group, and Adecco Employment Services, Belleville, MI

TA–W–56,428 & A; Magneti Marelli Powertrain USA, LLC, Sanford, NC and Michigan Office, Farmington Hills, MI

TA–W–56,504; England, Inc., Booneville, MS

TA–W–56,459; MMG Corporation, St. Louis, MO

TA–W–56,467; Kimberly Clark Corp., Feminine Care Div., Conway, AR

TA–W–56,528; Hussmann Corp., Bridgeton, MO

TA–W–56,482; Gebo Corporation USA, Packaging Systems Div., a div. of Sidel, including on-site leased workers from Express Personnel Service and Accounting Principals, Bradenton, FL

TA–W–56,444; JDS Uniphase Corporation, Melbourne, FL

TA–W–52,441 & A; Conn-Selmer, Inc., Selmer Main Street Div., Elkhart, IN and Selmer Plant 2 Div., Elkhart, IN

The Department as determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–52,319; Akron Porcelain and Plastics Co., Inc., Akron, OH

TA–W–56,148; Ozark Electronics Cullman Alabama, Inc., a subsidiary of Ozark Electronics Repair, Inc., including on-site Temporary workers of Cullman Employment Center, Cullman, AL

TA–W–54,614A; Tim Englehart Corp., d/b/a Conduflor, Grand Haven, MI

TA–W–56,430; QAP, Inc., West New York, NJ

TA–W–56,300; OBY, Inc., including on-site leased workers of Brickforce, Newark, NJ

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–56,452; Sanmina—SCI Corporation, San Jose, CA

TA–W–56,487; Fraser Paper, Park Falls, WI

TA–W–56,368; Invista S.A.R.L., a div. of Koch Industries, Victoria, TX

TA–W–56,536 & A, B; Butler Manufacturing Co., subsidiary of Bluescope Steel, Ltd, Buildings Div., Wall and Roof Panels Production, Galesburg, IL, Trim and Components Production, Galesburg, IL and Secondaries Production, Galesburg, IL

TA–W–56,558; Ben Mar Hosiery, Ft. Payne, AL

TA–W–56,603; ATK—Ordnance Systems, a Unit of Alliant Techsystems, Janesville, WI

TA–W–56,574; Skillsoft, Nashua, NH

TA–W–56,457; Swenco, Inc., d/b/a Posi-Products, Poplar Bluff, MO

TA–W–56,160; Kennametal, Inc., MSSG Advertising, Latrobe, PA

TA–W–56,486; Lucent Technologies, Inc., Imerge Software Development and Testing Group, Phoenix, AZ

TA–W–56,454; G E Engine Services-Dallas LP, Dallas, TX

TA–W–56,463; Santa's Best, Lubbock Distribution Center, Lubbock, TX

TA–W–56,303; Alcatel USA Resources, VND Signaling Systems Products Div., Plano, TX

TA–W–56,353; Lear Corp., Marshall, MI

TA–W–56,400; Sprint Corp., United Telephone Company of North Carolina, Wake Forest Repair Service and Evaluation Center, Wake Forest, NC

TA–W–56,453; SBC Communications, formerly known as Southwestern Bell, Consumer Markets, Jonesboro, AR

TA–W–56,180; Bristol-Myers Squibb Co., Technical Operations, East Syracuse, NY

TA–W–56,412; Tiro Industries LLC, including leased workers from Excel Staffing, Fridley, MN

TA–W–56,451; Alloy Engineering and Casting Company, Counter Gravity Casting Division, Champaign, IL

TA–W–56,276; Trinity Marine Products, Inc., Marine Division, Burly, LA

TA–W–56,355 & A; Graham Steel Corp., Reinforcing Steel Div., Kirkland, WA and Structural Steel Div., Kirkland, WA

TA–W–56,477; Gardner Shoe Company, West Plains, MO

TA–W–56,484; Renee's Manufacturing, Inc., San Francisco, CA

TA–W–56,518; Standard Textile Thomaston, Inc., Thomaston, GA

TA–W–56,388; Westpoint Stevens, Inc., Daleville Div. Office, Daleville, IN

TA–W–56,448; LM Services LLC, Cumberland, MD

TA–W–56,357 & A; Westpoint Stevens, Inc., Middletown Plant, including on-site leased workers of Pro Resources, Middletown, IN and Anderson Warehouse, including on-site leased workers f PRO Resources, Anderson, IN

TA–W–56,374; Napso Window Systems, Sarver, PA

TA–W–56,383; CFM, Home Products Div., Joplin, MO

TA–W–56,541; Osram Sylvania, Inc., St. Marys, PA

TA–W–56,586; Lawson-Hemphill Sales, Inc., Spartanburg, SC

TA–W–56,531; Facility Management Engineering, Inc., St. George, UT

TA–W–56,426; General Chemical Industrial Products, Manistee, MI

TA–W–56,505; FB Johnston Graphics, Hillsborough, NC

TA–W–56,493; Keopplingers Bakery, Inc., Oak Park, MI

TA–W–56,439 & A, B; Dietrich Industries, Inc., Plant #14, Hammond, IN, Plant #18, Hammond, IN and Laporte, IN

TA–W–56,511; Quantegy, Inc., Opelika, AL

TA–W–56,354; Flambeau, Inc., Baraboo Blow Molding Div., Baraboo, WI

TA–W–56,432; Freescale Semiconductor, Inc., Motorola Business Group Services, formerly Motorola SPS, Inc., Tempe, AZ

TA–W–56,286; Duracell, a div. of The Gillette Co., Lexington, NC: ''workers engaged in the production of high power lithium film camera batteries are denied eligibility to apply for alternative trade adjustment assistance under

Section 246 of the Trade Act of 1974.''

TA–W–56,433A; Armstrong World Industries, Lancaster Floor Plant, Sheet Div., Lancaster, PA: ''Workers of Armstrong World Industries, Lancaster Floor Plant, Sheet Division are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Affirmative Determinations for Alternative Trade Ajdustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

TA–W–56,499; Wallace Packaging, Inc., Bay Shore, NY: February 4, 2004.

TA–W–56,559; Flexible Technologies, including leased workers of MGA Contracting, Honea Path, SC: February 8, 2004.

TA–W–56,534; Anchor Glass Container Co., Zanesville Mould Div., Zanesville, OH: February 7, 2004.

TA–W–56,509; Barrow Manufacturing Co., Inc., including leased workers of Skilstaf, Inc., Winder, GA: February 3, 2004.

TA–W–56,502; Gertrude Davenport, a div. of The Tog Shop, Inc., Americus, GA: January 25, 2004.

TA–W–56,421; Crane Pumps and Systems, Deming Div., Salem, OH: January 25, 2004.

TA–W–56,478; Peerless Premier Appliance Co., Belleville, IL: February 1, 2004.

TA–W–56,473; Glenoit LLC/Ex-Cell Home Fashions, Inc., Administrative Office, New York, NY: January 12, 2004.

TA–W–56,613; Valtex, LLC, including onsite leased workers of Skilstaf, Scottsboro, AL: February 18, 2004.

TA–W–56,572; Hickory Finishing, Inc., Hickory, NC: February 12, 2004.

TA–W–56,554; Boling Furniture Co., Mount Olive, NC: February 10, 2004.

TA–W–56,414; Ego Beltex, LLC, Belmont, NC: January 21, 2004.

TA–W–56,427; Ja-Mar Apparel Manufacturing Co., Inc., Irwindale, CA: January 21, 2004.

TA–W–56,425; Avalanche Industries, a subsidiary of Synergy Manufacturing, including leased workers of Staffing Solutions, Colorado Springs, CO: January 27, 2004.

TA–W–56,417; Pride Manufacturing Co LLC, including leased workers of BDL/Allies, Guilford, ME: January 19, 2004.

TA–W–56,346; RPI, Inc., d/b/a Oxford Automotive, Prudenville, MI: January 6, 2004.

TA–W–56,386; Eagle Family Foods, Inc., including on-site leased workers of Snelling, Wellsboro, PA: January 6, 2004.

TA–W–56,556; Pitt Service, Ltd, working at Unifi-Kinston, LLC, Kinston, NC: February 8, 2004.

TA–W–56,548; Reed City Tool & Die, a div., of Martinrea Industries, Inc., Reed City, MI: February 9, 2004.

TA–W–56,533; Owens and Hurst Lumber Co., Inc., Eureka, MT: February 7, 2004.

TA–W–56,450; Quality Apparel, Inc., Dillon, SC: May 9, 2004.

TA–W–56,485; Anchor Hocking Co., a div. of Global Home Products, Monaca, PA: January 31, 2004.

TA–W–56,469; Blackstone Manufacturing, Blackstone, VA: February 1, 2004.

TA–W–56,377; Culp Weaving, a div. of Culp, Inc., Pageland Plant, Pageland, SC: January 18, 2004.

TA–W–56,575; Eljer Plumbingware, Inc., Verona, MS: February 4, 2004.

TA–W–56,522; Clayton Marcus Co., Inc., Plant #9, a subsidiary of L–Z–Boy, Hickory, NC: February 7, 2004.

TA–W–56,651; Profile Metal Forming, Tullahoma Plant Div., including on-site leased workers of Randstad, Tullahoma, TN: February 24, 2004.

TA–W–56,640; ATS Precision Components Texas, Inc., a div. of Precision Components Group, McAllen, TX: February 23, 2004.

TA–W–56,494; Kimberly-Clark Corp., Ballard Medical Products Div., Draper, UT: February 3, 2004.

TA–W–56,476; Miss Elaine, Inc., Ste. Genevieve, MO: January 28, 2004.

TA–W–56,519; North Valley Operations, a div. of The Weyerhaeuser Co., Lebanon, Or: February 3, 2004.

TA–W–56,585; Latronics Corp., Latrobe, PA: February 10, 2004.

TA–W–56,607; Superior Uniform Group, Inc., Mississippi Uniform Div., Lexington, MS: February 16, 2004.

TA–W–56,588; Guy Brown Products, Laser Cartridge Div., Chatsworth, CA: February 16, 2004.

TA–W–56,581; General Aluminum Manufacturing Co., including leased workers of Seek, Inc., Cedarburg, WI: February 15, 2004.

TA–W–56,577; Becton Dickinson and Co., BD Consumer Healthcare Div., including leased onsite workers of Kelly Services, Seneca, SC: February 15, 2004.

TA–W–56,573; Charleston Hosiery, Amherst Div., Biscoe, NC: February 12, 2004.

TA–W–56,468; Alexander Technologies USA, Inc., Mason City, IA: February 1, 2004.

TA–W–56,629; Datex-Ohmeda, Inc., a subsidiary of GE Healthcare, including leased workers of Kelly Services, Louisville, CO: February 22, 2005.

TA–W–56,543; Evans Rule Co., Inc., a div. of L.S. Starrett Co., Inc., including leased workers of Hammes Staffing Services and Extra Help Personnel Services, Charleston, SC: December 10, 2004.

TA–W–56,390; Eimo Technologies, including onsite leased workers of Pomerantz Staffing and Adecco Staffing, Fort Worth, TX: January 3, 2004.

TA–W–56,389 & A,B,C; Coats American, Inc., a div. of Coats North American, Sevier Plant, Marion, NC, El Paso Distribution Center & Customer Service Center, El Paso, TX, Sparks Distribution Center, Sparks, NV and Old Fort Transportation & Distribution Center, Old Fort, NC: January 21, 2004.

TA–W–56,609; Celanese Acetate LLC, including on-site leased workers of Venturi Staffing, Rock Hill, SC: February 18, 2004.

TA–W–56,564; Lab Line Instruments, Inc., a div. of Barnstead International, Melrose Park, IL: February 3, 2004.

TA–W–56,553; SJP Corp., Also Known As Simmons Juvenile Products, Wooden Children's Furniture Div., New London, WI: September 6, 2004

TA–W–56,532; Stant Manufacturing, Inc., Connersville, IN: February 1, 2004.

TA–W–56,507; Augusta Sportswear, Inc., Grovetown, GA: February 2, 2004.

TA–W–56,547; Seton Co., Saxton Leather Div., including leased workers of Spherion, Saxton, PA: August 14, 2004.

TA–W–56,530; United Engine and Machine Co., Inc., Carson City, NV: February 3, 2004.

TA–W–56,461 & A; Teradyne, Inc., Teradyne Connection Systems (TCS), Connectors and Backplane Assemblies Facility, including leased workers of Microtech Staffing Group, TAC Worldwide and Technical Needs, Nashua, NH and Printed Circuit Board Facility, including leased workers of Microtech Staffing Group, TAC Worldwide and Technical Needs, Nashua, NH: January 31, 2004.

TA–W–56,286; Duracell, a div. of The Gillette Co., Lexington, NC: Workers engaged in packaging zinc air hearing aid batteries who became totally or partially separated on employment on or after December 30, 2003.

TA–W–56,433; Armstrong World Industries, Lancaster Floor Plant, Tile Div., Lancaster, PA: February 3, 2005.

TA–W–52,136; Fairchild Semiconductor Corp., a subsidiary of Fairchild Semiconductor International, Inc., including Temporary Workers of Manpower, South Portland, ME: June 9, 2002 through August 6, 2005.

TA–W–52,274; Thomson, Inc., Circleville Glass Operations, Circleville, OH: June 27, 2002 through August 7, 2005.

TA–W–54,226; Plastic Research and Development, a subsidiary of EBSCO Industries, Inc., Mulberry, AR: February 4, 2003 through February 24, 2006.

TA–W–54,334; Simonds International Corp., File Div., Newcomerstown, OH: February 13, 2003 through March 30, 2006.

TA–W–53,353; LAPP Insulator Co. LLC, Sandersville Facility, Sandersville, GA: October 22, 2002 through November 21, 2005.

TA–W–53,166; Arvin Meritor, Inc., Chickasha, OK: October 1, 2002 through October 20, 2005.

TA–W–52,071; Colson Plastics, a div. of Colson Caster Corp., Monette, AR: June 16, 2002 through August 20, 2005.

TA–W–52,803 & A; Mastercraft Fabrics, LLC, Joan Fabrics Corp., Norwood Yarn Sales, Norwood, NC and Norwood Yarn Sales, Troy, NC: August 11, 2002 through October 20, 2005.

TA–W–51,720; Kidder, Inc., Agawam, MA: April 22, 2002 through September 11, 2005.

I hereby certify that the aforementioned determinations were issued during the month of March 2005. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 23, 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–1446 Filed 3–31–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Alternative Trade Adjustment Assistance

Applications have been filed with the Secretary of Labor under Section 246 of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these applications, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 246 of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for alternative adjustment assistance under Title II, Chapter 2, of the Act. The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 11, 2005.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 11, 2005.

The petitioners filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 22nd day of March 2005.

Timothy F. Sullivan,

Director, Division of Trade Adjustment Assistance.

ATAA APPENDIX

[Petitions instituted between 12/06/04 and 3/18/05—Contact: Regina Chapman (202) 693–3547]

TA–W No.	Company name	City, state	Date of application	Date of institution
53,344	Royal Appliance Mfg. Co	Glenwillow, Mentor, Ohio	Nov. 10, 2004	Dec. 6, 2004.
54,211	Intercraft Company, Inc	Taylor, Texas	Nov. 3, 2004	Dec. 6, 2004.
54,354	Arvesta Company	Perry, Ohio	Nov. 10, 2004	Dec. 6, 2004.
54,630	Osborn, Intl., Brush, Div	Cleveland, Ohio	Nov. 10, 2004	Dec. 6, 2004.
52,891	C.O.W. Ind., Inc	Columbus, Ohio	Nov. 10, 2004	Dec. 6, 2004.
52,917	Hooven Allison	Xenia, Ohio	Nov. 10, 2004	Dec. 6, 2004.
53,026	Metaldyne Driveline/Hydraulics	Bedford Heights, Michigan	Nov. 10, 2004	Dec. 14, 2004.
53,087	Manchester Tool Co	Akron, Ohio	Nov. 10, 2004	Dec. 15, 2004.
52,951	Durrell Corp	Alliance, Ohio	Nov. 10, 2004	Dec. 15, 2004.
53,587	Sensient Imaging Technology	Piqua, OH	Nov. 10, 2004	Dec. 21, 2004.
53,119	Orrca, Inc	Killbuck, Ohio	Nov. 10, 2004	Dec. 21, 2004.
52,909	Dolly	Tipp City, Ohio	Nov. 10, 2004	Dec. 22, 2004.
52,213	Hoover Company	North Canton, Ohio	Nov. 10, 2004	Dec. 22, 2004.

ATAA APPENDIX—Continued

[Petitions instituted between 12/06/04 and 3/18/05—Contact: Regina Chapman (202) 693–3547]

TA–W No.	Company name	City, state	Date of application	Date of institution
52,823	Channel Products	Cleveland, Ohio	Nov. 10, 2004	Dec. 22, 2004.
53,677	Smead Mfg. Co	Logan, Ohio	Nov. 10, 2004	Dec. 22, 2004.
53,699	Tomlinson Industries	Cleveland, Ohio	Nov. 10, 2004	Dec. 22, 2004.
53,921	Pac-Tec, Inc	Heath, Ohio	Nov. 10, 2004	Dec. 22, 2004.
52,274	Thomson, Inc	Circleville, Ohio	Nov. 10, 2004	Dec. 22, 2004.
52,376	Delphi Corp	Kettering, Ohio	Nov. 10, 2004	Dec. 23, 2004.
52,419	Nestaway	Columbus, Ohio	Nov. 10, 2004	Dec. 23, 2004.
52,453	National Metal Abrasives	Columbus, Ohio	Nov. 10, 2004	Dec. 23, 2004.
51,803	North American Cronite, Inc.	North Ridgeville, Ohio	Nov. 10, 2004	Dec. 23, 2004.
52,445	Baron Dawn Steel Corp	Toledo, Ohio	Nov. 10, 2004	Dec. 23, 2004.
52,443	Formica Corp	Cincinnati, Ohio	Nov. 10, 2004	Dec. 23, 2004.
52,291	Sterling China Co	Wellsville, Ohio	Nov. 10, 2004	Dec. 23, 2004.
52,319	Akron Porcelain and Plastics Co., Inc	Akron, Ohio	Nov. 10, 2004	Dec. 23, 2004.
54,033	Aluminum Color Ind	Lowellville, Ohio	Nov. 10, 2004	Dec. 23, 2004.
54,051	Ferriot, Inc., Mold Bldg. Div	Akron, Ohio	Nov. 10, 2004	Dec. 23, 2004.
54,334	Simonds Intl. Corp	Newcomerstown, Ohio	Nov. 10, 2004	Dec. 23, 2004.
53,264	Burlington Industries	Burlington, NC	Nov. 18, 2004	Dec. 23, 2004.
53,855	American Fast Print	Spartanburg, SC	Nov. 18, 2004	Jan. 24, 2005.
52,803	Norwood Yarn Sales	Norwood, NC	Nov. 23, 2004	Jan. 4, 2005.
54,249	VF Jeanswear	Greensboro, NC	Nov. 22, 2004	Dec. 30, 2004.
54,661	Hooven-Allison	Xenia, OH	Nov. 23, 2004	Dec. 30, 2004.
55,180	Rainbow Swimwear	Brooklyn, NY	Nov. 23, 2004	Dec. 30, 2004.
54,332	Springs Ind. Lyman Finishing Plant	Lyman, SC	Nov. 23, 2004	Jan. 4, 2005.
54,575	Timken	Rutherford, NC	Nov. 24, 2004	Jan. 4, 2005.
53,227	Voith Paper	Salisbury, NC	Nov. 24, 2004	Jan. 4, 2005.
53,276	H. Freeman and Sons	Philadelphia, PA	Nov. 24, 2004	Jan. 4, 2005.
54,255	Imperial Schrade Corporation	Ellenville, NY	Nov. 26, 2004	Jan. 4, 2005.
52,809	Mayflower Mfg. Co	Old Forge, PA	Nov. 26, 2004	Jan. 4, 2005.
54,355	Wellman, Inc	Charlotte, NC	Nov. 30, 2004	Jan. 4, 2005.
54,329	Diefendorf Gear, Corp	Syracuse, NY	Nov. 30, 2004	Jan. 4, 2005.
53,517	Howell Penncraft	Howell, MI	Dec. 2, 2004	Jan. 4, 2005.
54,314	Production Dept	Confluence, PA	Dec. 2, 2004	Jan. 4, 2005.
54,195	Excelsior Foundry	Belleville, IL	Dec. 6, 2004	Jan. 4, 2005.
53,096	H. Warsaw and Sons, Inc	Milton, PA	Dec. 6, 2004	Jan. 4, 2005.
54,164	Maida Dev. Co	Hampton, VA	Dec. 6, 2004	Jan. 4, 2005.
53,481	Springs Ind., Inc	Fort Mill, SC	Dec. 6, 2004	Jan. 4, 2005.
52,708	Carolina Pad & Paper	Charlotte, NC	Dec. 7, 2004	Jan. 5, 2005.
53,410	NIDEC America Corp	Norwood, MA	Dec. 7, 2004	Jan. 5, 2005.
53,395	DU–CO Ceramics Co	Saxonburg, PA	Dec. 8, 2004	Jan. 5, 2005.
52,372	Code Systems, Inc	Troy, MI	Dec. 16, 2004	Jan. 5, 2005.
52,173	Carr Lowrey Glass Co	Baltimore, MD	Dec. 14, 2004	Jan. 5, 2005.
54,226	EBSCO, Ind	Mulberry, AR	Dec. 14, 2004	Jan. 5, 2005.
54,225	Prado Outdoor	Hot Springs, AR	Dec. 14, 2004	Jan. 5, 2005.
53,509	Armstrong Flooring	Warren, AR	Dec. 14, 2004	Jan. 5, 2005.
53,183	Group Seven Systems, Inc	Lenoir, NC	Dec. 15, 2004	Jan. 5, 2005.
54,714	Carbo Minerals, LP	Wrightstown, WI	Dec. 15, 2004	Jan. 5, 2005.
53,029	American Electric Lighting (Acuity Brands Co.).	Bainbridge, GA	Dec. 16, 2004	Jan. 5, 2005.
53,166	Arvin Meritor	Chickasha, OK	Dec. 17, 2004	Jan. 5, 2005.
52,340	RST&B	Johnsonville, SC	Dec. 20, 2004	Jan. 5, 2005.
52,415	Today's Plastics	Bonneville, AR	Dec. 21, 2004	Jan. 5, 2005.
52,286	L.A. Darling Co	Piggot, AR	Dec. 21, 2004	Jan. 5, 2005.
52,382	Capital Mercury	Gasville, AR	Dec. 21, 2004	Jan. 5, 2005.
52,072	Colson Caster	Jonesboro, AR	Dec. 21, 2004	Jan. 5, 2005.
52,071	Colson Plastic	Monette, AR	Dec. 21, 2004	Jan. 5, 2005.
52,349	Terry Apparel	Marianna, AR	Dec. 21, 2004	Jan. 5, 2005.
52,239	Titan Tire Corp	Des Moines, IA	Dec. 21, 2004	Jan. 5, 2005.
53,353	Lapp Insulator Co	Sandersville, GA	Dec. 21, 2004	Jan. 5, 2005.
52,399	Morelock Enterprises	Bend, OR	Dec. 28, 2004	Jan. 5, 2005.
53,526	Royal Home Fashions	Durham, NC	Dec. 30, 2004	Jan. 5, 2005.
53,912	AK Steel	Butler, PA	Dec. 30, 2004	Jan. 5, 2005.
53,349	Ethan Allen	Beecher Falls, VT	Jan. 3, 2005	Jan. 24, 2005.
54,677	Penn Champ, Inc	East Butler, PA	Jan. 3, 2005	Jan. 24, 2005.
53,298	Fisher Controls	McKinney, TX	Jan. 3, 2005	Jan. 24, 2005.
52,417	Pennsylvania House	Lewisburg, PA	Jan. 4, 2005	Jan. 24, 2005.
52,117	Johnstown America Corp	Johnstown, PA	Jan. 6, 2005	Jan. 24, 2005.
54,108	Bridal Originals (S.A.S.I. Corp.)	Sparta, IL	Jan. 6, 2005	Jan. 24, 2005.
52,136	Fairchild Semiconductor Int., Inc	South Portland, ME	Jan. 11, 2005	Jan. 24, 2005.
51,524	General Electric	Bloomington, IN	Jan. 11, 2005	Jan. 24, 2005.
52,424	Johnstown Corp.	Johnstown, PA	Jan. 11, 2005	Jan. 24, 2005.

ATAA APPENDIX—Continued

[Petitions instituted between 12/06/04 and 3/18/05—Contact: Regina Chapman (202) 693–3547]

TA–W No.	Company name	City, state	Date of application	Date of institution
53,591	Steward	Chattanooga, TN	Nov. 23, 2004	Jan. 4, 2005.
53,134	Dan River, Inc	Ft. Valley, GA	Dec. 9, 2004	Jan. 24, 2005.
52,448	T.S. Trim Industries, Inc	Athens, OH	Nov. 10, 2004	Jan. 24, 2005.
53,573	Elco (Textron)	Rockford, IL	Nov. 24, 2004	Jan. 24, 2005.
52,243	Nestle Purina Pet Foods	St. Joseph, MO	Jan. 24, 2005	Jan. 26, 2005.
53,754	Douglas Quick-it	Walnut Ranch, AR	Jan. 26, 2005	Feb. 9, 2005.
54,313	Pennacle Frames and Accent, Inc	Pigott, AR	Jan. 26, 2005	Feb. 9, 2005.
52,187	General Electric	Jonesboro, AR	Jan. 26, 2005	Feb. 9, 2005.
52,429	Agilent Tech	Fort Collins, CO	Feb. 3, 2005	Feb. 9, 2005.
52,441	Conn-Selmer, Inc	Elkhart, IN	Jan. 27, 2005	Feb. 9, 2005.
51,720	Kidder, Inc	Agawam, MA	Jan. 31, 2003	Feb. 9, 2005.
54,257	MCS Ind. Inc	Easton, PA	Feb. 3, 2005	Feb. 9, 2005.
53,944	Universal Lighting Tech	Madison, AL	Jan. 26, 2005	March 3, 2005.
53,918	BMC Software, Inc	Houston, TX	March 11, 2005	March 15, 2005.

[FR Doc. 05–6411 Filed 3–31–05; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act—Demonstration Grants; Solicitation for Grant Applications—Prisoner Re-Entry Initiative

Announcement Type: New. Solicitation for Grant Applications.

Funding Opportunity Number: SGA/DFA PY–04–08.

Catalog of Federal Domestic Assistance (CFDA) Number: 17.261.

DATES: The closing date for receipt of applications under this announcement is July 13, 2005. Applications must be received no later than 5 p.m. (eastern time). Application and Submission information is explained in detail in Section IV of this SGA.

SUMMARY: The President's Prisoner Re-entry Initiative seeks to strengthen urban communities characterized by large numbers of returning prisoners through an employment-centered program that incorporates mentoring, job training, and other comprehensive transitional services. This program, which involves several Federal agencies, is designed to reduce recidivism by helping inmates find work when they return to their communities, as part of an effort to build a life in the community for everyone. DOL will be awarding grants under this competition to faith-based and community organizations (FBCOs) to be the agencies carrying out this demonstration. The Department of Justice will subsequently award competitive grants to State agencies to provide pre-release services to prisoners who will be returning to the communities served by the DOL grants. The Department of Housing and Urban Development may in future years provide funds under this initiative for housing services and the Department of Health and Human Services is also assisting in the design and implementation of the initiative regarding substance abuse and mental health treatment. We hope to serve 6,250 released prisoners during the first year of this initiative with projects operating in 30 communities across the country. Each lead local agency awarded a DOL grant may choose to directly provide services to released prisoners; provide sub-grants to other FBCOs to provide these services; or use a mixed approach of providing some direct services themselves while using other FBCOs to also provide services. We expect that most lead local agencies will need to sub-grant some portion of their award to other FBCOs. If the lead local agency is using sub-grantees, it will be responsible for providing technical assistance and oversight to these other FBCOs. Lead local FBCOs applying for these grants will identify as part of their application the need in the community that they plan to serve; their proposed FBCO sub-grantees; their plan for serving released prisoners; and their partnerships with the criminal justice system, Workforce Investment Board, housing authority, and mental health and substance abuse treatment providers.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

1. Background

Experts estimate that each year more than 600,000 inmates are released from Federal and State prisons and return to their communities and families. The return of these ex-prisoners threatens the fragile cohesion in many of the most troubled neighborhoods in America.

Without help, a majority of ex-prisoners do in fact return to criminal activity. For example, according to the U.S. Department of Justice, almost three out of five returning inmates will be charged with new crimes within three years of their release from prison and two out of five will be re-incarcerated.

Released prisoners face a myriad of challenges that contribute to a return to criminal activity, re-arrest, and re-incarceration. Joblessness among ex-prisoners has been broadly linked to recidivism rates. Statistics demonstrate that even before incarceration, adult prisoners demonstrate weak or non-existent ties to the workforce. Data from 1997 show that nearly one-third of adult prisoners were unemployed in the month before their arrest, compared to seven percent unemployment in the general population.[1] Post-incarceration, employment rates only get worse—unemployment among ex-prisoners has been estimated at between 25 and 40 percent. Likewise, prisoners also demonstrate low levels of educational attainment. Nineteen percent of adult State prisoners are completely illiterate and 40 percent are functionally illiterate;[2] over half of State parole entrants were not high school graduates and as many as eleven percent had only an eighth grade education or less.[3]

Research has also broadly documented the substance abuse and mental health issues of ex-prisoners—factors that are likely to contribute to poor education levels, un-employability,

[1] Petersilia, 2002. *When Prisoners Come Home: Parole and Prisoner Reentry.*

[2] Rubinstien, 2001 as quoted in Petersilia, 2002.

[3] Petersilia, 2002.

and a return to criminal activity. A study of parolees from State prisons in 1999 found that 84 percent had been using an illegal drug or abusing alcohol at the time of their offense. One-quarter had been alcohol dependent and one-quarter had been IV drug users. Fourteen percent had a mental illness and twelve percent were homeless at the time of their arrest. In some States, nearly one-quarter of parole revocations were related to drug-related violations.[4] Estimates of mental illness among the prison population vary. One study found that sixteen percent of State prison and local jail inmates had a mental illness as did seven percent of Federal prisoners. Among detainees with a mental disorder, 72 percent also had a substance abuse disorder.[5] In a survey of prisoners, one-fourth of male adults and more than one-third of female adults reported having been treated at some time for a mental or emotional problem.[6] Only one-third of adult male detainees and one-fourth of females who needed services for severe mental disorders received treatment in jail.[7]

In returning to criminal activity, ex-prisoners contribute to the presence of violence and crime in already struggling neighborhoods and reduce their chances of living healthy and positive lives and strengthening their families. Research indicates that parental loss is related to a host of poor outcomes for children that include poverty, drug abuse, educational failure, criminal behavior, and premature death. Healthy and consistent relationships between parents and children strengthen the community by positively impacting both parent and child generations. Ex-offenders who maintain strong family and community ties have greater success in reintegrating into the community and avoiding incarceration.[8]

In order to successfully reintegrate into the community it is essential that ex-offenders possess the skills and support necessary to enter and compete in the workforce. The Prisoner Re-entry Initiative is designed to draw on the unique strengths of faith-based and community-based organizations and to rely on them as a primary partner for social service delivery to ex-prisoners by providing a direct link into the communities to which they are returning. It also seeks to coordinate the provision of these services with supervision of these released prisoners to ensure they are held accountable for their behavior upon release.

Community-based partners are well suited for this work because they can provide the resources and infrastructure that are necessary to intervene in the lives of returnees and interrupt cycles of crime and incarceration. This grant will rely heavily on FBCOs to develop relationships and ensure connections to rehabilitation services for the formerly incarcerated.

In addition, FBCOs will be utilized in this grant because evidence indicates that faith-based and community institutions are among the strongest, most trusted institutions in the urban neighborhoods to which the majority of released inmates will return. Local faith-based and community institutions are a significant presence, with many resources at their command—including buildings, volunteers, and a tradition of outreach and service.[9] Churches, mosques, temples, and community centers are especially significant in poor urban areas where FBCOs have historically had a strong presence. The additional trust that many FBCOs have earned outside urban centers is invaluable, since collaboration and communication with public, private and nonprofit providers and policymakers are essential to helping those in resource-poor neighborhoods.

Many FBCOs also possess a proven ability to work collaboratively with other service providers and justice agencies for the delivery of social services. This is an invaluable asset as the FBCOs that do remain in poor urban neighborhoods are typically small and have limited financial resources. For them to effectively ensure connections to job training and social services, it is critical that they build collaborations with other public and private organizations.

A substantial number of inner-city faith-based and community leaders already have re-entry programs. This initiative will help develop and expand these programs that provide job training, housing, mentoring and transitional services that help ex-offenders avoid recidivism and become contributing members of their communities.

Recognizing the work that has already been done under initiatives funded by the U.S. Departments of Justice, Labor, Housing and Urban Development and Health and Human Services, this initiative will complement existing ex-offender initiatives for which the data show positive impacts on rates of recidivism, employment, and substance abuse.

2. Objectives

The Prisoner Re-entry Initiative is designed to strengthen urban communities through an employment-centered program that incorporates mentoring, job training, and other comprehensive transitional services. This program seeks to reduce recidivism by helping inmates find work when they return to their communities, as part of an effort to build a life in the community for everyone. In the local areas served through this initiative, FBCOs will provide comprehensive and coordinated services to ex-offenders in the following three areas:

- *Employment:* Employment is a critical stabilizing factor for ex-offenders and this initiative will stress job placement, job retention, and increasing the earnings potential of released prisoners. FBCOs will offer job training and job placement services in coordination with business, local One-Stop Centers, educational institutions, and other employment providers. Partnering faith-based and community organizations will provide each program participant with work-readiness, soft skills training, mentoring, job placement or referral for job placement, and post-placement support. The applicant must provide educational services and hard skills training through vouchers. These services must be provided by organizations that grant industry-recognized credentials. These vouchers should be used to supplement the limited supply of individual training accounts available through the workforce system.
- *Housing:* Because adequate housing for ex-offenders is an important component of successful reentry, the initiative will stress both satisfactory transitional housing and the movement from transitional to permanent housing. Funds are not currently available under this initiative to provide housing services for participants, but the grants will require that linkages be developed at each site to provide necessary housing services to participants. Subject to the availability of appropriations, Federal funds to provide housing services may be added to these grants in future years.

[4] Hughes, T.A., Wilson, D.J., and Belk, A.J., 2001, *Trends in State Parole, 1990–2000.* Bureau of Justice Statistics, Special Report, NCJ 184735.

[5] Ditton, P.M., 1999, *Mental Health and Treatment of Inmates and Probationers*, Washington, DC: U.S. Department of Justice.

[6] Harlow, C.W., 1998, *Profile of Jail Inmates*, 1996, Bureau of Justice Statistics Special Report, Washington, DC: U.S. Department of Justice, NCJ164620.

[7] Substance Abuse and Mental Health Services Administration, 2002, *Report to Congress on the Prevention and Treatment of Co-occurring Substance Abuse Disorders and Mental Disorders*.

[8] Hairston, 1991; Muston, 1994; Nelson, 1999.

[9] Branch, 2002. Faith and Action: Implementation of the National Faith-Based Initiative for High-Risk Youth, Public/Private Ventures.

• *Mentoring:* FBCOs will provide post-release mentoring and other services essential to reintegrating ex-offenders in coordination with the corrections, parole, and probation structure. Participating adult ex-offenders will be matched with appropriate mentors who will be primarily responsible for supporting the returnee in the community and the work place. Mentors will offer support, guidance, and assistance with the many challenges faced by ex-offenders.

As described above, local FBCOs will be primarily responsible for ensuring connections to and delivering services to program participants to achieve the main goals of long-term and meaningful employment, reduction of criminal involvement, adequate transitional housing, social connection, mental health and substance abuse counseling, and other wraparound support services as needed. Funds to be awarded by the Department of Justice under a separate solicitation will support the activities of the criminal justice partners, both pre-release and during the time released prisoners may be under supervision in the community.

3. Design and Structure of the Initiative

What Is the Overall Structure of This Initiative?

We hope to serve 6,250 released prisoners during the first year of this initiative, with projects operating in 30 communities across the country. Under this announcement, DOL will be awarding grants to FBCOs to oversee the provision of re-entry services in their community. DOJ subsequently will award competitive grants to State agencies to provide pre-release services for prisoners returning to the communities that are awarded DOL grants.

Each lead local agency awarded a DOL grant may choose to directly provide services to released prisoners; provide sub-grants to other FBCOs to provide these services; or use a mixed approach of providing some direct services themselves while using other FBCOs to also provide services. We expect that most lead local agencies will need to sub-grant some portion of their award to other FBCOs. If the lead local agency is using sub-grantees, it will be responsible for providing technical assistance and oversight to these other FBCOs.

FBCOs applying for these grants will identify as part of their application the need for this Federal support in the community that they plan to serve; their FBCO sub-grantees; and their plan for providing services to released prisoners. They must also demonstrate that they have established partnerships with the criminal justice system, local Workforce Investment Board, and the local housing authority. They must also identify their plan to leverage other Federal, State, or local funding, as well as private funding sources, to provide other wraparound support services that are not directly funded through this initiative such as substance abuse and mental health treatment.

Who Will Be the Grant Recipients Under This Initiative?

The recipients of the DOL grants will be faith-based and community organizations that are located in or have a staff presence in the urban community being served, and that have the capacity to serve as the lead agency under this initiative, which in some cases will mean providing technical assistance and oversight to other FBCOs.

What Types of Communities Will Be the Focus of These Grants?

We are looking to award grants in urban communities that are heavily impacted by large numbers of prisoners returning to their community each year, particularly those affected by high rates of recidivism. A large metropolitan area could include more than one community appropriate for a project under this initiative. For example, DOL could award grants to lead FBCOs in more than one community within the City of Los Angeles and surrounding areas. Therefore, you may propose to serve a sub-area within a larger metropolitan area or an entire small or medium-sized city. Given the amount of funds available and the number of communities that we expect to serve, we expect that an average of 200 released prisoners per community will be served in the first year.

How Large a Grant Should I Apply for?

We anticipate that FBCOs will receive grants of approximately $660,000 to cover their first year of operations. You may request a larger or smaller amount based on the size of the community that you propose to serve, but deviations from this amount must be clearly justified in your application.

How Much Money Should the Lead FBCO Reserve for Providing Program Administration, Including Technical Assistance and Oversight of the Small FBCOs?

Limit the share of funds reserved for program administration, including technical assistance and oversight, to 10 percent of the amount for which you are applying. The remaining funds should be used to provide services to returning prisoners. The application should specify the share of funds the applicant will use for program administration versus services.

If the Lead FBCO Is Planning To Make Sub-grants to Other FBCOs, Does it Need To Make These Awards Competitively?

Grantees are required to have written procurement standards under DOL regulations (29 CFR 95.44). The selection of sub-grantees should be conducted, to the maximum extent practicable, in a manner designed to ensure full and open competition (see 29 CFR 95.43). Where a provider is selected non-competitively, the grantee must be able to justify why it was not practicable to compete the selection, in accordance with its procurement standards. The fact that the sub-awardee was identified in the grant application does not alone suffice to demonstrate such impracticability. The decision and justification for a non-competitive selection is susceptible to questioning upon audit. DOL procurement regulations at 29 CFR Part 95 do not contain standard provisions for non-competitive selections.

In Preparing Their Applications, How Much Effort Should FBCOs Put Into Identifying the Small FBCOs and Local Partnerships for These Projects?

If you are planning to provide sub-grants to others FBCOs, you should use the three-month application period to identify and competitively select these sub-grantees and develop strong partnerships in the community that you propose to serve. Depending on your procurement procedures, this could be sufficient time for you to conduct a competition or to otherwise select the FBCOs that will be your sub-grantees.

Lead FBCOs are expected to demonstrate connections to the criminal justice system that will allow referrals of released prisoners who will be returning to the community, as well as coordination with parole and probation officers. We also encourage lead FBCOs to use this three-month period to develop or strengthen partnerships with the Workforce Investment Board (WIB) so that program participants will be able to receive services from local One-Stop Centers. The application must include letters of support from the local Workforce Investment Board and from cooperating entities in the criminal justice system. Lead FBCOs should also demonstrate linkages and cooperative partnerships with local housing authorities, substance abuse and mental health treatment providers, and other

organizations that provide services necessary to meet the needs of returning prisoners.

What if Two or More FBCOs Submit Separate Applications To Serve the Same Community or Metropolitan Area?

If more than one proposal to serve the same community or metropolitan area are rated highly, we will determine whether the community or metropolitan area is large enough to support more than one project.

Can a National or Regional FBCO Apply To Serve Multiple Metropolitan Areas?

Yes, but you must submit a separate application for each metropolitan area that you propose to serve and you must demonstrate that you have an existing presence in each metropolitan area for which you apply. Single proposals applying to serve multiple metropolitan areas will not be considered.

Can an FBCO Submit Two or More Applications For the Same Metropolitan Area?

We expect that most FBCOs will propose to serve multiple communities within a metropolitan area (for example, different neighborhoods). In most cases, we expect to receive a single application covering all communities that are proposed to be served within a single metropolitan area. However, for very large metropolitan areas, you may choose to submit separate proposals for distinct communities (*e.g.*, the Bronx and Brooklyn).

What Is the Target Group To Be Served Under These Grants?

Generally, grantees should plan to serve individuals 18 years old and older who have been convicted as an adult and imprisoned pursuant to an Act of Congress or a State law, and who have never been convicted of a violent or sex-related offense. Additional information on eligible beneficiaries is provided in Section III (1).

What Are Allowable Uses of Grant Funds?

DOL grant funds can be used to provide a variety of services to returning prisoners, including workforce development services, job training, on-the-job training, work experience, basic skills remediation, counseling and case management, mentoring, and other reentry services. DOL grant funds may not be used for substance abuse treatment services. DOL grant funds should also not be used for pre-release services other than recruitment, introductory meetings, orientations, and other activities necessary to establishing program connections with prisoners prior to their release. The DOJ grant to State agencies will provide pre-release services.

Will There Be a Planning Period After Grant Award?

FBCOs will be allowed up to four months to put into place their various local partnerships and to hire staff. The probability of continuation of grants beyond the first year will be greatly reduced for those grantees that do not begin providing services by the end of the first four months.

How Will Success Be Measured Under These Grants?

Four outcome measures will be used to measure success in these grants: entered employment rate, employment retention rate, earnings change, and recidivism rate. In addition, grantees will report on a number of leading indicators that will serve as predictors of success. Leading indicators will include: Enrollment rate; participation in education/training, workforce preparation, mentoring, and community service; attainment of degrees and certificates; reduced substance abuse; proportion of enrollees in stable housing; and proportion of enrollees complying with parole conditions. In applying for these grants, FBCOs and their sub-grantees agree to submit updated Management Information System (MIS) data on enrollee characteristics, services provided, placements, outcomes, and follow-up status.

Will There Be an Evaluation of This Initiative?

There will be a formal evaluation of this initiative. In applying for these grants, lead FBCOs and their sub-grantees agree to cooperate in this evaluation by providing enrollment and participation data and other information during all years of the project and to participate in a random assignment evaluation during the third and fourth years of the project.

4. Guidelines for Technical Proposal

How Should I Organize My Technical Proposal?

Organize your technical proposal to answer the questions below. Each proposal must apply for funds for a single metropolitan area. The criteria below will be used to evaluate your proposal. Points will be deducted from applications that are not responsive to these questions. The technical questions are as follows:

#1. What is the need for the project in the community to be served by the grant? (20 points) Identify the need in the community that you propose to serve through your grant and make a case for the need for the project in that area. Demonstrate how your community meets the requirement of being an urban area heavily impacted by high numbers of returning prisoners and high rates of recidivism. Use census tract data from the 2000 census to show the population of the community, its poverty rate, and its unemployment rate. Use local law enforcement data to show the crime rate and recidivism rate for the community and how this compares with the State or county as a whole. If there are particular neighborhoods within the city in which you plan to focus this grant, describe these neighborhoods and provide available data specific to that area. We recognize that data might not be readily available on the number of offenders returning to your community who have never committed a violent crime, and so for the purpose of establishing need (but not for determining eligibility for services once the program starts) you can use data on the number of returning prisoners whose *most recent offense* was non-violent. Use data that is available from the State to estimate the number of non-violent offenders returning each year to your community, and how this compares to other areas in the State. If possible, provide such data for the specific neighborhoods that you plan to serve rather than county-wide data. If such data are not available from your State at the sub-county level, data on the number of returning non-violent prisoners by county from the National Corrections Reporting Program (NCRP) will be available on ETA's web page at www.doleta.gov. Please note, however, that the list on our web site will only include the 108 counties with the largest number of returning prisoners, and will not include the States of Alaska, Delaware, Idaho, Massachusetts, Montana, New Mexico, Rhode Island, Vermont, and Wyoming. You can apply to serve a community in a county that is not on this list. If you are applying from a community in a county that is not included, provide the best data that is available. Applicants will not be penalized for being in a State that does not participate in the NCRP reporting system.

#2. What Is the Project Design and Service Strategy? (25 points) Describe the project design and service strategy for each of the following required program components.

How Do You Plan To Increase the Employment Opportunities of Released Prisoners Who You Will Be Serving?

Describe how you will use funds available under this grant to increase the employment opportunities of released prisoners. You and your FBCO sub-grantees can directly provide assessment services, work-readiness training, job placement, and post-placement support. Vouchers or another mechanism of choice should be provided to participants needing educational services or hard skills training. These vouchers should be used to supplement the limited supply of individual training accounts available through the workforce investment system. Educational services and hard skills training must be provided by organizations that grant industry-recognized credentials. Discuss how you will conduct an initial assessment of each individual's educational achievement and employability. Describe how you will provide job readiness training for individuals in your program, and help them explore career options. Describe the follow-up services that you will provide to individuals. Be sure to indicate how many direct-service staff will be hired with these grant funds.

Often a condition of release is to find employment quickly. How will you help these persons find a job soon after their release from prison? Describe your use of job developers and career counselors. Describe how you will work with employers to identify and create job openings for these persons. Discuss possible ways of building career ladders into your job placements. Discuss how you will emphasize a demand-driven approach in job development, seeking jobs in high-growth and high-demand occupations. Describe links to local One-Stop Centers and service providers under the Workforce Investment Act in the urban area that you will serve. Discuss strategies to ensure that released offenders have the forms of identification needed to obtain employment. Discuss the possibility of having local employers serve on an advisory board for you to develop job placements that are both geared to local demand occupations and open to ex-offenders. Discuss whether you will be using the Work Opportunity Tax Credit or Federal Bonding Program in helping released prisoners find jobs. Discuss the possible use of on-the-job training contracts to help place released prisoners in jobs in which they can learn a skill. Discuss transitional employment approaches that allow persons with little or no labor market experience to gradually progress to jobs with more responsibility and higher pay. Will you offer Try-Out Employment packages to employers in which you pay for the first several weeks of wages to see if the employee is going to succeed?

Describe possible links to local community colleges and trade schools for individuals seeking job training or to continue their education in the urban area that you will be serving. Many released prisoners will have low reading levels. How will you increase the literacy levels of these individuals? Many released prisoners will also lack a high school diploma. How will you assist them to receive a GED or attain a high school diploma? How do you plan to increase the employment opportunities for released prisoners who have disabilities, including psychiatric, learning, and developmental disabilities?

Also discuss how you will make sure that individuals you serve have transportation to their work sites. Will you assist individuals to learn to drive and get a drivers license? Will you help individuals resolve warrants for past driving offenses that may prevent them from driving now? Also discuss whether you will pay for work clothes and work tools to get individuals started in jobs. Also discuss the sustainability of these employment activities after Federal grant funds cease.

How Will You Provide Housing Services to Released Prisoners?

Funds are not currently available under this initiative to provide housing services for participants, but the grants will require that linkages be developed in the community to provide necessary housing services to participants. Describe potential linkages with local agencies that provide housing services. Describe the technical assistance that you will provide to sub-grantees to help them develop such linkages. Discuss potential partnerships to provide both transitional housing and permanent housing to released prisoners. Please note that McKinney Vento Supportive Housing Program (SHP) transitional and permanent housing funded through the Continuum of Care application process cannot be used for ex-offenders. Discuss options for assisting released prisoners who need to put a deposit on an apartment. Discuss how you will ensure that appropriate housing services are provided to released prisoners with physical and mental disabilities. Please note that Federal funds to provide housing services may be available for these grants in future years. If funds are made available for these purposes grantees will be required to expend funds in accordance with applicable Department of Housing and Urban Development regulations.

How Will You Provide Mentoring for the Released Prisoners Who You Will Be Serving?

We expect that mentoring will be a key part of this initiative; that you will be able to offer mentors to each of the released prisoners who desire these services enrolled during the first year; and that mentors will be provided by faith-based and community organizations. Discuss your plans for providing mentors to released prisoners. Describe any experience that the lead FBCO has in operating mentoring programs or how you will develop this capacity. If you are using sub-grantees, describe the experience that your FBCO sub-grantees have in operating mentoring programs or how you will develop this capacity in them. How will the lead FBCO involve other local faith-based and community organizations in recruiting mentors for this project? What training will you provide to mentors? How will you make sure that appropriate mentoring is available to released prisoners with physical and mental disabilities? How do you plan to match the released prisoners with appropriate mentors, taking into consideration factors such as age, gender, life experiences, and career interests? If you plan to make use of peer mentoring in your program, are you aware of possible State prohibitions against ex-offenders associating with known felons? Do you plan to use former prisoners that have successfully reintegrated back into society to mentor recently released prisoners? Do you expect to be able to sustain this mentoring component after Federal grant funds cease? How will you ensure that the mentoring programs funded through this project comply with Workforce Investment Act and Establishment Clause guidelines that restrict Federal funding of inherently religious activities (worship, instruction, and proselytizing) and guarantee program participants' rights to free exercise of religion?

How Will You Secure Alcohol and Drug Treatment and Other Health and Social Services to Released Prisoners Who Require Such Assistance?

Provide examples of local partnerships that you have developed to secure support services for released prisoners. Because grant funds cannot be used to provide alcohol and drug treatment, give examples of other resources that are available to provide

such services. Also give examples of local partnerships you have developed to provide physical and mental health services. Many released prisoners will be under court orders to pay child support and/or restitution. How will you assist these individuals in complying with these court orders? Discuss whether you will help individuals open checking accounts at banks. How will you make sure that you have mental health services available to released prisoners who need such services? Discuss plans for providing any other social services that you anticipate that returning prisoners will need. It is also important to be able to demonstrate the ability to provide access to and coordination with mainstream health, social services, and employment resources for which non-violent ex-offenders may be eligible. These programs include, but are not limited to, Medicaid, Social Security Insurance Disability Benefits, Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Stamps, and services funded through the Mental Health Block Grant and Substance Abuse Block Grant, Workforce Investment Act, and Veterans Health Care.

#3. How will the lead FBCO and any sub-grantees work with the criminal justice system in having released prisoners referred to the program and in coordinating program services with community supervision and law enforcement agencies? (20 points) Reentry by its very nature must start behind the walls of an institution, whether the institution is a prison, jail, or halfway house. As a result, a cooperative partnership with corrections agencies is a critical component of this initiative. Applicants must demonstrate the existence of a collaboration with corrections agencies that will:

- Identify potential program participants prior to release, including a formalized referral and intake process from State or Federal prisons, and in some case, local jails.
- Identify specific needs of those participating in the program.
- Enable employment with identified program participants to begin within 6 months after release.
- Facilitate access to corrections facility for work with offenders prior to release.
- Coordinate provision of services and mentoring with community supervision.

Released offenders often have terms of post-release supervision that may include reporting requirements, drug and/or alcohol treatment, counseling, etc. Failure to meet the terms of release often results in revocation of probation or parole. A critical component of a successful application will be a demonstration of a partnership between the applicant and local representatives of law enforcement, including police, probation and parole, to ensure coordination and cooperation in accessing services to fulfill these terms of release. Please note that restrictions on pre-release services are discussed in section I.3.

#4. What is the quality and experience of your organization to serve as a lead local agency in overseeing this initiative? (25 points) Describe your organization and its qualifications for serving as the lead local FBCO in this initiative. How long has your organization been in existence? What services and programs has it provided in the urban area to be served by the grant? If you are planning to use sub-grantees, discuss previous instances in which the organization has overseen or coordinated the work of other FBCOs. Discuss previous instances in which the organization has provided technical assistance to other FBCOs. Discuss the experience of the organization in operating social service programs, including the results of those programs (in terms of individual service outcomes). Discuss any specific experience relating to working with community-based and faith-based organizations. Describe your experience working with criminal justice agencies. Describe the qualifications of key staff persons of your organization who may work on this project, and their specific experience relating to this project. Also describe previous experience of the organization in operating grants from either Federal or non-Federal sources. Describe the fiscal controls in place in your organization. What is your organization's current annual budget? Discuss how you will provide fiscal oversight of sub-grantees. Describe your management plan for overseeing and providing technical assistance to any sub-grantees.

If you plan to use sub-grantees, describe the faith-based and community organizations that you propose to use for the project. Describe their experience in operating workforce and social service programs and the results of those programs. Describe any specific experience operating programs for persons with alcohol or drug addictions and persons with psychiatric disabilities. Describe any specific experience recruiting or overseeing mentors, and the number of mentors they have involved in their programs. Describe the experience and qualifications of their staff persons who may have a role in this project.

#5. What will be the results and cost-effectiveness of your project and what non-Federal funds will you be able to leverage for the project? (10 points) Describe the costs of this project in relation to the expected benefits of services provided to released prisoners. For example, compare the costs of incarceration for a year with your expected cost-per-participant. Also, compare your per-participant training and employment costs with those of other institutions. Also discuss your expected performance outcomes (in terms of entered employment rate, employment retention rate, earnings change, and recidivism rate) and your plan for collecting, tracking, and reporting data on these outcomes. Describe any non-Federal funds that you expect to be able to leverage for this project.

II. Award Information

What Type of Assistance Instrument Will Be Awarded Under This Initiative?

Funds will be awarded under this initiative through grants for an initial period of one year, with up to three additional option years depending on the availability of funds and demonstrated performance.

What Is the Expected Number of Awards?

We expect to award grants for 30 projects.

What Is the Total Amount Expected To Be Awarded Through This Announcement?

DOL expects to award a total of $19.84 million in initial grants through this announcement.

What Is the Expected Amount of Individual Awards?

DOL expects that initial awards will average $660,000.

III. Eligibility Information

1. Eligible Applicants

Am I an Eligible Applicant for These Grants?

You are eligible to apply for the DOL grants if you are a faith-based or community-based organization and are located within or have a staff presence within the urban community that is the focus of your grant application. Urban communities are those that are located within Urbanized Areas or Urban Clusters, as designated by the Census Bureau in the 2000 Census.

National or regional FBCOs may submit separate proposals for more than

one metropolitan area, but applicants must demonstrate that they have a presence in each metropolitan area for which they submit a separate application for each metropolitan area.

Can an FBCO Be Listed as a Sub-Grantee in More Than One Application?

Yes, but if an FBCO is listed as a sub-grantee in two winning proposals, it will only be allowed to receive a sub-grant award from one grant.

Who Is Eligible To Be Served Under These Grants?

Individuals 18 years old and older who have been convicted as an adult and imprisoned pursuant to an Act of Congress or a State law, and who have never been convicted of a violent or sex-related offense can be served with these grants. Individuals should be enrolled in the program within 180 days after their release from prison or a halfway house. Up to 10 percent of individuals served can be enrolled over 180 days from their prison release. Services may be provided to individuals who have been released from prison and are residing in a halfway house.

Non-violent offenses are those offenses described in State and Federal statutes encompassing property crime, drug offenses, and public order crimes. Property crimes include, but are not limited to: Burglary, larceny, motor vehicle theft, and receiving stolen property. Drug crimes include, but are not limited to: Possession of a controlled substance, trafficking in a controlled substance, and possession of drug paraphernalia. Public order offenses include, but are not limited to: commercial vice, gambling, animal cruelty and drinking while intoxicated.

If an FBCO exhausts its supply of eligible offenders during the course of the grant period, it may request approval from the DOL grant officer to expand its eligible population. Approval of such a request will require the use of a validated risk assessment tool and consideration of the nature of any prior violent offense in consultation with the Department of Justice.

This program is subject to the provisions of the ''Jobs for Veterans Act,'' Public Law 107–288, which provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the Department of Labor. Please note that, to obtain priority of service, a veteran must meet the program's eligibility requirements. ETA Training and Employment Guidance Letter (TEGL) No. 5–03 (September 16, 2003) provides general guidance on the scope of the veterans priority statute and its effect on current employment and training programs, and additional guidance is available at the ''Jobs for Veterans Priority of Services Website'' (*http://www.doleta.gov/programs/VETS/*).

2. Cost Sharing or Matching

Is Cost Sharing or Matching Required for These Grants?

No, cost sharing or matching is not required, although leveraging of non-Federal resources is strongly encouraged. In addition, applicants will be selected, in part, based on their plans to tap such resources to support program activities.

IV. Application and Submission Information

1. Address To Request Application Package

This SGA includes all information and forms needed to apply for this funding opportunity.

2. Content and Form of Application Submission

What Are the Content and Form of Application Submission?

Each application must address one or more urban communities within a single metropolitan area. Applicants must submit an original signed application and three hard copies to the Department of Labor. The proposal must consist of two (2) separate and distinct parts. Applications that fail to adhere to the instructions in this section will be considered non-responsive and will not be considered.

Part 1 of the proposal is the Cost Proposal and must include the following three items:

- The Standard Form (SF) 424, ''Application for Federal Assistance'' (Appendix A). (also available at *http://www.whitehouse.gov/omb/grants/sf424.pdf*). The SF 424 must clearly identify the applicant and be signed by an individual with authority to enter into a grant agreement. Applicants are required to have a Dun and Bradstreet (DUNS) number which is a nine-digit identification number that uniquely identifies business entities. To obtain a DUNS number, access the Web site: *www.dunandbradstreet.com* or call 1–866–705–5711. Applicants must supply their DUNS number in item #5 of the new SF–424 issued by OMB (rev. 9–2003).
- The Budget Information Form SF–424A (Appendix B). (also available at *http://www.whitehouse.gov/omb/grants/sf424a.pdf*). In preparing the Budget information form, the applicant must provide a concise narrative explanation for each line item to support the request and should discuss precisely how the administrative costs support the project goals. Also provide a detailed back-up budget that includes the number of staff to be hired by job title.

The Equal Employment Opportunity Survey Form (Appendix C) is an optional part of the Cost Proposal.

Part 2 of the application is the Technical Proposal, which demonstrates the applicant's capabilities to plan and implement the Prisoner Reentry Initiative grant project in accordance with the provisions of this solicitation. The guidelines for the content of the Technical Proposal are provided in Section I(4) of this SGA. The Technical Proposal is limited to twenty (20) double-spaced single-sided pages with 12 point text font and one-inch margins. In addition, the applicant must provide letters of support from the criminal justice agencies which will release the prisoners and supervise their release in the community and the local Workforce Investment Board; a list of proposed staff positions to be funded by the grant; a Time Line outlining project activities; and a two-page Executive Summary. These additional materials do not count against the 20-page limit for the Technical proposal, but may not exceed fifteen (15) pages.

3. Submissions Dates, Times, and Address

Will There Be Informational Conferences for Organizations Planning To Apply?

There will be three information conferences held for this grant competition. The dates and locations of these information conferences will be posted concurrently on ETA's Web site at *http://www.doleta.gov* and DOJ's Web site at *http://www.ojp.usdoj.gov/rentry*. For potential applicants who cannot attend one of these conferences, a tape of the first conference will be available on both Web sites.

What Is the Closing Date for Applications?

The closing date for receipt of applications under this announcement is July 13, 2005. Applications must be received at the address below no later than 5 p.m. (eastern time). Applications sent by e-mail, telegram, or facsimile (fax) will not be accepted. Applications that do not meet the conditions set forth in this notice will not be considered. No exceptions to the mailing and delivery

requirements set forth in this notice will be granted.

To What Address Should I Send My Application?

Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Eric D. Luetkenhaus, Reference SGA/DFA PY04–08, 200 Constitution Avenue, NW., Room N–4438, Washington, DC 20210. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand delivered proposals will be received at the above address. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date.

Applicants may apply online at *http://www.grants.gov*. Any application received after the deadline will not be accepted. For applicants submitting electronic applications via Grants.gov, it is strongly recommended that you immediately initiate and complete the ''Get Started'' steps to register with Grants.gov at *http://www.grants.gov/GetStarted*. These steps will probably take multiple days to complete which should be factored in to your plans for electronic application submission in order to avoid facing unexpected delays that could result in the rejection of your application.

Late Applications: Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it (a) was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (that is, no later than July 8, 2005) or (b) was sent by U.S. Postal Service Express Mail or Online to addressee not later than 5 p.m. at the place of mailing or electronic submission one working day prior to the date specified for receipt of applications (that is, no later than July 12, 2005). It is highly recommended that online submissions be completed one working day prior to the date specified for receipt of applications to ensure that the applicant still has the option to submit by U.S. Postal Service Express Mail in the event of any electronic submission problems. ''Post marked'' means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the package. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

4. Intergovernmental Review

Is an Intergovernmental Review Required?

This funding opportunity is not subject to Executive Order (EO) 12372, ''Intergovernmental Review of Federal Programs.''

5. Funding Restrictions

Are There Funding Restrictions?

All proposal costs must be necessary and reasonable in accordance with Federal guidelines. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, *e.g.,* 29 CFR 95.27; Non-Profit Organizations—OMB Circular A–122. Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowed in accordance with the applicable Federal Cost Principles or other conditions contained in the grant. Applicants will not be entitled to reimbursement of pre-award costs.

The government is prohibited from providing direct support to religious activity.[10] See 29 CFR part 2, subpart D. Provision relating to the use of indirect support (such as through vouchers) are at 29 CFR 2.33(c) and 20 CFR 667.266. These grants may not be used to directly support religious instruction, worship, prayer, proselytizing or other inherently religious practices. Neutral, secular criteria that neither favor nor disfavor religion must be employed in the selection of grant and sub-grant recipients. In addition, under the WIA and DOL regulations implementing the Workforce Investment Act, a recipient may not use direct Federal assistance to train a participant in religious activities, or employ participants to construct, operate, or maintain any part of a facility that is used or to be used for religious instruction or worship. *See* 29 CFR 37.6(f). Under WIA, ''no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.''

DOL grant funds should not be used for pre-release services other than recruitment, introductory meetings, orientations, and other activities necessary to establishing program connections with prisoners prior to their release. This restriction on pre-release services does not apply to halfway houses. Additionally, grant funds should not be used to provide substance abuse treatment. Such treatment should be made available to persons enrolled in the program using resources available through partnerships with other agencies.

6. Other Submission Requirements

Can Applications Be Withdrawn?

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

V. Application Review Information

1. Criteria for Review

What Will Be the Criteria for Award?

Panelists will rate proposals based on the following criteria, which are explained in detail in Section I(4) of this SGA.

(1) Need in the city and neighborhoods to be served (20 points);

(2) Project design and service strategy, including sustainability (25 points);

(3) Connections to the criminal justice system for referring prisoners to the program and coordinating services upon release (20 points);

(4) Quality and experience of lead FBCO, including ability to manage the project (25 points);

(5) Cost-effectiveness and leveraging of non-Federal resources (10 points).

2. Review and Selection Process

How Will Applications Be Reviewed and Selected?

Proposals that are timely and responsive to the requirements of this SGA will be rated against the criteria listed above by an independent panel comprised of representatives from DOL, DOJ, HUD, and HHS. The panel recommendations to the Grant Officer

[10] The term ''direct'' support is used to describe funds or other support that are provided ''directly'' by a governmental entity or an intermediate organization with the same duties as a governmental entity, as opposed to funds that an organization receives ''indirectly'' as the result of the genuine and independent private choice of a beneficiary within the meaning of the Establishment Clause of the U.S. Constitution.

are advisory in nature. The Grant Officer may consider any information that comes to his or her attention. Final award decisions will be based on the best interests of the government, including consideration of geographic balance, program balance, and diversity. The Department may elect to award grants either with or without discussions with the applicant. In situations without discussion, an award will be based on the applicant's signature on the SF 424, which constitutes a binding offer.

VI. Award Administration Information

1. Award Notices

Award Notices—All award notifications will be made by mail and posted on the ETA home page at *http://www.doleta.gov*. Non-selected applicants will be notified by mail.

2. Administrative and National Policy Requirements

All grantees, including faith-based organizations, will be subject to all applicable Federal laws (including provisions of appropriation laws), regulations, and the applicable Office of Management and Budget (OMB) Circulars. The grant(s) awarded under this SGA must comply with all provisions of this solicitation and will be subject to the following administrative standards and provisions, as applicable to the particular grantee:

a. 20 Code of Federal Regulations (CFR) Part 667.220. (Administrative Costs).

b. Non-Profit Organizations—Office of Management and Budget (OMB) Circulars A–122 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

c. Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

d. All entities must comply with 29 CFR Parts 93 and 98, and, where applicable, 29 CFR Parts 96 and 99.

e. In accordance with Section 18 of the Lobbying Disclosure Act of 1995, Public Law 104–65 (2 U.S.C. 1611) non-profit entities incorporated under Internal Revenue Service Code section 501(c)(4) that engage in lobbying activities are not eligible to receive Federal funds and grants.

f. 29 CFR part 2, subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries;

g. 29 CFR part 30—Equal Employment Opportunity in Apprenticeship and Training;

h. 29 CFR part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964;

i. 29 CFR part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance;

j. 29 CFR part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor;

k. 29 CFR part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor;

l. 29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance;

m. 29 CFR part 37—Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA).

Note: Except as specifically provided in this Notice, DOL/ETA's acceptance of a proposal and an award of Federal funds to sponsor any programs(s) does not provide a waiver of any grant requirements and/or procedures.

3. Reporting

What Reporting Will Be Required Under These Grants?

The grantee is required to provide the reports and documents listed below:

Quarterly Financial Reports. A Quarterly Financial Status Report (SF 269) is required until such time as all funds have been expended or the grant period has expired. Quarterly reports are due 30 days after the end of each calendar year quarter. Grantees must use ETA's On-Line Electronic Reporting System.

Quarterly Progress Reports. The grantee must submit a quarterly progress report to the designated Federal Project Officer within 30 days after the end of each quarter. Two copies are to be submitted providing a detailed account of activities undertaken during that quarter. DOL may require additional data elements to be collected and reported on either a regular basis or special request basis. Grantees must agree to meet DOL reporting requirements. The quarterly progress report should be in narrative form and should include:

1. In-depth information on accomplishments, including project success stories, upcoming grant activities, and promising approaches and processes.

2. Progress toward performance outcomes, including updates on product, curricula, and training development.

MIS Reports. FBCOs and their sub-grantees will be required to submit updated MIS data on enrollment, services provided, placements, outcomes, and follow-up status. A government-procured MIS system will be provided to all grantees. Grantees will be required to have industry-standard computer hardware and high-speed Internet access in order to use the MIS system. Grant funds may be used with the prior approval of the Grant Officer to upgrade computer hardware and Internet access to enable projects to use the MIS system.

Quarterly financial reports, quarterly progress reports, and MIS data will all be provided electronically.

VII. Agency Contacts

Any questions regarding this SGA should be *faxed* to Kevin Brumback, Grants Management Specialist, Division of Federal Assistance, FAX number (202) 693–2705. (This is not a toll-free number). You must specifically address your FAX to the attention of Kevin Brumback and should include SGA/DFA PY 04–08, a contact name, fax and phone number.

FOR FURTHER INFORMATION CONTACT: Please contact Kevin Brumback, Grants Management Specialist, Division of Federal Assistance, on (202) 693–3381. (This is not a toll-free number). This announcement is also being made available on the ETA Web site at *http://www.doleta.gov/sga/sga.cfm* and *http://www.grants.gov.*

Signed in Washington, DC, this 29th day of March, 2005.

Eric D. Luetkenhaus,

Grant Officer, Employment and Training Administration.

Appendix A: SF–424 Application for Federal Assistance

Appendix B: SF–424A Budget Form

Appendix C: OMB Survey N. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

Version 7/03

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Pre-application ☐ Construction ☐ Non-Construction	**2. DATE SUBMITTED**	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	**Organizational Unit:** Department:
Organizational DUNS:	Division:
Address: Street:	**Name and telephone number of person to be contacted on matters involving this application (give area code)** Prefix: First Name:
City:	Middle Name
County:	Last Name
State: Zip Code	Suffix:
Country:	Email:
6. EMPLOYER IDENTIFICATION NUMBER *(EIN):* ☐☐-☐☐☐☐☐☐☐	Phone Number (give area code) Fax Number (give area code)
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐ Other (specify)	**7. TYPE OF APPLICANT:** (See back of form for Application Types) Other (specify)
	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE (Name of Program):	**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**
12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*	
13. PROPOSED PROJECT Start Date: Ending Date:	**14. CONGRESSIONAL DISTRICTS OF:** a. Applicant b. Project

15. ESTIMATED FUNDING:		**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**
a. Federal	$ .00	a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE:
b. Applicant	$ .00	
c. State	$ .00	
d. Local	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
e. Other	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
f. Program Income	$ .00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**
g. TOTAL	$ .00	☐ Yes If "Yes" attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative		
Prefix	First Name	Middle Name
Last Name		Suffix
b. Title		c. Telephone Number (give area code)
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:	Item:	Entry:
1.	Select Type of Submission.	11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).	12.	List only the largest political entities affected (e.g., State, counties, cities).
3.	State use only (if applicable).	13	Enter the proposed start date and end date of the project.
4.	Enter Date Received by Federal Agency Federal identifier number: If this application is a continuation or revision to an existing award, enter the present Federal Identifier number. If for a new project, leave blank.	14.	List the applicant's Congressional District and any District(s) affected by the program or project
5.	Enter legal name of applicant, name of primary organizational unit (including division, if applicable), which will undertake the assistance activity, enter the organization's DUNS number (received from Dun and Bradstreet), enter the complete address of the applicant (including country), and name, telephone number, e-mail and fax of the person to contact on matters related to this application.	15	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.	16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
7.	Select the appropriate letter in the space provided. A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School District I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) O. Not for Profit Organization	17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
8.	Select the type from the following list: • "New" means a new assistance award. • "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. • "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision enter the appropriate letter: A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration	18	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)
9.	Name of Federal agency from which assistance is being requested with this application.		
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.		

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

Previous Edition Usable

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

OMB No. 1890-0014 Exp. 1/31/2006

Purpose: The Federal government is committed to ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. In order for us to better understand the population of applicants for Federal funds, we are asking nonprofit private organizations (not including private universities) to fill out this survey.

Upon receipt, the survey will be separated from the application. Information provided on the survey will not be considered in any way in making funding decisions and will not be included in the Federal grants database. While your help in this data collection process is greatly appreciated, completion of this survey is voluntary.

Instructions for Submitting the Survey: If you are applying using a hard copy application, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it along with your application package. If you are applying electronically, please submit this survey along with your application.

Applicant's (Organization) Name: _____

Applicant's DUNS Number: _____

Grant Name: _____ **CFDA Number:** _____

1. Does the applicant have 501(c)(3) status?

   ☐ Yes ☐ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

   ☐ 3 or Fewer ☐ 15-50
   ☐ 4-5 ☐ 51-100
   ☐ 6-14 ☐ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

   ☐ Less Than $150,000
   ☐ $150,000 - $299,999
   ☐ $300,000 - $499,999
   ☐ $500,000 - $999,999
   ☐ $1,000,000 - $4,999,999
   ☐ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

   ☐ Yes ☐ No

5. Is the applicant a non-religious community-based organization?

   ☐ Yes ☐ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

   ☐ Yes ☐ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

   ☐ Yes ☐ No

8. Is the applicant a local affiliate of a national organization?

   ☐ Yes ☐ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

Provide the applicant's (organization) name and DUNS number and the grant name and CFDA number.

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 2202-4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, D.C. 20202-4725

OMB No. 1890-0014 Exp. 1/31/2006

[FR Doc. 05–6484 Filed 3–31–05; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from the date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5, Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decision being modified.

Volume I

Massachusetts
MA20030001 (Jun. 13, 2003)
MA20030002 (Jun. 13, 2003)
MA20030003 (Jun. 13, 2003)
MA20030004 (Jun. 13, 2003)
MA20030017 (Jun. 13, 2003)
MA20030018 (Jun. 13, 2003)
MA20030020 (Jun. 13, 2003)
MA20030021 (Jun. 13, 2003)

New York
NY20030002 (Jun. 13, 2003)
NY20030004 (Jun. 13, 2003)
NY20030005 (Jun. 13, 2003)
NY20030007 (Jun. 13, 2003)
NY20030008 (Jun. 13, 2003)
NY20030018 (Jun. 13, 2003)
NY20030021 (Jun. 13, 2003)
NY20030022 (Jun. 13, 2003)
NY20030025 (Jun. 13, 2003)
NY20030026 (Jun. 13, 2003)
NY20030031 (Jun. 13, 2003)
NY20030032 (Jun. 13, 2003)
NY20030037 (Jun. 13, 2003)
NY20030040 (Jun. 13, 2003)
NY20030044 (Jun. 13, 2003)
NY20030048 (Jun. 13, 2003)
NY20030060 (Jun. 13, 2003)
NY20030072 (Jun. 13, 2003)

Rhode Island
RI20030001 (Jun. 13, 2003)

Volume II

District of Columbia
DC20030001 (Jun. 13, 2003)
DC20030003 (Jun. 13, 2003)

Maryland
MD20030001 (Jun. 13, 2003)
MD20030009 (Jun. 13, 2003)
MD20030021 (Jun. 13, 2003)
MD20030029 (Jun. 13, 2003)
MD20030034 (Jun. 13, 2003)
MD20030036 (Jun. 13, 2003)
MD20030037 (Jun. 13, 2003)
MD20030042 (Jun. 13, 2003)
MD20030048 (Jun. 13, 2003)
MD20030056 (Jun. 13, 2003)
MD20030057 (Jun. 13, 2003)
MD20030058 (Jun. 13, 2003)

Pennsylvania
PA20030001 (Jun. 13, 2003)
PA20030003 (Jun. 13, 2003)
PA20030004 (Jun. 13, 2003)
PA20030013 (Jun. 13, 2003)
PA20030014 (Jun. 13, 2003)
PA20030018 (Jun. 13, 2003)
PA20030033 (Jun. 13, 2003)
PA20030040 (Jun. 13, 2003)
PA20030041 (Jun. 13, 2003)
PA20030042 (Jun. 13, 2003)
PA20030065 (Jun. 13, 2003)

Virginia
VA20030052 (Jun. 13, 2003)
VA20030076 (Jun. 13, 2003)
VA20030078 (Jun. 13, 2003)
VA20030079 (Jun. 13, 2003)
VA20030080 (Jun. 13, 2003)
VA20030084 (Jun. 13, 2003)
VA20030092 (Jun. 13, 2003)
VA20030099 (Jun. 13, 2003)

West Virginia
WV20030002 (Jun. 13, 2003)
WV20030003 (Jun. 13, 2003)
WV20030006 (Jun. 13, 2003)
WV20030009 (Jun. 13, 2003)
WV20030010 (Jun. 13, 2003)

Volume III

Kentucky
KY20030004 (Jun. 13, 2003)
KY20030007 (Jun. 13, 2003)
KY20030027 (Jun. 13, 2003)
KY20030028 (Jun. 13, 2003)
KY20030029 (Jun. 13, 2003)
KY20030034 (Jun. 13, 2003)

Volume IV

Indiana
IN20030001 (Jun. 13, 2003)
IN20030002 (Jun. 13, 2003)
IN20030003 (Jun. 13, 2003)
IN20030004 (Jun. 13, 2003)
IN20030005 (Jun. 13, 2003)
IN20030006 (Jun. 13, 2003)
IN20030007 (Jun. 13, 2003)
IN20030010 (Jun. 13, 2003)
IN20030011 (Jun. 13, 2003)
IN20030012 (Jun. 13, 2003)
IN20030014 (Jun. 13, 2003)

IN20030015 (Jun. 13, 2003)
IN20030017 (Jun. 13, 2003)
IN20030019 (Jun. 13, 2003)
IN20030020 (Jun. 13, 2003)
IN20030021 (Jun. 13, 2003)
Michigan
MI20030039 (Jun. 13, 2003)
MI20030046 (Jun. 13, 2003)
MI20030047 (Jun. 13, 2003)
MI20030050 (Jun. 13, 2003)
MI20030052 (Jun. 13, 2003)
MI20030059 (Jun. 13, 2003)
MI20030060 (Jun. 13, 2003)
MI20030064 (Jun. 13, 2003)
MI20030066 (Jun. 13, 2003)
MI20030067 (Jun. 13, 2003)
Minnesota
MN20030003 (Jun. 13, 2003)
MN20030007 (Jun. 13, 2003)
MN20030008 (Jun. 13, 2003)
MN20030009 (Jun. 13, 2003)
MN20030010 (Jun. 13, 2003)
MN20030013 (Jun. 13, 2003)
MN20030015 (Jun. 13, 2003)
MN20030027 (Jun. 13, 2003)
MN20030058 (Jun. 13, 2003)
MN20030059 (Jun. 13, 2003)
MN20030061 (Jun. 13, 2003)
MN20030062 (Jun. 13, 2003)
Ohio
OH20030002 (Jun. 13, 2003)
OH20030003 (Jun. 13, 2003)
OH20030004 (Jun. 13, 2003)
OH20030009 (Jun. 13, 2003)
OH20030012 (Jun. 13, 2003)
OH20030013 (Jun. 13, 2003)
OH20030020 (Jun. 13, 2003)
OH20030022 (Jun. 13, 2003)
OH20030023 (Jun. 13, 2003)
OH20030027 (Jun. 13, 2003)
OH20030028 (Jun. 13, 2003)
OH20030029 (Jun. 13, 2003)

Volume V:

Iowa
IA20030003 (Jun. 13, 2003)
IA20030004 (Jun. 13, 2003)
IA20030005 (Jun. 13, 2003)
IA20030006 (Jun. 13, 2003)
IA20030007 (Jun. 13, 2003)
IA20030008 (Jun. 13, 2003)
Missouri
MO20030001 (Jun. 13, 2003)
MO20030002 (Jun. 13, 2003)
MO20030003 (Jun. 13, 2003)
MO20030004 (Jun. 13, 2003)
MO20030006 (Jun. 13, 2003)
MO20030007 (Jun. 13, 2003)
MO20030008 (Jun. 13, 2003)
MO20030010 (Jun. 13, 2003)
MO20030011 (Jun. 13, 2003)
MO20030012 (Jun. 13, 2003)
MO20030013 (Jun. 13, 2003)
MO20030015 (Jun. 13, 2003)
MO20030019 (Jun. 13, 2003)
MO20030020 (Jun. 13, 2003)
MO20030041 (Jun. 13, 2003)
MO20030043 (Jun. 13, 2003)
MO20030045 (Jun. 13, 2003)
MO20030047 (Jun. 13, 2003)
MO20030051 (Jun. 13, 2003)
MO20030052 (Jun. 13, 2003)
MO20030053 (Jun. 13, 2003)
MO20030054 (Jun. 13, 2003)
MO20030055 (Jun. 13, 2003)
MO20030056 (Jun. 13, 2003)
MO20030059 (Jun. 13, 2003)
MO20030060 (Jun. 13, 2003)
MO20030061 (Jun. 13, 2003)
Nebraska
NE20030003 (Jun. 13, 2003)
NE20030010 (Jun. 13, 2003)
NE20030025 (Jun. 13, 2003)
New Mexico
NM20030001 (Jun. 13, 2003)

Volume VI

Colorado
CO20030014 (Jun. 13, 2003)
CO20030015 (Jun. 13, 2003)
Montana
MT20030001 (Jun. 13, 2003)
MT20030003 (Jun. 13, 2003)
MT20030004 (Jun. 13, 2003)
MT20030005 (Jun. 13, 2003)
MT20030007 (Jun. 13, 2003)
MT20030008 (Jun. 13, 2003)
MT20030033 (Jun. 13, 2003)
Washington
WA20030001 (Jun. 13, 2003)
WA20030002 (Jun. 13, 2003)
WA20030003 (Jun. 13, 2003)

Volume VII

Nevada
NV20030001 (Jun. 13, 2003)
NV20030002 (Jun. 13, 2003)
NV20030003 (Jun. 13, 2003)
NV20030004 (Jun. 13, 2003)
NV20030005 (Jun. 13, 2003)
NV20030007 (Jun. 13, 2003)
NV20030009 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 25th day of March, 2005.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 05–6240 Filed 3–31–05; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0011(2005)]

Subpart A (''General Provisions'') and Subpart B (''Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment'') of 29 CFR Part 1915; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its request for an extension of the information collection requirements contained in 29 CFR part 1915, subpart A (''General Provisions'') and subpart B (''Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment'').

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by May 31, 2005.

Facsimile and electronic transmission: Your comments must be received by May 31, 2005.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0011(2005), by any of the following methods:

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625,

U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 a.m. to 4:45 p.m., ET.

Facsimile: If your comments are 10 pages or fewer in length, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov.* Follow instructions on the OSHA Web page for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://www.OSHA.gov.* In addition, the ICR, comments and submissions are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Theda Kenney at the address below to obtain a copy of the ICR. For additional information on submitting comments, please see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to commet on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA-95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 et seq.) authorizes information collection by employers as necessary or approprate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The following is a brief description of the requirements in subparts A and B that pertain to the collection and retention of information:

General Provisions (Part 1915 Subpart A)

Competent Person (§ 1915.7)

Designation (§ 1915.7(b)); and Recordkeeping (§ 1915.7(d)). Paragraph (b)(2) states that employers must designate one or more competent persons to perform required inspections and tests, unless a Marine Chemist will do so. The paragraph also requires that employers maintain a roster of designated competent persons or a statement that a Marine Chemist will perform all required inspections and tests. In addition, employers are to ensure that the rosters contain, at a minimum, the employer's name, the name of the designated competent persons, and the date the employee completed traiing as a competent person.[1] If requested, employers must make the roster or statement available to employees, their representatives, OSHA compliance officers, and representatives from the National Institute for Occupational Safety and Health (NIOSH).

Paragraph (d)(1) specifies that employers ensure that competent person, Marine Chemists, and CIHs make a record of each inspection and thest they conduct. The Record of the inspection or test must contain the employer's location; time, date, location of the inspected space; the operatiosn performed; test results; and any instructions. Paragraph (d)(2) requires that employers must post the record in the immediate vicinity of the inspected space while employees are working in the space. Employers must maintain the record in a file for at least three months after work int he space is complete. In addition, paragraph (d)(3) provides that employers make inspection and test records avaiable, upon request, to employees, their representatives, OSHA compliance officers, and NIOSH.

Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment (Part 1915 Subpart B)

(A) Precautions and the Order of Testing Before Entering Confrined and Enclosed Spaces and Other Dangerous Atmosphers (§ 1915.12)

Oxygen Content (§ 1915.12(a)(1) and (a) (2)); Flammable Atmospheres (§ 1915.12(b)(1) and (b)(2)); and Toxic, Corrosive, Irritant or Fumigated Atmospheres and Residues (§ 1915.12(c)(1), (c)(2), and (c)(3)). Before an employee initially enters a space, paragraph (a)(1) requires employers to ensure that a competent person visually inspects and tests it to determine its atmospheric oxygen content. Spaces submit to this requirement include:

- Sealed spaces such as, but not limited to, coated and closed-up spaces and freshly painted non-ventilated spaces;
- Spaces that contain materials or residues of material that can cause it to become oxygen deficient; spaces and adjacent spaces that contain or have contained combustible or flammable liquids or gases, or that contain or previously contained toxic, corrosive, or irritant liquids, gases, or solids; and
- Fumigated spaces and adjacent spaces and spaces containing materials or residues that create an oxygen-deficient atmosphere.

If the space has an oxygen-deficient atmosphere, paragraph (a)(2) specifies that employers must label the space ''Not Safe for Workers.'' For oxygen-enriched spaces, the label must read ''Not Safe for Workers—Not Safe for Hot Work.'' Employers must ventilate these spaces with a sufficient volume and flow rate to maintain the oxygen content at or above 19.5 percent and below 22.0 percent by volume, at which point they may remove the warning label.

Under paragraph (b)(1), employers must have a competent person visually inspect a space or adjacent space for combustible or flammable liquids or gases. If such liquids or gases are present, the competent person must test the atmospheric concentration prior to employee entry. If the concentration is equal to or greater than 10 percent of the lower explosive limit (LEL), paragraph (b)(2) specifies that the employer must label the space ''Not Safe for Workers—Not Safe for Hot Work.'' Employers must provide ventilation at a volume and flow rate that maintains the concentration of flammable vapors below 10 percent of the LEL; the employer may remove the warning label when the vapors reach this level.

Paragraph (c)(1) mandates that if a space or adjacent space contains or previously contained liquids, gases, or solids that are toxic, corrosive, or cause irritation, employers have a competent person visually inspect the space to determine whether these substances are present. If so, the competent person must test the atmospheric concentration before an employee enters the space. Under paragraph (c)(2), employers must label the space ''Not Safe for Workers''

[1] Subpart A contains no training requirements for competent persons.

if the air concentration of these substances exceeds the permissible exposure level (PEL) specified by 29 CFR 1915, subpart Z (''Toxic and Hazardous Substances''), or is immediately dangerous to life or health (IDLH).[2] Employers must provide a sufficient ventilation volume and flow rate to maintain the atmospheric concentration at or below the PEL or below the IDLH if there is no PEL, after which they may remove the warning labels. Paragraph (c)(3) specifies that if, after ventilation, the concentrations are not at or below the PEL or below the IDLH employers have a Marine Chemist or CIH retest the space until they can certify it as ''Enter with Restrictions'')[3] or ''Safe for Workers.''

Training of Employees Entering Confined and Enclosed Spaces or Other Dangerous Atmospheres and Training Certification Records (§ 1915.12(d)). Paragraphs (d)(1) through (d)(4) require employers to train employees who enter a confined and enclosed space or other dangerous atmospheres so they can perform their duties safely. Employees must receive the required training before they begin to work in the space, and if a change in operations or their duties results in a new hazard not previously addressed by the training. Employers must train employees to recognize the characteristics of the confined space; anticipate and be aware of the hazards that may be present in the space; recognize the adverse health effects that these hazards may cause; understand the physical signs and reactions that may result from exposure to these hazards; know what personal protective equipment is needed for safe entry in and exit from the space; and be aware of and know the proper use of barriers that may be needed to protect employees from the hazards. In addition, paragraph (d)(3) specifies that employees be trained to exit the space if the employer or employer representative orders an evacuation, an evacuation signal or alarm is activated, or the employee perceives there is a dangerous condition.

Under paragraph (d)(5), employers must certify that each employee received the required training. The certification is to contain the employee's name, the name of the certifier, and the certification date, and be available for inspection by OSHA compliance officers, NIOSH, and employees and their representatives.

Rescue Teams (§ 1915.12(e)). Under paragraph (e), employers must establish a shipyard rescue team, or arrange for an outside rescue team that will respond promptly to the employer's request for rescue service. For shipyard-based rescue teams, paragraph (e)(1) specifies that employers must provide and train team members to use personal protective equipment necessary to make a rescue, train each team member to perform his/her rescue functions, ensure that the team practices its skills at least once a year,[4] and have at least one person on a team maintain current first aid certification.[5] If employers use an outside rescue team, paragraph (e)(2) requires them to inform the members of the team of the hazards they may encounter when called to rescue employees from confined and enclosed spaces or other dangerous atmospheres at the shipyard facility.

Exchanging Hazard Information Between Employers (§ 1915.12(f)). If an employer has employees who work in confined and enclosed spaces or other dangerous atmospheres, this paragraph requires the employer to inform other employers whose employees may enter the same space about the hazards, safety rules, and emergency procedures concerning those spaces and atmospheres.

(B) Cleaning and Other Cold Work (§ 1915.13)

Requirements for Performing Cleaning and Cold Work (§ 1915.12(b)(10)). Paragraph (b)(2) requires that a competent person test the concentration of flammable, combustible, toxic, corrosive or irritant vapors within the confined or enclosed space prior to employees beginning cleaning or cold work. Paragraph (b)(3) specifies that continuous ventilation must be provided at volumes and flow rates that ensure that the concentration of flammable vapor is maintained below 10 percent of the LEL, and toxic, corrosive or irritant vapors are maintained within the PELs and below IDLH levels. Paragraph (b)(4) requires that the competent person also conduct testing as often as necessary during cleaning or cold work to ensure that air concentrations remain at the levels specified in paragraph (b)(3).

Paragraph (b)(7) requires that the competent person test ventilation discharge areas and other areas where discharge vapors may collect to determine whether those vapors are accumulating in concentrations that are hazardous to employees. If accumulations are hazardous, all work in the contaminated areas must be stopped until the vapors have dissipated or been removed.

Paragraph (b)(10) requires that employers post signs in a prominent location prohibiting sources of ignition within or near a space that previously contained flammable or combustible liquids or gases in bulk quantities. Employers must post these signs at the entrance to the space, in adjacent spaces, and in the open area adjacent to these spaces.

(C) Hot Work (§ 1915.14)

Hot Work Requiring Testing by a Marine Chemist or Coast Guard Authorized Person (§ 1915.14(a)(1) and (a)(2)). Under paragraph (a)(1), employers must have a Marine Chemist or a U.S. Coast Guard authorized person test and certify a work area as safe for hot work if the area is in or on any of the following confined and enclosed spaces and other dangerous atmospheres, boundaries of spaces, or pipelines: Within, on, or immediately adjacent to spaces that contain or previously contained combustible or flammable liquids or gases or fuel tanks that contain or previously contained fuel; or pipelines, heating coils, pump fittings, or other accessories connected to spaces that contain or previously contained fuel.[6] Under paragraph (a)(2), employers must post the certificate in the immediate vicinity of the hot work operation while the operation is in progress. On completion of the operation, they must file the certificate for at least three months.

Hot Work Requiring Testing by a Competent Person (§ 1915.14(b)(1) and (b)(2). Paragraph (b)(1) specifies that before starting any hot work in or on the following spaces or adjacent spaces or other dangerous atmospheres, employers must have a competent person test and determine that the space

[2] Paragraph (b) of § 1915.11 (''Scope, application and definitions applicable to this subpart'') defines IDLH as ''an atmosphere that poses an immediate threat to life or that is likely to result in acute or immediate severe health effects.''

[3] As defined under § 1915.11(b), the term ''enter with restrictions'' means ''[denoting] a space where entry for work is permitted only if engineering controls, personal protective equipment, clothing, and time limitations are as specified by the Marine Chemist, Certified Industrial Hygienist, or the shipyard competent person.''

[4] During practice drills, team members must do rescue simulations using mannequins and rescue equipment involving physical facilities that closely approximate the facilities from which they may make a rescue.

[5] Including maintenance of an airway, control of bleeding, maintenance of circulation, and cardiopulmonary resuscitation (CPR) skills.

[6] The provision specifies an exception for hot work performed on dry cargo, miscellaneous, or passenger vessels and land-side operations in spaces that meet the requirements for oxygen, flammability, and toxicity specified in § 1915.12, but only if the flammable gases or liquids in the adjacent spaces have a flash point below 150° F (65.6° C) and the distance between these spaces and the hot work is at least 15 feet (7.62 m).

does not contain concentrations of flammable vapors equal to or greater than 10 percent of the LEL: Dry cargo holds; bilges; and engine rooms; boiler spaces; vessels and vessel sections; landside confined and enclosed spaces; or other dangerous atmospheres not requiring certification by a Marine Chemist or Coast Guard authorized person. If the concentration of flammable vapors or gases is equal to or greater than 10 percent of the LEL in these or adjacent spaces, paragraph (b)(2) specifies that the employer must label the space ''Not Safe for Hot Work.'' Employers must provide ventilation in the space at a volume and flow rate that maintains the concentration of flammable vapors below 10 percent of the LEL, after which they may remove the warning label.

(C) Maintenance of Safe Conditions (§ 1915.15)

Alteration of Existing Conditions (§ 1915.15(b)). If a change occurs that may alter the atmospheric conditions within a tested confined or enclosed space or other dangerous atmosphere (*e.g.*, opening a manhole or other closures, adjusting a valve that regulates the flow of hazardous materials), this provision requires employers to stop work in the affected space or work area. Work may resume only after visual inspection and retesting finds that the affected space or work area meets the requirements of the subpart.

Test to Maintain the Conditions of a Marine Chemist's or Coast Guard Authorized Person's Certificates (§ 1915.15(c)). This paragraph requires employers to ensure that a competent person visually inspects and tests each space certified as ''Safe for Workers'' or ''Safe for Hot Work'' as often as necessary to ensure that the atmospheric conditions in the space conform to the conditions established by the certificate.

Change in the Conditions of a Marine Chemist's or Coast Guard Authorized Person's Certificates (§ 1915.15(d)). If a competent person finds that the atmospheric conditions in a certified space fail to meet the applicable requirements of the subpart, employers must stop work in the space until a Marine Chemist or Coast guard authorized person retests the space and issues a new certificate.

Tests to Maintain a Competent Person's Findings (§ 1915.156(e)); and Changes in the Conditions Determined by a Competent Person's Findings (§ 1915.15(f)). Paragraph (3) specifies that after a competent person conducts the required initial visual inspection and tests and determines that a space is safe for employee entry, employers must ensure that the required atmospheric conditions are being maintained by having a competent person continue to test and visually inspect the space as often as necessary. Paragraph (f) specifies that if the atmospheric conditions do not meet the requirements of the subpart, employers must stop work in the space until conditions in the space are brought into compliance.

(D) Warning Signs and Labels (§ 1915.16)

This paragraph establishes protocols for preparing the sign and labels required in previous paragraphs.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the purposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection of information (paperwork) requirements necessitated by Subpart A (''General Provisions'') and Subpart B (''Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment'') of 29 CFR part 1915. (The Agency will include this summary in its request to OMB to extend the approval of these collection of information requirements.

Type of Review: Extension of currently approved information collection requirements.

Title: Subpart A (''General Provisions'') and Subpart B (''Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment'') of 29 CFR part 1915.

OMB Number: 1218–0011.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local or Tribal Government.

Frequency: On occasion.

Average Time Per Response: Varies from 1 minute (.02 hour) for a secretary to maintain a training certification record to 10 minutes (.17 hour) for a supervisory shipyard production worker to update, maintain and post either the required roster or statement at each shipyard.

Estimated Total Burden Hours: 348,394.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Webpage. Because of security-related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of submissions by express delivery, hand delivery and courier service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Webpage are available at *http://www.OSHA.gov.* Contact the OSHA Docket Office for information about materials not available through the OSHA Webpage and for assistance using the Webpage to locate docket submissions.

Electronic copies of the **Federal Register** notice as well as other relevant documents are available on OSHA's Webpage. Since all submissions become public, private information such as social security numbers should not be submitted.

V. Authority and Signature

Jonathan L. Snare, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 et seq.), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on March 28, 2005.

Jonathan L. Snare,

Acting Assistant Secretary of Labor.

[FR Doc. 05–6487 Filed 3–31–05; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–066]

NASA Advisory Council, Education Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Education Advisory Committee (EAC).

DATES: Monday, April 25, 2005, 9 a.m. to 4:15 p.m., Tuesday, April 26, 2005, 8:40 a.m. to 12:30 p.m.

ADDRESSES: On Monday, April 25, 2005, the meeting will be at John F. Kennedy Space Center, Kennedy Space Center, Florida 32899. On Tuesday, April 26, 2005, the meeting will be held at the Radisson Resort at the Port, 8701 Astronaut Boulevard, Cape Canaveral, Florida, 32920.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Working sessions and discussion groups on the strategic roadmap and managing education projects
- Center research and education programs
- Partnerships and education

Attendees will be requested to sign a register and comply with NASA security requirements for the meeting on April 25, 2005. On Monday, April 25, 2005, civilians will have to enter the main entrance and proceed to the visitor center. Civilians will be issued a ticket and will have to go through Kennedy Space Center's security gates.

Attendance for the meeting on April 25, 2005, should be coordinated with Dr. Gregg Buckingham, *gregg.a.buckingham@nasa.gov* or (321) 867–8777 in the Office of Education at Kennedy Space Flight Center, Cape Canaveral, Florida.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Allen, The Office of Education, National Aeronautics and Space Administration, Washington, DC, 20546, (202) 358–0103 for information.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: March 24, 2005.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–6515 Filed 3–31–05; 8:45 am]

BILLING CODE 4510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 70 FR 3398, and one comment was received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW. Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or via e-mail to *splimpto@nsf.gov*. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION: On January 24, 2005, we published in the Federal Register (70 FR 3398) a 60-day notice of our intent to request renewal of this information collection authority from OMB. In that notice, we solicited public comments for 60 days ending March 25, 2005. We received one comment regarding this notice.

Comment: B. Sachau of Florham Park, New Jersey, objects to this information collection as having customers solely in science and engineering and believes the surveys should go to the public.

Response: NSF is an independent federal agency established by Congress in 1950 (42 U.S.C. 1861 *et seq.*) with the mission to promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense. While the focus of NSF is largely science and engineering, the purpose of these surveys is to assess public opinion, and this is emphasized in the first **Federal Register** notice when noting who respondents most likely will be. Therefore, NSF is proceeding with seeking approval from OMB.

Title of Collection: NSF Surveys to Measure Customer Service Satisfaction.

OMB Number: 3145–0157.

Type of Request: Intent to seek approval to renew an information collection.

Abstract

Proposed Project: On September 11, 1993, President Clinton issued Executive Order 12862, ''Setting Customer Service Standards,'' which calls for Federal agencies to provide service that matches or exceeds the best service available in the private sector. Section 1(b) of that order requires agencies to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.'' The National Science Foundation (NSF) has an ongoing need to collect information from its customer community (primarily individuals and organizations engaged in science and engineering research and education) about the quality and kind of services it provides and use that information to help improve agency operations and services.

Estimate of Burden: The burden on the public will change according to the needs of each individual customer

satisfaction survey; however, each survey is estimated to take approximately 30 minutes per response.

Respondents: Will vary among individuals or households; business or other for-profit; not-for-profit institutions; farms; Federal government; State, local or tribal governments.

Estimated Number of Responses per Survey: This will vary by survey.

Comments: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; 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.

Dated: March 28, 2005.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05–6427 Filed 3–31–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 445, Request For Approval of Official Foreign Travel.

2. *Current OMB approval number:* 3150–0193.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* Non-Federal consultants, contractors and NRC invited travelers (*i.e.*, non-NRC employees).

5. *The number of annual respondents:* 200.

6. *The number of hours needed annually to complete the requirement or request:* 200 hours (1 hour per response).

7. *Abstract:* Form 445, ''Request for Approval of Foreign Travel,'' is supplied by consultants, contractors, and NRC invited travelers who must travel to foreign countries in the course of conducting business for the NRC. In accordance with 48 CFR part 20, ''NRC Acquisition Regulation,'' contractors traveling to foreign countries are required to complete this form. The information requested includes the name of the Office Director/Regional Administrator or Chairman, as appropriate, the traveler's identifying information, purpose of travel, listing of the trip coordinators, other NRC travelers and contractors attending the same meeting, and a proposed itinerary.

Submit, by May 31, 2005, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton (T–5 F3), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 28th day of March 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E5–1447 Filed 3–31–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement submitted:

1. *The title of the information collection:* NRC Form 450, ''General Assignment''.

2. *Current OMB approval number:* 3150–0114.

3. *How often the collection is required:* Once during the closeout process.

4. *Who is required or asked to report:* Contractors, Grantees, and Cooperators.

5. *The number of annual respondents:* 100.

6. *The number of hours needed annually to complete the requirement or request:* 200 hours (2 hours per response).

7. *Abstract:* During the contract closeout process, the NRC requires the contractor to execute a NRC Form 450, General Assignment. Completion of the form grants the government all rights, titles, and interest to refunds arising out of the contractor performance.

Submit, by May 31, 2005, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge

at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site (*http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC homepage site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 F52, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 28th day of March 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E5–1448 Filed 3–31–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

FirstEnergy Nuclear Operating Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of FirstEnergy Nuclear Operating Company (the licensee) to withdraw its October 12, 2001, application for a proposed amendment to Facility Operating License No. NPF–3 for the Davis-Besse Nuclear Station, Unit 1, located in Ottawa County, Ohio.

The proposed amendment would have made necessary revisions to the DBNPS technical specifications to reflect an increase in the authorized rated thermal power from 2772 MWt to 2817 MWt (approximately 1.63 percent), based on the use of Caldon Inc. Leading Edge Flow Meter (LEFM) CheckPlus™ System instrumentation to improve the accuracy of the feedwater mass flow input to the plant power calorimetric measurement.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** December 26, 2001 (66 FR 66467). However, by letter dated December 20, 2004, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 12, 2001, and the licensee's letter dated December 20, 2004, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 25th day of March 2005.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–1451 Filed 3–31–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–424 and 50–425]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 1 and 2; Exemption

1.0 Background

Southern Nuclear Operating Company, Inc. (SNC, or the licensee) is the holder of Facility Operating License Nos. NPF–68 and NPF–81 that authorize operation of the Vogtle Electric Generating Plant, Units 1 and 2 (Vogtle, Units 1 and 2). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized water reactors located in Burke County, Georgia.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) part 50, Appendix G requires that pressure-temperature (P-T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR part 50, Appendix G states that ''[t]he minimum temperature requirements * * * pertain to the controlling material, which is either the material in the closure flange or the material in the beltline region with the highest reference temperature. * * * the minimum temperature requirements and the controlling material depend on the operating condition (*i.e.,* hydrostatic pressure and leak tests, or normal operation including anticipated normal operational occurrences), the vessel pressure, whether fuel is in the vessel, and whether the core is critical. The metal temperature of the controlling material, in the region of the controlling material which has the least favorable combination of stress and temperature, must exceed the appropriate minimum temperature requirement for the condition and pressure of the vessel specified in Table 1 [of 10 CFR part 50, Appendix G].'' Footnote 2 to Table 1 in 10 CFR Part 50, Appendix G specifies that RPV minimum temperature requirements related to RPV closure flange considerations shall be based on ''[t]he highest reference temperature of the material in the closure flange region that is highly stressed by bolt preload.''

In order to address provisions of amendments to modify the Vogtle, Units 1 and 2 Technical Specifications to revise the pressure-temperature limits report methodology for each unit, SNC requested in its submittal dated February 26, 2004, that the staff exempt Vogtle, Units 1 and 2 from the application of specific requirements of 10 CFR part 50, Appendix G, as they pertain to the establishment of minimum temperature requirements, for all modes of operation addressed by 10 CFR part 50, Appendix G, based on the material properties of the material of the RPV closure flange region that is highly stressed by the bolt preload. The licensee's technical basis for this exemption request is contained in Enclosure 4 of its February 26, 2004, submittal: WCAP–16142–P, Revision 1, ''Reactor Vessel Closure Head/Vessel Flange Requirements Evaluation for Vogtle Units 1 and 2,'' and a response to an NRC staff request for additional information contained in an SNC letter dated October 22, 2004. The requirements from which SNC requested that Vogtle, Units 1 and 2 be exempted shall be referred to, for the purpose of this exemption, as those requirements related to the application of footnote (2) to Table 1 of 10 CFR part 50, Appendix G.

WCAP–16142–P, Revision 1 included a fracture mechanics analysis of

postulated flaws in the Vogtle, Units 1 and 2 RPV closure flange regions under boltup, 100 °F per hour (/hr) heatup, 100 °F/hr cooldown, and steady-state conditions, with the heatup and cooldown transients being modeled in accordance with what would be permissible using P–T limit curves based on the most limiting Vogtle, Units 1 and 2 beltline materials. Westinghouse performed finite element analyses to calculate the stresses present at the flange region and determined two limiting locations: (1) The top head dome-to-torus weld at the end of the 100 °F/hr heatup transient, and (2) the torus-to-flange weld at the boltup condition. With these stresses, Westinghouse calculated the applied stress intensity factor (Kapplied) for semi-elliptical, outside diameter initiated, surface breaking flaws with an aspect ratio (length vs. depth) of 6:1, and with depths ranging from 0 to 80 percent of the thickness of the component wall. The Kapplied values were calculated by using the Raju-Newman stress intensity factor influence coefficients for external surface cracks in cylindrical vessels and is in accordance with the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) Section XI, Appendix G, Subparagraph G–2220 requirements for the analysis of flange locations. Westinghouse then compared these K applied values to ASME Code lower bound plane strain fracture toughness (KIc) values determined from the nil-ductility transition reference temperature (RTNDT) values for the Vogtle, Units 1 and 2 RPV closure flange materials. Westinghouse also provided an assessment of the potential for changes in the material RTNDT values for the Vogtle, Units 1 and 2 RPV closure flange materials due to thermal aging resulting from exposure to the RPV operating environment.

The use of ASME Code KIc as the material property for the fracture mechanics analysis represents the most significant change between the analysis provided in WCAP–16142–P, Revision 1 and the analysis that was performed as the basis for establishing the minimum temperature requirements in 10 CFR part 50, Appendix G. The minimum temperature requirements related to footnote (2) to Table 1 of 10 CFR part 50, Appendix G were incorporated into the Code of Federal Regulations in the early 1980s and were based on analyses that used ASME Code lower bound crack arrest fracture toughness (KIA) as the parameter for characterizing a material's ability to resist crack initiation and propagation. The use of ASME Code KIA is always conservative with respect to the use of ASME Code KIC for fracture mechanics evaluations, and its use in the evaluations that established the requirements in 10 CFR part 50, Appendix G was justified based on the limited knowledge of RPV material behavior that was available in the early 1980s. However, the use of ASME Code KIC, not ASME Code KIA, is consistent with the actual physical processes that would govern flaw initiation under conditions of normal RPV operation, including RPV heatup, cooldown, and hydrostatic and leak testing. Based on our current understanding of the behavior of RPV materials, the NRC staff has routinely approved licensees' utilization of ASME Code KIC as the basis for evaluating RPV beltline materials to demonstrate compliance with the intent of 10 CFR part 50, Appendix G through licensees' use of ASME Code Cases N–640 and N–641, which have been incorporated into Appendix G to Section XI of the 2001 Edition through the 2003 Addenda of the ASME Code endorsed in 10 CFR 50.55a.

Information in WCAP–16142–P, Revision 1 and the licensee's October 22, 2004, response to NRC staff questions indicated that the resulting margin ($K_{IC}/K_{applied}$) from the fracture mechanics analysis is 3.19 for the boltup condition and 4.06 for the heatup condition, assuming that the crack depth is one tenth of the wall thickness (1/10t). The margins show that the boltup condition with lower $K_{applied}$ (about one half the $K_{applied}$ of the heatup condition) is more limiting because the low temperature associated with the boltup condition gives a much lower K_{IC} value. Using these calculated margins and the $K_{applied}$ plot shown in WCAP Figures 4–1 and 4–2, the NRC staff found that the ASME Code Appendix G margin of 2 can be maintained for a flaw much deeper than 1/10t at these limiting locations.

In summary, the analysis provided in WCAP–16142–P, Revision 1 has demonstrated that, for the most limiting transient addressed by 10 CFR Part 50, Appendix G, the combination of factors (high stresses in the RPV flange region along with low temperature at the metal of the flange region) cannot exist simultaneously, and the structural integrity of the Vogtle, Units 1 and 2 RPV closure flange materials will not be challenged by facility operation in accordance with P–T limit curves based consideration of Vogtle, Units 1 and 2 beltline materials. Therefore, the more conservative minimum temperature requirements related to footnote (2) to Table 1 of 10 CFR Part 50, Appendix G are not necessary to meet the underlying intent of 10 CFR Part 50, Appendix G, to protect the Vogtle, Units 1 and 2 RPVs from brittle failure during normal operation under both core critical and core non-critical conditions and RPV hydrostatic and leak test conditions.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. These circumstances include the special circumstances where application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of 10 CFR Part 50, Appendix G, footnote (2) to Table 1 is to protect the integrity of the reactor coolant pressure boundary during hydrostatic pressure and leak tests, and during normal operations, including heatup, cooldown, and operational occurrences. This is accomplished through these regulations that, in part, specify the minimum temperature requirements in the closure flange region. The NRC staff accepts the licensee's determination that an exemption would be required to permit SNC to not meet those requirements related to the application of footnote (2) to Table 1 of 10 CFR Part 50, Appendix G. The NRC staff examined the licensee's rationale to support the exemption request. Based on a consideration of the information provided in WCAP–16142–P, Revision 1 and SNC's October 22, 2004 letter, an acceptable technical basis has been established to exempt Vogtle, Units 1 and 2 from requirements related to footnote (2) to Table 1 of 10 CFR Part 50, Appendix G. The technical basis provided by SNC has established that an adequate margin of safety against brittle failure would continue to be maintained for the Vogtle, Units 1 and 2 RPVs without the application of those requirements related to the application of footnote (2) to Table 1 of 10 CFR Part 50, Appendix G, for normal operation under both core critical and core non-critical conditions and RPV hydrostatic and leak test conditions.

Therefore, the NRC staff concludes that, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of 10 CFR part 50, Appendix G will be achieved without the application of those

requirements related to the application of footnote (2) to Table 1 of 10 CFR part 50, Appendix G, and the proposed exemption should be granted to SNC such that those requirements related to the application of footnote (2) to Table 1 of 10 CFR part 50, Appendix G need not be applied to Vogtle, Units 1 and 2.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants SNC an exemption from the requirements 10 CFR Part 50, Appendix G, Table 1, footnote (2), for Vogtle, Units 1 and 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (70 FR 13215).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 24th day of March 2005.

For the Nuclear Regulatory Commission

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–1450 Filed 3–31–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–01063]

Notice of Environmental Assessment and Finding of No Significant Impact of License Amendment for Augustana College at Sioux Falls, SD

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental Assessment and Finding of No Significant Impact for license amendment.

FOR FURTHER INFORMATION CONTACT: D. Blair Spitzberg, PhD., Fuel Cycle and Decommissioning Branch, Division of Nuclear Materials Safety, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011. Telephone: (817) 860–8100; e-mail *dbs@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to NRC Materials License No. 40–06921–03 to remove a former burial site from the license. This licensing action will allow Augustana College to release the property for unrestricted use. If approved, Augustana College will continue to possess radioactive materials in accordance with the conditions of its license but will not be required to maintain radiological control over the burial site. The NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has determined that a Finding of No Significant Impact (FONSI) is appropriate.

II. Environmental Assessment

Background

The radioactive burial site is located on the campus of Augustana College (the licensee) in the central part of Sioux Falls, South Dakota. The burial site is located in a grove of crabapple trees on the east side of the Gilbert Science Center near the corner of 33rd Street and Summit Avenue. Based on the licensee's records, the burial site consists of a line of six pits (holes) containing radioactive material. The holes were dug using manual equipment (post-hole digger & shovel) to a depth of 5 feet (1.5 meters) and are arranged in 6-foot (1.8-meter) intervals.

The licensee has been authorized by the NRC and its predecessor, the U.S. Atomic Energy Commission (AEC), to possess radioactive material since 1958. The docket file records indicate that Augustana College first began possessing radioactive material during 1963. The licensee's records document that about 12 millicuries (0.44 gigabecquerels) of carbon-14, a long-lived beta particle emitter, were disposed at the burial site between 1968 and 1969.

Review Scope

By letters dated February 17, April 25 and August 25, 2003, the licensee requested that the former radioactive materials burial site located on campus property be released for unrestricted use. Prior to January 28, 1981, the NRC permitted licensees to dispose of small quantities of licensed materials by burial in soil without specific NRC authorization. This was authorized pursuant to 10 CFR 20.304. This regulation has since been rescinded by the NRC. The NRC is considering the issuance of an amendment to Materials License No. 40–06921–03 to release the burial site for unrestricted use. In accordance with 10 CFR 30.36 and NUREG–1757, Volume 1, Revision 1, a decommissioning plan was not required from the licensee. The purpose of this EA is to assess the environmental consequences of this licensing action using the guidance provided in NUREG–1748.

Proposed Action

The proposed action would approve the licensee's request to amend its license to release the former burial site located at Augustana College in Sioux Falls, South Dakota, for unrestricted use. The licensee would not be required to remediate the burial site if the NRC approves the license amendment request.

Purpose and Need for Proposed Action

The proposed action is necessary to release the burial site from the license for unrestricted use. The need for the proposed action is for the licensee to be in compliance with the requirements of 10 CFR 30.36, ''Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas.'' By releasing the site for unrestricted use, the applicant will not be burdened with additional regulations that would no longer be applicable to them.

Alternatives

The alternatives to the proposed action are (1) the no-action alternative, or (2) to deny the amendment request and require the licensee to take additional actions such as the remediation of the burial site.

Affected Environment and Environmental Impacts of Proposed Action

By letter dated March 25, 1968, the licensee requested information from the AEC on ''* * * how and where to dispose of solid and liquid form carbon-14 wastes * * * accumulated.'' The AEC responded in a letter dated April 1, 1968, stating that the disposal options available to the licensee at the time included disposal by burial in soil. Licensees were authorized to dispose of radioactive material by burial in accordance with 10 CFR 20.304 between 1959 and 1981. The April 1, 1968, letter reminded the licensee of the regulatory requirements—that each burial may not exceed 50,000 microcuries (50 millicuries, or 1.85 gigabecquerels) of carbon-14, each burial must be made at a depth of at least 4 feet (1.2 meters), and each burial must be separated from other burial sites by at least 6 feet (1.8 meters).

Based on the licensee's records, no more than 12 millicuries (0.44 gigabecquerels) of carbon-14 were buried. The licensee's estimate was based on available disposal records from the 1968 to 1969 time frame. Although the records do not clearly identify the amount of material buried, the licensee made the assumption from the records available that each hole contained the maximum amount of carbon-14 that could have been received under the license's authorization limit. Since six holes were constructed, the licensee assumed that the maximum possession limit of 2 millicuries (0.074 gigabecquerels) were buried in each hole. This total may be an overestimate of the amount buried but is below the regulatory limit of 50 millicuries (1.85 gigabecquerels) per year that was allowed during 1968 to 1969.

According to the licensee's records, only dry wastes were buried. Liquid wastes were disposed via the sewer as allowed by AEC regulations at that time. In addition, the experiments involved carbon-14 in a chemical form that would have resulted in a loss of carbon to the atmosphere during the experiments. Therefore, the actual amount of carbon-14 buried could be less than 12 millicuries (0.44 gigabecquerels). The NRC conducted a review of archived records to ascertain whether the licensee's estimate was accurate. Nothing was identified in the NRC's records that refuted the licensee's claim that only 12 millicuries (0.44 gigabecquerels), or less, of radioactive material were buried during 1968 to 1969.

The licensee's request to release the former burial site for unrestricted use was based on dose modeling calculations using the NRC-approved RESRAD Computer Code, Version 6.21. The licensee used the code's default values for its calculations, including a default value of 100 picocuries (3.7 becquerels) per gram of carbon-14. [The NRC and the licensee's contractor estimated that the actual concentration was around 1 picocurie (0.037 becquerels) per gram based on the amount of material buried and the volume of the burial pit.] Using this conservative approach, the individual dose summed over all pathways was calculated at time zero (1969) to be 77.8 millirems (0.778 millisieverts) per year. At Year 10 (1979), the dose had fallen to less than 1 millirem (0.01 millisievert) per year, and by Year 30 (1999) the dose had fallen to 0.00 millirems (0.0 millisieverts) per year. These calculations were independently verified by the NRC. The NRC notes that the calculated values beyond Year 10 (1979) are below the 25-millirem (0.25 millisieverts) limit for unrestricted release of the site as stipulated in 10 CFR 20.1402. Furthermore, the radiological impacts of releasing the burial site for unrestricted use are bounded by the impacts evaluated in NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities.''

The NRC staff considered the potential impacts of the leaching of radioactive and non-radioactive material into the groundwater. The licensee estimated that the groundwater table is at a depth of 20 feet (6 meters), and the depth of the disposed material was about 4–6 feet (1.2–1.8 meters) deep. The shallow surface groundwater in the vicinity of the site is not used as a drinking water supply. Local members of the public obtain water from the city. Further, the impacts that potentially contaminated groundwater would have on members of the public were considered as part of the RESRAD modeling scenario. The NRC believes that the burial site, if left undisturbed, will not have a radiological impact on the site groundwater.

Environmental Impacts of Alternative Actions

1. Environmental Impacts of the No-Action Alternative

The no-action alternative would result in impacts similar to or the same as the proposed action. However, this alternative would be inconsistent with the Commission's regulations, therefore, it is not a reasonable alternative.

2. Environmental Impacts of Alternative 2

Alternative 2 to the proposed action is to deny the amendment request and require the licensee to take some additional action such as the remediation of the burial site. If the licensee were required to remediate the burial site, the potential harm to the workers or members of the public from exposure to radioactive material would be bounded by the RESRAD calculations. In other words, the remediation of the site would most likely have a minimal radiological impact on site workers and members of the public.

Remediation of the site may have short-term health and safety consequences caused by the excavation, packaging, and shipping of the residual radioactive material. These non-radiological impacts would include the normal risks of exhuming the wastes with earth-moving equipment and transportation of the material to an out-of-state disposal facility. The risks include death or injury from a construction or transportation accident.

The remediation of the former burial site would cause some environmental harm. The waste material would have to be excavated, packaged, and transported to an out-of-state disposal facility. The excavation process would be accomplished by heavy equipment and trucks that would disturb the general area. The prevailing winds will most likely disperse some of the excavated material offsite. The resulting surface void would have to be refilled with clean soil and contoured. Vegetation in the vicinity of the reclaimed site would be temporarily disturbed.

Since the licensee successfully demonstrated that the current dose is 0.00 millirems (0.0 millisieverts) using the RESRAD program, the NRC has determined that the remediation of the burial site is not a practical option.

Conclusion

Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action and the preparation of an environmental impact statement is not warranted. The staff has determined that the proposed action, approval of the license amendment request to release the former burial site from the license for unrestricted use, is the appropriate alternative for selection.

Agencies and Persons Contacted

The NRC staff has determined that the proposed action is not a major construction activity and will not affect listed or proposed endangered species. Additionally, it is not an undertaking that will affect historic properties. Therefore, the U.S. Fish & Wildlife Service and the State Historic Preservation Office were not contacted.

The Department of Environment & Natural Resources, State of South Dakota, was consulted by the NRC. The State responded by letter dated September 23, 2004, and suggested that the NRC consider use of institutional controls to prevent the unintentional disturbance of the burial site. The NRC responded by letter dated October 27, 2004, stating that it was appropriate to release the site without restrictions, including institutional controls. The NRC contacted the Administrator, Waste Management Program, South Dakota Department of Environment & Natural Resources, for the State's response. The State accepted the NRC's position as documented in the October 27, 2004, letter, but plans to pursue the issue of

institutional controls directly with the College.

III. Finding of No Significant Impact

The NRC staff concludes that the proposed action complies with the radiological criteria for unrestricted use as stipulated in 10 CFR 20.1402. The licensee demonstrated that any remaining residual radioactivity will not result in radiological exposures in excess of the 25 millirem (0.25 millisievert) total effective dose equivalent limit specified in § 20.1402. Dose modeling indicates that current and future members of the public will not receive any radiological dose from the burial site. The NRC staff prepared this EA in support of the proposed action to amend the license. On the basis of this EA, the NRC has concluded that there are no significant environmental impacts and the license amendment does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a FONSI is appropriate.

IV. Further Information

A copy of this document will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of the NRC's document system. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The following references are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). ADAMS accession numbers are located in parentheses following the reference.

1. Wanous, Michael, Augustana College letter to NRC, February 17, 2003 (ML030850812).

2. Wanous, Michael, Augustana College letter to NRC, April 25, 2003 (ML031220675).

3. NRC, ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs,'' NUREG–1748, August 2003 (ML032540811).

4. Wanous, Michael, Augustana College letter to NRC, August 25, 2003 (ML032400519).

5. NRC, ''Consolidated Decommissioning Guidance,'' NUREG–1757, Volume 1, Revision 1, September 2003 (ML032530410).

6. NRC, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities,'' NUREG–1496, July 1997 (ML042310492).

7. Satorius, Mark, ''Request for Comments Regarding Environmental Assessment of Former Burial Site at Augustana College,'' NRC letter to State of South Dakota, September 10, 2004 (ML042540432).

8. Lancaster, Rick, ''Request for Comments Regarding Environmental Assessment of Former Burial Site at Augustana College,'' State of South Dakota letter to NRC, September 23, 2004 (ML042730227).

9. Satorius, Mark, ''Request for Institutional Controls Over Former Burial Site at Augustana College,'' NRC letter to State of South Dakota, October 27, 2004 (ML043010521).

10. Evans, Robert, ''Telephone Call With State of South Dakota Regarding Former Burial Site at Augustana College,'' NRC Memorandum To Docket File, December 8, 2004 (ML0434400520).

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*. Documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Arlington, Texas this 22nd day of March 2005.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Director, Division of Nuclear Materials Safety, Region IV.

[FR Doc. E5–1449 Filed 3–31–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–11]

Sacramento Municipal Utility District Issuance of Environmental Assessment and Finding of No Significant Impact Regarding an Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental Assessment.

FOR FURTHER INFORMATION CONTACT: James R. Hall, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–1336; fax number: (301) 415–8555; e-mail: *jrh@nrc.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC or the staff) is considering issuance of an amendment to Special Nuclear Materials License No. 2510 that would allow for the storage of Greater Than Class C (GTCC) waste at the Rancho Seco Independent Spent Fuel Storage Installation (ISFSI). The Sacramento Municipal Utility District (SMUD) is currently storing spent nuclear fuel at the Rancho Seco ISFSI on the site of the decommissioned Rancho Seco Nuclear Generating Station in Sacramento County, California.

Environmental Assessment (EA)

Identification of Proposed Action

By application, dated July 29, 2004, SMUD submitted a request to the U.S. Nuclear Regulatory Commission (NRC) in accordance with Title 10 of the Code of Federal Regulations (10 CFR) 72.56, ''Application for amendment of license,'' to amend the license to allow for the storage of GTCC waste at the Rancho Seco ISFSI. SMUD proposes to store the GTCC waste in a GTCC canister and load the canister into a Horizontal Storage Module in the NUHOMS–24P dry cask storage system used at the Rancho Seco ISFSI. SMUD proposes to co-locate the GTCC waste canister with the spent fuel canisters at the ISFSI, but no GTCC waste will be co-mingled with the spent fuel.

The proposed action before the NRC is whether to approve the amendment.

Need for the Proposed Action

SMUD is in the process of decommissioning the Rancho Seco Nuclear Generating Station in Sacramento County, California. SMUD needs to temporarily store GTCC waste resulting from plant operations and from decommissioning, such as activated metals in the form of baffles and formers, cut-up sections of incore-instrument tips, and associated surface contamination, in the ISFSI until there is a permanent repository that will accept GTCC waste. Approving the amendment would allow the licensee to store GTCC at the Rancho Seco ISFSI.

Environmental Impacts of the Proposed Action

The staff has reviewed the amendment request submitted by the licensee and has determined that allowing the storage of GTCC waste at the Rancho Seco ISFSI would have no significant impacts to the environment. In its Safety Evaluation Report related to the ISFSI license, the NRC staff found

that the proposed GTCC canister is functionally identical to those spent fuel canisters currently being stored at the ISFSI. Once the GTCC waste is loaded into the canister, the operational steps to drain, seal and transfer the GTCC waste to the ISFSI are essentially identical to those for a fuel canister except that the GTCC waste canister loading and processing operations will be conducted in the Reactor Building as opposed to the Spent Fuel Building. There are no credible scenarios by which liquid or gaseous effluents could be released from the GTCC waste canister. Furthermore, the NUHOMS–24P dry cask storage system used at the Rancho Seco ISFSI is a passive system which, by design, produces no gaseous or liquid effluent.

The staff has determined that the proposed action would not endanger life or property. Further, the staff concludes that there is reasonable assurance that the proposed amendment will have no impact on off-site doses because the licensee is currently storing GTCC at the Rancho Seco Site under its 10 CFR Part 50 license.

The proposed action would not increase the probability or consequences of accidents, no changes would be made to the types of effluents that may be released offsite, and there would be no increase in public exposure, and only minimal increase in occupational exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action. Additionally, the proposed action would have no significant impact on the safe storage of spent fuel at the Rancho Seco ISFSI.

Furthermore, as documented in the Environmental Assessment and Finding of No Significant Environmental Impact for the final rule, ''Interim Storage of Greater than Class C Waste'' (66 FR 51823; October 11, 2001), the NRC staff found for the following reasons that storing NRC-licensed reactor-related GTCC waste using 10 CFR Part 72 has no significant environmental impacts:

(1) There is a smaller source term available for release from normal operations, or as a result of an accident, involving GTCC waste as compared to spent fuel or HLW;

(2) There is a smaller total volume and curie content of the GTCC waste as compared to the spent fuel or HLW;

(3) The previous findings related to the environmental impacts in NUREG–0575, ''Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel,'' dated August 1979, and NUREG–1092, ''Environmental Assessment for 10 CFR Part 72 Licensing Requirements for the Independent Storage of Spent Fuel and High-Level Radioactive Waste'' concluded that there are no significant environmental impacts for these activities; and

(4) GTCC waste is already being safely stored by 10 CFR Part 50 licensees. Re-licensing of this material under a 10 CFR Part 72 specific license requires an approved safety analysis report. The approval process requires that each application or amendment be individually reviewed and approved before storage would be allowed under a specific 10 CFR Part 72 license.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the amendment request (*i.e.*, the ''no-action'' alternative). If the request was denied, SMUD would need to continue to store the GTCC waste under its 10 CFR Part 50 license, either in its existing location or in another appropriately shielded configuration. This would limit the extent to which SMUD could complete its decommissioning activities for the Rancho Seco Nuclear Generating Station. Approval or denial of the amendment request would result in no change in the environmental impacts. Therefore, the environmental impacts of the proposed action and the alternative action are similar.

Agencies and Persons Consulted

The NRC staff prepared this environmental assessment (EA) and contacted the California Department of Health Services, Radiologic Health Branch. Staff provided the State with a draft copy of this EA for review. Mr. Steve Hsu responded on behalf of the State of California and stated that he had no comments on the EA or the Finding of No Significant Impact. The NRC staff has determined that consultation under Section 7 of the Endangered Species Act is not required for this specific amendment, which will not affect listed species or critical habitat. The NRC staff has also determined that the proposed action is not a type of activity having the potential to cause effects on historic properties. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act.

Conclusion

The staff has reviewed the amendment request submitted by SMUD and has determined that allowing the storage of GTCC waste at the Rancho Seco ISFSI would have no significant impact on the environment.

Finding of No Significant Impact

The environmental impacts of allowing the storage of GTCC waste at the Rancho Seco ISFSI have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the NRC finds that the proposed action of approving the amendment to the license will not significantly impact the quality of the human environment. Accordingly, the NRC has determined that an environmental impact statement for the proposed amendment is not warranted.

The request for amendment was docketed under 10 CFR part 72, Docket 72–11. For further details with respect to this action, see the request for the license amendment dated July 29, 2004. Supporting documentation is available for inspection at the NRC's Public Electronic Reading Room at: *http://www.nrc.gov/reading-rm/adams.html.* A copy of the EA and FONSI can be found at this site using the Agencywide Documents Access and Management System (ADAMS). These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 24th day of March, 2005.

For the Nuclear Regulatory Commission.

James R. Hall,

Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–1452 Filed 3–31–05; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Compliance Assistance Resources and Points of Contact Available to Small Businesses

Authority: The Small Business Paperwork Relief Act (44 U.S.C. 3520)

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice.

SUMMARY: In accordance with the Small Business Paperwork Relief Act of 2002,

the Office of Management and Budget (OMB) is publishing a ''list of the compliance assistance resources available to small businesses'' and a list of the points of contacts in agencies ''to act as a liaison between the agency and small business concerns'' with respect to the collection of information and the control of paperwork. This information is posted on the OMB Web site: *http://www.whitehouse.gov/omb/inforeg/infocoll.html*.

FOR FURTHER INFORMATION CONTACT: Keith B. Belton, Office of Information and Regulatory Affairs, Office of Management and Budget, e-mail: *kbelton@omb.eop.gov*, Telephone: (202) 395–4815. Inquiries may be submitted by facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION:

A. Background

The Small Business Paperwork Relief Act of 2002 (Pub. L. 107–198) requires OMB to ''publish in the **Federal Register** and make available on the Internet (in consultation with the Small Business Administration) ''a list of the compliance assistance resources available to small businesses'' (44 U.S.C. 3504(c) (6)). In addition, under another provision of this Act, ''each agency shall, with respect to the collection of information and the control of paperwork, establish 1 point of contact in the agency to act as a liaison between the agency and small business concerns'' (44 U.S.C. 3506(I)(1)).

Working in cooperation with the Small Business and Agriculture Enforcement Ombudsman (SBA Ombudsman) in the Small Business Administration, OMB has, with the active assistance and support of the SBA Ombudsman, assembled a list of the compliance assistance resources available to small businesses. This list is available today on OMB's Web site at *http://www.whitehouse.gov/omb/inforeg/infocoll.html.* The SBA Ombudsman has created a link to this information on the SBA Ombudsman's Web Site at *http://www.sba.gov/ombudsman*.

Donald R. Arbuckle,

Deputy Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 05–6429 Filed 3–31–05; 8:45 am]

BILLING CODE 3110–01–P

POSTAL RATE COMMISSION

Joint Briefing on Commission Functions and Greeting Card Industry Issues

AGENCY: Postal Rate Commission.

ACTION: Notice of briefing.

SUMMARY: On April 5, 2005, briefings on the Commission's role in rate setting and on greeting card industry issues will take place in the Commission's conference room. Participants will include Commissioners, greeting card industry executives, and staff.

DATES: April 5, 2005.

ADDRESSES: Postal Rate Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

Dated: March 29, 2005.

Steven W. Williams,

Secretary.

[FR Doc. 05–6496 Filed 3–31–05; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51439; File No. SR–DTC–2004–12]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change To Revise Fees for Low Volume Tender Offers

March 28, 2005.

I. Introduction

On November 19, 2004, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change File No. SR–DTC–2004–12 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposed rule change was published in the **Federal Register** on February 15, 2005.[2] No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

II. Description

The proposed rule change adjusts the fees DTC charges for low volume tender offers so that the fees may be aligned with the estimated costs incurred by DTC. DTC notes that certain offerors in low volume tender offers processed through DTC have extended the expiration of their offers multiple times. For tender offers other than low volume tender offers, extensions are unusual and multiple extensions almost never occur. With respect to low volume tender offers, however, DTC has experienced offers being extended as many as 15 times. Because each extension involves significant processing costs for DTC, DTC is increasing the fee for low volume tender offers from a flat fee of $2,900 per offer to a fee of $2,900 per offer and per each extension thereof.

III. Discussion

Section 17A(b)(3)(D) of the Act requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants.[3] The Commission finds that DTC's proposed rule change is consistent with this requirement because by establishing a fee for extensions of low volume tender offers DTC is more equitably allocating the fees that cover its cost of providing the service to those participants who utilize the service.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change (File No. SR–DTC–2004–12) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–6482 Filed 3–31–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 51156 (February 8, 2005), 70 FR 7785.

[3] 15 U.S.C. 78q–1(b)(3)(D).

[4] 15 U.S.C. 78s(b)(2).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51440; File No. SR–FICC–2004–23]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Change the Notice Period Required for the Closing of Participant Accounts or Withdrawing From Membership in Its Mortgage-Backed Securities Division

March 28, 2005.

I. Introduction

On November 22, 2004, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change File No. SR–FICC–2004–23 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposed rule change was published in the **Federal Register** on February 22, 2005.[2] No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

II. Description

The purpose of the rules change is to amend the timeframe in which a participant, limited purpose participant, or EPN user can cease to maintain an account or can voluntarily withdraw as a participant from the Mortgage-Backed Securities Division (''MBSD'') of FICC.

Currently, the MBSD's Rules expressly state that in order to cease to maintain an account or to voluntarily withdraw as a participant, a participant must notify FICC of its intent to do so in writing and that thereafter FICC management and the participant must wait ten days for the cessation or withdrawal to become effective. Upon review, FICC has determined that imposing this mandatory time period is unnecessary. FICC believes it should have the flexibility to close an account or to permit withdrawal within a shorter period. The rule changes provide this flexibility by providing that: (1) A participant must provide ten days' written notice of account cessation or withdrawal from membership but the MBSD can accept termination within a shorter period; (2) the requested account cessation or withdrawal would not be effective until accepted by the MBSD; and (3) the MBSD's acceptance will be evidenced by a notice to all members announcing the account cessation or withdrawal effective date.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[3] The Commission finds that FICC's proposed rule change is consistent with this requirement because while it will provide the FICC with greater flexibility with respect to closing accounts of participants and to permitting the voluntary withdrawal of participants, it has been designed with sufficient safeguards to allow the MBSD to continue to safeguard the securities and funds in its custody and control or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change (File No. SR–FICC–2004–23) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1457 Filed 3–31–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 51206 (February 15, 2005), 70 FR 8648.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 15 U.S.C. 78s(b)(2).

[5] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Public Meeting on Implementation of the North American Standard for Cargo Securement

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of public meeting.

SUMMARY: FMCSA announces a public meeting concerning implementation of the North American Standard for Protection Against Shifting or Falling Cargo. The meeting's purpose is to discuss a process for ensuring consistent interpretation of the harmonized cargo securement standards by FMCSA and the Canadian Provinces, such as interpretation issues raised by U.S. enforcement agencies and motor carriers and potential implementation issues for Canadian Provinces and motor carriers operating in Canada.

On September 27, 2002, FMCSA published a final rule revising its regulations on cargo securement for commercial motor vehicles (CMVs) operated in interstate commerce; and motor carriers were given until January 1, 2004 to comply with the new regulations. The agency's new standards were based on the North American Cargo Securement Standard Model Regulations, which reflected at the time the results of a multi-year comprehensive research program to evaluate U.S. and Canadian cargo securement regulations, motor carrier industry best practices, and recommendations from public meetings involving U.S. and Canadian industry experts, Federal, State, and Provincial enforcement officials, and other interested parties. Since then, Canada's Council of Ministers Responsible for Transportation and Highway Safety approved a new National Safety Code Standard for cargo securement (September 23, 2004). Full implementation of Canada's new cargo securement requirements is expected by this summer.

DATES: April 21–22, 2005. The public meeting begins on April 21, from 1 p.m. to 5 p.m., and on April 22, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting is at the Albuquerque Convention Center, 401 Second Street NW., Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Director of the Office of Bus and Truck Standards and Operations, FMCSA, phone (202) 366–4009; FAX to (202) 366–8842; or e-mail: *Larry.Minor@fmcsa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

FMCSA published a final rule revising its regulations concerning protection against shifting and falling cargo for CMVs operated in interstate commerce, on September 27, 2002 (67 FR 61212). Motor carriers had until January 1, 2004 to comply with the new regulations. The regulations were intended to reduce the number of crashes caused by cargo shifting on or within, or falling from, CMVs operating in interstate commerce, and to harmonize U.S., Canadian, and Mexican cargo securement regulations. On September 23, 2004, Canada's Council of Ministers Responsible for

Transportation and Highway Safety approved a new National Safety Code Standard for cargo securement. The new Canadian securement requirements are expected to be fully implemented by this summer, 2005.

Maintaining Uniformity Between U.S. and Canadian Cargo Securement Standards

FMCSA believes it is necessary to continue working with U.S. and Canadian industry experts, Federal, State, and Provincial enforcement officials and other interested parties to maintain harmonization of U.S. and Canadian cargo securement standards. A major part of this effort includes uniformity in interpreting the meaning of requirements adopted by the U.S. and Canada. While there are some differences between certain provisions adopted by FMCSA and Canada's National Safety Code Standard 10, the contents of most of the Model Regulations have been adopted, or will be adopted shortly, by almost all jurisdictions in the U.S. and Canada. To ensure consistency in the interpretation and enforcement of the requirements, FMCSA is working with its Canadian partners to develop a process for sharing information about requests for interpretation, and exchanging technical information that will be helpful to the regulatory agencies in developing their responses to such requests. FMCSA will continue to work with its Canadian partners to ensure that interpretations are provided in an efficient and timely manner to all interested parties.

As a first step, FMCSA is holding a public meeting to provide all interested parties an opportunity to participate in discussions between the agency and its Canadian counterparts about interpretations and other implementation issues.

Additional Meeting Information

The meeting is on April 21–22, 2005, at the Albuquerque Convention Center (Enchantment 1 Room), 401 Second Street NW., Albuquerque, New Mexico. On April 21, the meeting is from 1 to 5 p.m.; and on April 22, from 8 a.m. to 5 p.m. This meeting is free of charge and open to all interested parties.

The public meeting is being held immediately after the Commercial Vehicle Safety Alliance's (CVSA's) 2005 Annual Conference ends. If you are interested in attending CVSA's conference sessions and committee meetings, you must register with CVSA and pay the appropriate registration fee. For further information about registering, you should contact CVSA at (202) 775–1623.

Issued on: March 28, 2005.

Annette M. Sandberg,

Administrator.

[FR Doc. 05–6488 Filed 3–31–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: The FMCSA announces its denial of 102 applications from individuals who requested an exemption from the Federal vision standard applicable to interstate truck drivers and the reasons for the denials. The FMCSA has statutory authority to exempt individuals from the vision standard if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions does not provide a level of safety that will equal or exceed the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Office of Bus and Truck Standards and Operations, (MC–PSD) 202–366–4001, Department of Transportation, FMCSA, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the Federal vision standard for a two-year period if it finds such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption (49 CFR 381.305(a)).

Accordingly, FMCSA evaluated 102 individual exemption requests on their merits and made a determination that these applicants do not satisfy the criteria established to demonstrate that granting an exemption is likely to achieve an equal or greater level of safety than exists without the exemption. Each applicant has, prior to this notice, received a letter of final disposition on his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final agency action. The list published today summarizes the agency's recent denials as required under 49 U.S.C. § 31315(b)(4) by periodically publishing names and reasons for denials.

The following 52 applicants lacked sufficient recent driving experience during the three-year period prior to the date of their application:

Adkins, William I.
Alejandro, Pablo
Archambault, Gary E.
Ash, Frederick J.
Barber, Jr., Lonnie D.
Bors, Allen G.
Brooks, Marvin L.
Burlitch, Donald L.
Cleveland, Nathan P.
Collins, Gary L.
Cooper, Gregory L.
Culverwell, Gerald L.
Delain, Lash L.
Dozier, Clifton
Durer, James F.
Else, Gerald G.
Fischer, Matthew A.
Frampton, James A.
Gilleland, David J.
Gravely, Donald G.
Graves, Thomas
Haas, Kenneth L.
Hamilton, Jeffery A.
Hill, Ray C.
Hummel, Patrick B.
Jackman, Norman
Johnson, James L.
Kelly, Danny J.
Kopeshke, Edward M.
Kuhr, Howard G.
Lana, Carmelo
Langford, William D.
Leven, Hugh
Logue, William H.
Lohrbach, Carl A.
May, Timothy G.
Merritt, Russell S.
Nickel V, William F.
Pitta, Jr., Joe
Polen, Floyd L.
Provencher, Edwin J.
Roslansky, Daniel F.
Rushing, Rodger D.
Schmitt, Stephen E.
Silver, Sylvester
Smith, Jr., Eddie J.
Smith, James A.
Tapp, Carolyn O.
Towner, John C.
Turner, Glen V.
Wright, Forrest L.
Zoeller, David D.

The following seven applicants do not have experience operating a CMV and presented no evidence from which FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption:

Chiakas, Randall
Jones, Nathan B.
Loum, Mamadou
Mankowski, Joseph P.
Reid, Mark A.
Skwarek, James M.
Stewart, James C.

The following nine applicants do not have three years of experience driving a CMV on public highways with the vision deficiency:

Atwood, Jr., Ronald S.
Church, Roy D.
Hopkins, Ricky A.
Little, Edward C.
Marshall, Judy L.
Perry, Gregory L.
Peters, Carl H.
Ross, Edward
Kou, Xiong

The following five applicants do not have three years of recent experience driving a CMV with the vision deficiency.

Armstrong, Karl G.
Hagen, Brian G.
Pugh, Timothy R.
Rodriguez, Angel L.
Slate, William K.

One applicant, Shefiu O. Abdulsalam, meets the vision requirements and does not need a vision exemption.

One applicant, Quinn C. Wheaton, does not have sufficient peripheral vision in the better eye to qualify for an exemption.

Five applicants had their commercial driver's licenses suspended during the three-year review period in relation to a moving violation. Applicants do not qualify for an exemption with a suspension during the three-year review period.

Bayer, Jeffery
Rankin, Richard O.
White, Stephen R.
Willis, J. C.
Woodworth, Daniel D.

Fourteen applicants contributed to a crash while operating a CMV. Applicants do not qualify for an exemption if they have contributed to a crash during the three-year review period.

Brooks, John P.
Cromwell, Jerry G.
Dunaway, Roger M.
Hahn, George L.
Harley, Jeff D.
Harris, Bobby L.
Hummel, Timothy B.
Peculis, Brian
Pitts, Sr., Jeffery A.
Reed, Sr., Franklin D.
Robbins, Frederick G.
Shaw, Ricky D.
Smith, Raymond C.
Wesley, Loyal R.

One applicant, Timothy L. Kelly, was issued excessive nonmoving violations during the three-year period, and did not demonstrate the level of safety required for interstate driving.

Four applicants did not hold a license that allowed operation of the vehicles that they drove during the three-year review period.

Garcia, Larry G.
McQuilty, Duane A.
Shamblin, Hoyt M.
Waiters, Clifton

One applicant, John Bruins, was denied because his license was suspended for ''refusing to submit to test.''

One applicant, Donnie R. Hovis, was denied because he did not hold a license that allowed operation of vehicles over 10,000 pounds for all or part of the three-year period, and was involved in a CMV crash to which he contributed. Both are disqualifying offenses.

Finally, one applicant, James W. Currie, did not have stable vision during the three-year review period.

Issued on: March 28, 2005.

Rose A. McMurray,

Associate Administrator for Policy and Program Development.

[FR Doc. 05–6473 Filed 3–31–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–98–4334, FMCSA–2003–14223]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 13 individuals. FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective April 21, 2005. Comments from interested persons should be submitted by May 2, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Numbers FMCSA–98–4334 and FMCSA–2003–14223 by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the agency name and docket numbers for this notice. 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. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Mary D. Gunnels, Office of Bus and Truck Standards and Operations, (202) 366–4001, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Public Participation:* The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the ''help'' section of the DMS web site. If you want us to notify you that we

received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), FMCSA may renew an exemption for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 13 individuals who have requested renewal of their exemptions from 49 CFR 391.41(b)(10) concerning vision requirements in a timely manner. FMCSA has evaluated these 13 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

John D. Bolding, Jr.
Michael P. Curtin
Richard L. Elyard
Michael R. Forschino
Richard H. Hammann
Billy L. Johnson
Christopher J. Kane
Wallace F. Mahan, Sr.
Kirby G. Oathout
James R. Petre
William E. Reveal
Duane L. Riendeau
Janusz Tyrpien

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if:

(1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 13 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 66 FR 17994; 68 FR 15037; 68 FR 10301; 68 FR 19596). Each of these 13 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by May 2, 2005.

In the past FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 69 FR 51346 (August 18, 2004). FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: March 28, 2005.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 05–6474 Filed 3–31–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2005–20027]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The FMCSA announces its decision to exempt 28 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: April 1, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Office of Bus and Truck Standards and Operations, (202) 366–4001, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov.*

Background

On January 14, 2005, the FMCSA published a notice of receipt of

exemption applications from 29 individuals, and requested comments from the public (70 FR 2701). The 29 individuals petitioned the FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. They are: Eddie Alejandro, Eldred S. Boggs, David F. Breuer, James T. Butler, Roger K. Cox, Richard S. Cummings, Joseph A. Dean, Donald P. Dodson, Jr., William H. Goss, Eric W. Gray, James K. Holmes, Daniel L. Jacobs, Jose M. Limon-Alvarado, Robert S. Loveless, Jr., Eugene R. Lydick, John W. Montgomery, Danny R. Pickelsimer, Zeljko Popovac, Juan Manuel M. Rosas, Francis L. Savell, Richie J. Schwendy, David M. Stout, Artis Suitt, Gregory E. Thompson, Kerry W. VanStory, Harry S. Warren, Carl L. Wells, Prince E. Williams, and Keith L. Wraight.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the FMCSA has evaluated the 29 applications on their merits and made a determination to grant exemptions to 28 of those persons who applied for them. The comment period closed on February 14, 2005. One comment was received, and its contents were carefully considered by the FMCSA in reaching the final decision to grant the exemptions.

The FMCSA has not made a decision on the application of Keith L. Wraight. Subsequent to the publication of the notice of applications and request for comments on January 14, 2005 (70 FR 2701), the agency received additional information from its check of his motor vehicle record, and we are evaluating that information. A decision on this application will be made in the future.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

Since 1992, the agency has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., ''Visual Requirements and Commercial Drivers,'' October 16, 1998, filed in the docket, FMCSA–98–4334.) The panel's conclusion supports the agency's view that the present visual acuity standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 28 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, retinal and macular scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but 12 of the applicants were either born with their vision impairments or have had them since childhood. The 12 individuals who sustained their vision conditions as adults have had them for periods ranging from 13 to 46 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion has sufficient vision to perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 28 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 30 years. In the past 3 years, two of the drivers have had convictions for traffic violations. One of these convictions was for speeding and one was for ''failure to obey traffic sign.'' None of the drivers was involved in a crash.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the January 14, 2005, notice (70 FR 2701). Since there were no substantial docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants is supported by the information published on January 14, 2005 (70 FR 2701).

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA–98–3637.

We believe we can properly apply the principle to monocular drivers, because data from a former FMCSA waiver study program clearly demonstrates that the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338 and 13345; March 26, 1996.) Because experienced monocular drivers with

good driving records in the waiver program demonstrated their ability to drive safely, this fact supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes. (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 28 applicants receiving an exemption, we note that the applicants have had no crashes and only two traffic violations in the last 3 years. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to 28 of the 29 applicants listed in the notice of January 14, 2005 (70 FR 2701).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 28 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year: (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

The FMCSA received one comment in this proceeding. The comment was considered and is discussed below.

Advocates for Highway and Auto Safety (Advocates) expresses continued opposition to the FMCSA's policy to grant exemptions from the FMCSRs, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which the FMCSA presents driver information to the public and makes safety determinations; (2) objects to the agency's reliance on conclusions drawn from the vision waiver program; (3) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). The FMCSA's responses are restated below.

On the first issue regarding the manner in which the FMCSA presents driver information to the public and makes safety determinations, Advocates questions how various aspects of exemption application information are verified. In particular, Advocates states that the public is not advised about outside verification of each applicant's miles driven, the number of years driving commercial vehicles, the type of vehicle driven, and the most recent 3-year driving record. The number of years driving commercial vehicles is not the precise experience criterion used to determine an applicant's acceptability for an exemption. That determination is made on the most recent 3 years' experience before application. That experience and the type of vehicle driven is verified by the applicant's employer.

The recent 3-year driving record is verified through the Commercial Driver License Information System (CDLIS). This is another criterion used to determine if an applicant is acceptable. Total miles driven is not and never has been a criterion used to decide acceptability. It is, therefore, not verified. Mileage is presented as an indication of overall experience with CMVs.

Advocates states that the FMCSA needs to provide an accurate mileage figure for the recent 3-year period. This mileage is allegedly needed to determine whether an applicant's crashes and violations are accumulated at low or high exposure in the 3 years preceding the application. While this may be an interesting determination in

some contexts, it is not relevant to the determination of the driver's acceptability. An applicant is acceptable relative to a driving record if there are no crashes for which the driver was issued a citation nor was a contributing factor. It is not relevant whether these types of crashes occur at high or low exposure. If they are present, the driver is disqualified.

Advocates states that the FMCSA should require a minimum average annual miles driven or total mileage in order to qualify for an exemption. In making this statement, Advocates notes that mileage driven by applicants in the **Federal Register** notice ranges from as little as 37,000 miles over 17 years to over 3 million miles for two applicants with 30 and 32 years' driving experience respectively. The FMCSA believes defining a required minimum mileage for application would enact a spurious screening standard not supported by the results of the Vision Waiver Program. An examination of the data from the years the program was in operation shows the annual mileage driven ranged from as little as 1,000 miles to a maximum of 160,000 miles. The median annual miles driven was about 40,000 with 25 percent of the waiver holders usually driving less than 17,000 miles per year.

Although a minimum mileage standard is an inappropriate criterion, FMCSA believes miles driven does have value in the context of program evaluation. It is part of the basis for establishing whether a program has achieved a ''level of safety that is equivalent to, or greater than, the level of safety that would have been achieved'' absent from exemption. The other part of the safety determination is the number of crashes experienced by an exempt group where crashes and mileage are related through a statistical model named Poisson regression. In this model, the relationship is given as the number of crashes (nc) being equal to a rate (r) times mileage (m) ($nc=r \times m$). The rate in this model is usually referred to as the crash rate per some convenient unit of miles driven (1 million, for example). This rate is the basis through which the safety level of a program is determined and miles driven are an integral part of the determination. This framework, however, does not suggest that there is a minimum level of mileage that could be arbitrarily used for a screening decision.

Advocates states that the FMCSA should consider imposing a sliding scale standard for drivers with little driving experience, holding applicants with relatively low accumulations of mileage and years of experience to a higher safety standard during the 3-year review period. Advocates based this view on two factors: (1) Exposure is frequently used as a means of determining safety, as when the FMCSA uses the fatality rate as a measure of safety progress in truck-related crashes; and (2) greater driving experience would mean the drivers have had more time to adjust to driving with their vision deficiencies. The FMCSA believes that imposing a sliding scale standard, like the minimum mileage requirement discussed above, would enact a spurious screening standard, based on data taken from the Vision Waiver Program which was shown to have an acceptable level of safety.

Advocates states that, while the FMCSA provides some information on the applicant's separate experience with combination tractor-trailers and the straight trucks, the agency has not assessed the relative value in terms of driving experience between driving these types of vehicle configurations in predicting safety. This would suggest that there should be separate experience specifications for each type of CMV and that an exemption would be issued for a particular type of vehicle. Relative to this, Advocates formerly pointed to research literature concerned with the differences between the two types of trucks. This literature, however, does not address the operation of the two types of CMVs in relation to the visual conditions which are the focus of the exemption program. The best evidence of possible disparities in the operation of the CMV types is taken from the earlier Vision Waiver Program. The data taken from the program show that those driving straight trucks had a crash rate that was slightly higher than that of the combination truck operators (2.15 crashes per million miles driven versus 1.76). This difference was not statistically significant. As a result, it appears that a consideration of vehicle type in the application process is not necessary.

The same conclusion can be drawn in relation to Advocates' statement concerned with driving routines. Advocates states that the FMCSA has not made any attempt to distinguish between the kinds of driving routine the applicants experienced based on the type of driving they had done. To support the need to do this, they previously noted that the agency distinguished between five types of drivers and driving regimens in its May 2000 proposed rule on driver rest and sleep for safe operations. This proposal was concerned with driver fatigue. There is no evidence that there is a differential effect of fatigue on drivers with the vision conditions that are the focus of exemptions. Consequently, the FMCSA does not believe there is a need to issue exemptions for specific types of driving routine.

Advocates is concerned with the FMCSA's use of a 3-year driving record to screen drivers who apply for exemptions. They first claim that it is misleading to report a driving record for the most recent 3-year period in conjunction with drivers' self report of the total number of years driving. This is misleading, they state, because the addition of the unverified total years of driving gives the impression of a longer period of safe driving. The FMCSA had no intention of conveying this type of interpretation. Total years driving was reported, as was mileage, to give an overall indication of experience. For the purposes of screening, a recent 3-year driving record is the critical focus relative to safe driving.

Advocates then argues that a 3-year record may not be sufficient to guarantee a level of safety that is equivalent to or greater than that present in the absence of an exemption program. In support of this, it points to the comment filed by the Department of Motor Vehicles (DMV) for the State of California relative to a driver from that State who applied for an exemption (Mr. James N. Spencer at 65 FR 20245, April 14, 2000). The California DMV opposed the granting of an exemption to this driver because of his crash involvement and citation record in years 4 and 5 before applying for an exemption. The FMCSA finds California's comment inconsistent with California's issuance of an intrastate CDL on July 23, 1997, to the driver.

The FMCSA believes that using a 3-year driving record as a screening procedure in the application process is adequate to ensure the required level of safety. In *John C. Anderson* v. *Federal Highway Administration*, No. 98–3739 (8th Cir. May 1, 2000), the United States Court of Appeals for the Eighth Circuit affirmed the agency's 3-year requirement of driving with a vision impairment before being eligible for an exemption. This screening period was used in the Vision Waiver Program which was shown to have a level of safety that was better than the national norm. Moreover, as Advocates correctly points out, not all States maintain driving records for more than 3 years. Requiring some drivers to submit 3-year records and others to submit ones for a longer duration, as Advocates suggests, would be arbitrary and capricious.

In another comment, Advocates suggests that the agency is sanitizing the

information in the driving record to justify granting vision exemptions. Specific information provided on the crashes and violations of applicants is a presentation of the facts as we know them and not any attempt to downplay or explain away crashes and citations as Advocates suggests.

Advocates also comments that the opinions of ophthalmologists and optometrists are not persuasive and should not be relied on by the agency. The opinions of the vision specialists on whether a driver has sufficient vision to perform the tasks associated with operating a CMV are made only after a thorough vision examination including formal field of vision testing to identify any medical condition which may compromise the visual field such as glaucoma, stroke or brain tumor, and not just based on a Snellen test. The FMCSA believes it can rely on medical opinions regarding whether a driver's visual capacity is sufficient to enable safe operations. The medical information is combined with information on experience and driving records in the agency's overall determination of whether exempting applicants from the vision standard is likely to achieve a level of safety equal to that existing without the exemption.

In regard to Advocates' second issue regarding what inferences can be drawn from the results of the waiver study program, Advocates suggests that the agency cannot base the present proceedings on the results generated by the waiver study program because a valid research model was not used. In response to this concern, we note that the validity of research designs is a quality with many dimensions which cannot be accepted or dismissed in a blanket, simplistic statement. Validity can be concerned with the measurements used, the manner in which the study is performed (internal validity), or the application of the results for a broader inference (external validity). The approach used by the FMCSA for the assessment of risk is a valid design that has been used in epidemiology for studies of occupational health. These studies compare a treated or exposed group (such as the drivers who hold waivers) to a control group that is large and represents outcomes for the nation as a whole (*e.g.*, national mortality rates or truck crash rates). This design has been used to investigate risk relative to the hazards of asbestos and benzene with regulatory decisions based on the outcomes.

While the design has been successfully used in critical risk areas, its application has been challenged in adversarial proceedings. Most of the criticism has focused on the data used in the models (measurement validity). In these circumstances, it has been argued that exposure to hazards is not always clearly measured because recordkeeping is not accurate or complete. Criticism has also focused on the poor measurement of outcomes (*e.g.* the occurrence of disease or vehicle crashes). Threats to the validity of measurement were not a problem in the waiver program's risk assessment. Exposure, for example, in the assessment is manifested by participation in the waiver program (as in an exposure to a medical treatment or an employment condition) and through vehicle miles traveled (as exposure to risk). The measurement of participation in the program had no error by virtue of the required recordkeeping. Exposure to risk by vehicle miles traveled was measured by self-report and could, of course, contain errors. However, since reports were made on a monthly basis, it was not expected that the reporting for these short periods would contain significant systematic error over the life of the program.

The measurement of risk outcomes was determined through crash occurrence. Crash occurrence was verified in multiple ways through self-report (a program requirement), the Commercial Driver License Information System (CDLIS), State driving records, and police crash reports. As a result it is believed that the research approach used in the waiver program did not suffer flaws relative to the validity of measurement.

Criticism of internal validity was addressed in a sensitivity analysis. The original design proposed to use a sample of CMV operators without vision deficiencies as a comparison group. While the design was appealing, it had potential for flaws relative to internal validity. Because the vision deficiencies studied were a fixed condition, the drivers could not be randomly assigned to the waiver and comparison groups as is done in clinical trials, for example. Moreover, a comparison group could not be assembled from the general population of CMV operators due to a lack of volunteers. Instead, the information needed for comparison was taken from the General Estimates System (GES). GES is an annual survey of police crash reports sponsored by the National Highway Traffic Safety Administration that is based on sound statistical sampling principles. Estimates derived from the survey (national crash rates) represent national crash rate norms for large trucks.

While the national norms in the GES data are effective for a comparison at the national level, they raise questions in relation to internal validity. When random assignment to the treatment and comparison groups cannot be used, internal validity can be questioned. The necessary approach to obtaining valid results, in this case, is to thoroughly examine a study for bias and make adjustments as necessary. To do this, additional information (*e.g.* demographic and operational data) is needed for both the treatment and comparison groups to determine if the samples are balanced. GES did not have these data, so internal validity could be questioned because adjustments could not be made. Under these circumstances, bias, if it existed, would remain hidden.

To address this question, the agency performed a sensitivity analysis to assess the impact of possible hidden bias (Rosenbaum, P.R. Observational Studies, New York, Springer-Verlag 1995). The analysis examined outcomes under various levels of possible hidden bias and the results showed that the comparison with GES crash rates is insensitive to hidden bias. The results of this sensitivity analysis, filed in docket number FMCSA–99–5578, provide evidence to support the internal validity of the comparison to GES data.

The remaining facet of validity that is of concern for the waiver program assessment involves its relevance in the regulatory setting (external validity). The structure of these types of epidemiological investigations provides a high level of external validity. Being able to compare outcomes to a national norm places the focus in proper perspective for regulatory matters. This, of course, is their strength relative to the waiver program where the GES crash rates represent a national safety norm.

Based on the various assessments, it is clear that the results of the waiver program risk analysis are valid. The measurement of exposure and risk outcomes was conducted with virtually no error. The external validity is ensured because a national norm is the focus of comparison and, based on the sensitivity analysis, the internal validity is substantiated.

Although the foregoing discussion successfully addresses Advocates' concerns about validity, there is another issue that was engaged to complete the scrutiny of the waiver program risk assessment. A full examination would consider all facets of how results are obtained. In particular, obtaining valid results that point to a clear causal connection between an action and an outcome rests on ruling out other

influences on the outcome. While this appears to be largely accomplished based on an examination of the various types of validity, there remained an additional potential threat to the validity of the results. Relative to this, it had been argued that the drivers in the various waiver programs have lower crash rates because they were aware of being monitored, and monitoring is a strong motivation to exercise care. To address this possible threat, the agency conducted a follow-up assessment after the waived drivers were given grandfather rights in March 1996 and were no longer monitored. Conducted in June 1998, the agency made an assessment of the drivers' crash experience for the period from March to December 1996. The results, on file in docket FMCSA–99–5578, showed that the drivers who had been in the program continued to have a crash rate that was lower than the national norm.

In regard to their third issue, Advocates believes that the agency misinterpreted the current law on exemptions by considering it slightly more lenient than the previous law. Regardless of how one characterizes the new exemption language, the FMCSA strictly adheres to the statutory standard for granting an exemption. In short, we determine whether granting the exemption is likely to achieve an equal or greater level of safety than exists without the exemption.

Advocates' final point suggesting that the Supreme Court decision, *Albertsons, Inc.* v. *Kirkingburg*, 119 S.Ct. 2162 (June 22, 1999) affects the legal validity of vision exemptions is without support. Vision exemptions are granted under FMCSA's statutory authority and standards, which were not at issue in the case.

Conclusion

Based upon its evaluation of the 28 exemption applications, the FMCSA exempts Eddie Alejandro, Eldred S. Boggs, David F. Breuer, James T. Butler, Roger K. Cox, Richard S. Cummings, Joseph A. Dean, Donald P. Dodson, Jr., William H. Goss, Eric W. Gray, James K. Holmes, Daniel L. Jacobs, Jose M. Limon-Alvarado, Robert S. Loveless, Jr., Eugene R. Lydick, John W. Montgomery, Danny R. Pickelsimer, Zeljko Popovac, Juan Manuel M. Rosas, Francis L. Savell, Richie J. Schwendy, David M. Stout, Artis Suitt, Gregory E. Thompson, Kerry W. VanStory, Harry S. Warren, Carl L. Wells, and Prince E. Williams from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Issued on: March 28, 2005.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 05–6476 Filed 3–31–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34631]

Union Pacific Railroad Company—Acquisition and Operation Exemption—Line of Denver Terminal Railroad Company, d/b/a Denver Rock Island Railroad

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board is granting a petition for exemption from the prior approval requirements of 49 U.S.C. 11323–25 for Union Pacific Railroad Company to acquire and operate approximately 3.23 miles of rail line of the Denver Terminal Railroad Company, d/b/a Denver Rock Island Railroad (DRIR), extending from DRIR milepost 0.72 near Sandown to DRIR milepost 3.95 at Belt Junction, in Denver, CO, subject to standard labor protective conditions.

DATES: The exemption will be effective on May 1, 2005. Petitions to stay must be filed by April 18, 2005. Petitions to reopen must be filed by April 26, 2005.

ADDRESSES: Send an original and 10 copies of all pleadings referring to STB Finance Docket No. 34631 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of all pleadings to petitioner's representative, Robert T. Opal, General Commerce Counsel, 1400 Douglas Street, Stop 1580, Omaha, NE 68179–0001.

FOR FURTHER INFORMATION CONTACT: Eric S. Davis, (202) 565–1608. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, e-mail, or call: ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail *asapdc@verizon.net;* telephone (202) 306–4004. (Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.)

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 24, 2005.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. 05–6277 Filed 3–31–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 24, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 2, 2005 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0047.

Form Number: TFS 2211.

Type of Review: Extension.

Title: List of Data (A) and List of Data (B).

Description: Information from insurance companies to provide Treasury a basis to determine acceptability of companies applying for a Certificate of Authority to write or reinsure Federal surety bonds or an Admitted Reinsurer (not on excess risks to U.S.).

Respondents: Business or other for-profit.

Estimated Number of Respondents: 30.

Estimated Burden Hours Per Respondent: 18 hours.

Frequency of Response: On occasion, Other (applications).

Estimated Total Reporting Burden: 540 hours.

Clearance Officer: Jiovannah L. Diggs, Financial Management Service, Administrative Programs Division, Records and Information Management Program, 3700 East West Highway, Room 144, Hyattsville, MD 20782, (202) 874–7662.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–6468 Filed 3–31–05; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–195–78]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–195–78 (TD 8426), Certain Returned Magazines, Paperbacks or Records (§ 1.458–1).

DATES: Written comments should be received on or before May 31, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Certain Returned Magazines, Paperbacks, or Records.

OMB Number: 1545–0879.

Regulation Project Number: IA–195–78.

Abstract: The regulations provide rules relating to an exclusion from gross income for certain returned merchandise. The regulations provide that in addition to physical return of the merchandise, a written statement listing certain information may constitute evidence of the return. Taxpayers who receive physical evidence of the return may, in lieu of retaining physical evidence, retain documentary evidence of the return. Taxpayers in the trade or business of selling magazines, paperbacks, or records, who elect a certain method of accounting, are affected.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 19,500.

Estimated Time Per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 8,125 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 27, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1471 Filed 3–31–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 12884

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 12884, Survey Questionnaire.

DATES: Written comments should be received on or before May 31, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Survey Questionnaire.

OMB Number: 1545–1922.

Form Number: Form 12884.

Abstract: This form will be completed by applicants to collect statistical data regarding advertising media and to collect RNO information that is recorded in the TIMIS database for EEO statistics and reporting.

Current Actions: This is a new collection.

Type of Review: This is a new collection.

Affected Public: Individuals and households and Federal Government.

Estimated Number of Respondents: 33,085.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 2,757.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 28, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1472 Filed 3–31–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209121–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209121–89 (TD 8802), Certain Asset Transfers to a Tax Exempt Entity (§ 1.337(d)–4).

DATES: Written comments should be received on or before May 31, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Certain Asset Transfers to a Tax-Exempt Entity.

OMB Number: 1545–1633.

Regulation Project Number: REG–209121–89.

Abstract: The written representation requested from a tax-exempt entity in regulations section 1.337(d)–4(b)(1)(A) concerns its plans to use assets received from a taxable corporation in a taxable unrelated trade or business. The taxable corporation is not taxable on gain if the assets are used in a taxable unrelated trade or business.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, business or other for-profit organizations.

Estimated Number of Respondents: 25.

Estimated Time Per Respondent: 5 hrs.

Estimated Total Annual Burden Hours: 125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 28, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1474 Filed 3–31–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Thursday, April 28, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Peterson O'Brien at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section

10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Thursday, April 28, 2005 from 12:30 p.m. pacific time to 1:30 p.m. pacific time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary Peterson O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary Peterson O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: March 25, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–1473 Filed 3–31–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Fund Availability Under the VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is announcing the availability of funds for applications for assistance under the Life Safety Code grant component of VA's Homeless Providers Grant and Per Diem Program. This Notice contains information concerning the program, application process and amount of funding available.

DATES: An original completed and collated grant application (plus two completed collated copies) for assistance under the VA's Homeless Providers Grant and Per Diem Program must be received in the Grant and Per Diem Field Office by 4 p.m. Eastern Time on June 22, 2005. Applications may not be sent by facsimile (FAX). In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

For a Copy of the Application Package: Download directly from VA's Grant and Per Diem Program Web page at *http://www.va.gov/homeless/page.cfm?pg=3* or call the Grant and Per Diem Program (toll-free) 1–877–332–0334. For a document relating to the VA Homeless Providers Grant and Per Diem Program, see the final rule published in the **Federal Register** (68 FR 55467) on September 26, 2003.

Submission of Application: An original completed and collated grant application (plus two copies) must be submitted to the following address: VA Homeless Providers Grant and Per Diem Field Office, 10770 N. 46th Street, Suite C–200, Tampa, Florida 33617. Applications must be received in the Grant and Per Diem Field Office by the application deadline. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected or not funded.

FOR FURTHER INFORMATION CONTACT: Dr. Guy Liedke, VA Homeless Providers Grant and Per Diem Program Field Office, Department of Veterans Affairs, 10770 N. 46th Street, Suite C–200, Tampa, FL 33617 or phone (toll-free) 1–877–332–0334.

SUPPLEMENTARY INFORMATION: This Notice announces the availability of funds for assistance under VA's Homeless Providers Grant and Per Diem Program for eligible capital grantees who received a previous grant under section 3 of the Homeless Veterans Comprehensive Service Act of 1992 (Pub. L. 102–590; 38 U.S.C. 7721 note) for construction, renovation, or acquisition of a facility and may seek a Life Safety Code grant solely for renovations to such facility to comply with the Life Safety Code of the National Fire Protection Association.

Public Law 107–95, the Homeless Veterans Comprehensive Assistance Act of 2001, authorizes this program. Funding applied for under this Notice may be used solely for renovations to such facility to comply with the Life Safety Code of the National Fire Protection Association.

Authority: VA's Homeless Providers Grant and Per Diem Program is authorized by Public Law 107–95, sec. 5(a)(1), the Homeless Veterans Comprehensive Assistance Act of 2001 codified at 38 U.S.C. 2011, 2012, 2061, 2064, and has been extended through Fiscal Year 2005. The program is implemented by the final rule codified at 38 CFR part 61. The final rule was published in the **Federal Register** on September 26, 2003. The regulations can be found in their entirety in 38 CFR 61.0 through 61.82. Funds made available under this Notice are subject to the requirements of those regulations.

Allocation: Approximately $1 million is available for the Life Safety Code grant component of this program.

Funding Priorities: None.

Application Requirements: The specific grant application requirements will be specified in the application package. The package includes all required forms and certifications. Selections will be made based on criteria described in the application.

Applicants who are selected will be notified of any additional information needed to confirm or clarify information provided in the application. Applicants will then be notified of the deadline to submit such information. If an applicant is unable to meet any conditions for grant award within the specified timeframe, VA reserves the right to not award funds and to use the funds available for other grant and per diem applicants.

Dated: March 23, 2005.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E5–1436 Filed 3–31–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Fund Availability Under the VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is announcing the availability of funds for applications for assistance under the Capital Grant component of VA's Homeless Providers Grant and Per Diem Program. This Notice contains information concerning the program, funding priorities, application process, and amount of funding available.

DATES: An original completed and collated grant application (plus three completed collated copies) for assistance under the VA's Homeless Providers Grant and Per Diem Program must be received in the Grant and Per Diem Field Office, by 4 p.m. Eastern Time on June 8, 2005. Applications may not be sent by facsimile (FAX). In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as

ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

For a Copy of the Application Package: Download directly from VA's Grant and Per Diem Program Web page at: *http://www.va.gov/homeless/page.cfm?pg=3* or call the Grant and Per Diem Program at (toll-free) 1–877–332–0334. For a document relating to the VA Homeless Providers Grant and Per Diem Program, see the final rule published in the **Federal Register** (68 FR 55467) on September 26, 2003.

Submission of Application: An original completed and collated grant application (plus three copies) must be submitted to the following address: VA Homeless Providers Grant and Per Diem Field Office, 10770 N. 46th Street, Suite C–200, Tampa, FL, 33617. Applications must be received in the Grant and Per Diem Field Office by the application deadline. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected or not funded.

FOR FURTHER INFORMATION CONTACT: Dr. Guy Liedke, VA Homeless Providers Grant and Per Diem Program, Department of Veterans Affairs, 10770 N. 46th Street, Suite C–200, Tampa, FL, 33617; (toll-free) 1–877–332–0334.

SUPPLEMENTARY INFORMATION: This Notice announces the availability of capital funds for assistance under VA's Homeless Providers Grant and Per Diem Program for eligible entities to: (1) Expand existing projects; or (2) develop new programs or new components of existing projects. Funding applied for under the capital grant component may be used for: (1) Remodeling or alteration of existing buildings; (2) acquisition of buildings, acquisition and rehabilitation of buildings; (3) new construction; and (4) acquisition of vans (in connection with a new or existing Grant and Per Diem Grant project) for outreach to and/or transportation for homeless veterans. Public Law 107–95, section 5(a)(1), the Homeless Veterans Comprehensive Assistance Act of 2001, *codified at* 38 U.S.C. 2011, 2012, 2061, and 2064 authorizes this program. The program has been extended through Fiscal Year 2005. For eligibility criteria please refer to the Final Rule published in the **Federal Register** on September 26, 2003.

Capital grant applicants may not receive assistance to replace funds provided by any State or local government to assist homeless persons. A proposal for an existing project that seeks to shift its focus by changing the population being served or the precise mix of services being offered is not eligible for consideration. No more than 25 percent of services available in projects funded through this grant program may be provided to clients who are not receiving those services as veterans.

VA is pleased to issue this Notice of Fund Availability (NOFA) for the Homeless Providers Grant and Per Diem Program. The Department expects to award approximately $15 million under the capital grant component.

Funding available under this NOFA is being offered to help offset the capital expenses of existing state and local governments, Indian Tribal governments, faith-based, and community-based organizations that are capable of creating and providing supported housing and/or supportive service center services for homeless veterans. The District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, may be considered eligible entities under the definition of ''State'' in the final rule, § 61.1 Definitions.

Per diem for these programs is requested in the grant application and may be paid at the time of grant project completion. It should be noted that VA per diem payment is limited to the applicant's cost of care per eligible veteran minus other sources of payments to the applicant for furnishing services to homeless veterans up to the per day rate VA pays for State Home Domiciliary care. Awardees will be required to support their request for per diem payment with adequate fiscal documentation as to program income and expenses.

Interested organizations should know that the vast majority of homeless veterans in this country suffer from mental illness or substance abuse disorders or are dually diagnosed with both mental illness and substance abuse disorders. In addition, many homeless veterans have serious medical problems. Collaboration with VA medical centers, VA community-based outpatient clinics or other health care providers is an important aspect of assuring that homeless veterans have access to appropriate health care services.

It is important to be aware that VA places great emphasis on responsibility and accountability. VA has procedures in place to verify the completion of the capital grant as well as monitor services provided to homeless veterans and outcomes associated with the services provided in grant and per diem-funded programs. Applicants should be aware of the following:

All awardees that are conditionally selected in response to *this NOFA* must meet the Life Safety Code of the National Fire and Protection Association as it relates to their specific facility. VA will conduct an inspection prior to awardees being able to submit request for per diem payment to ensure this requirement is met.

Upon capital grant completion each program seeking per diem will have a liaison appointed from a nearby VA medical facility to provide oversight and monitor services provided to homeless veterans in the per diem-funded program.

Monitoring will include at a minimum an annual review of each per diem program's progress toward meeting internal goals and objectives in helping veterans attain housing stability, adequate income support, and self sufficiency as identified in each per diem program's original application. Monitoring will also include a review of the agency's income and expenses as they relate to this project to ensure per diem payment is accurate.

Each per diem-funded program will participate in VA's national program monitoring and evaluation system administered by VA's Northeast Program Evaluation Center (NEPEC). It is the intention of VA to develop specific performance targets with respect to housing for homeless veterans. NEPEC's monitoring procedures will be used to determine successful accomplishment of these housing outcomes for each per diem-funded program.

VA encourages all eligible and interested entities to review this NOFA and consider applying for funds to provide service for homeless veterans.

Authority: VA's Homeless Providers Grant and Per Diem Program is authorized by Public Law 107–95, section 5(a)(1), the Homeless Veterans Comprehensive Assistance Act of 2001 codified at 38 U.S.C. 2011, 2012, 2061, 2064, and has been extended through Fiscal Year 2005. The program is implemented by the final rule codified at 38 CFR part 61. The final rule was published in the **Federal Register** on September 26, 2003, the regulations can be found in their entirety in 38 CFR 61.0 through 61.82. Funds made available under this Notice are subject to the requirements of those regulations.

Allocation: Approximately $15 million is available for the capital grant component. Capital grant awards will be limited to no more than $400,000.00, and not more than one award per tax identification number. Vans must be

directly connected to a new or existing Grant and Per Diem Grant project and will be limited to one per project. Per diem payments to capital grant recipients are subject to the recipients maintaining the program for which the grant was awarded, the availability of funds and reauthorization of the program past September 30, 2005.

Funding Priorities: VA establishes priority for funding to underserved and low utilization populations and areas. VA encourages applications from applicants that serve the identified population or are in the identified underserved areas listed in the priorities. In this round of capital grant funding, VA expects to award funding to create 1,000 community-based supported housing beds.

Funding priority 1. Applicants whose projects are exclusively for homeless Native American veterans will be considered in the first funding priority. Provision of services must occur on Indian Tribal property. Of those eligible entities in the first funding priority, that are legally fundable, the highest scoring applicants will be funded first until approximately $1.8 million is awarded. Applicants not funded in this priority will be placed in the fourth funding priority.

Funding priority 2. Applicants whose projects are physically located in Alaska, Maine, Michigan, Minnesota, Missouri, Oklahoma, Virginia, Vermont, Puerto Rico, and any territory or possession of the United States are the second funding priority. Eligible entities whose projects are located in these states will be considered in the second funding priority. Of those eligible entities in the second funding priority, that are legally fundable, the highest scoring applicant from each state will be funded first followed by the second highest scoring applicant from each state until approximately $6 million is awarded. Applicants not funded in this priority will be placed in the fourth funding priority.

Funding priority 3. Applicants whose projects are physically located in cities within the Metropolitan Statistical Areas (MSA) as defined in the tables below that are eligible entities will be considered in the third funding priority. Of those eligible entities in the third funding priority, that are legally fundable, the highest scoring applicant from each MSA will be funded first followed by the second highest scoring applicant in each MSA until approximately $3.2 million is awarded. Applicants not funded in this priority will be placed in the fourth funding priority.

Funding priority 4. VA is encouraging interested, state and local governments, faith-based, and community-based organizations to apply for funding under this NOFA. Eligible entities that are state and local governments, Indian Tribal governments, faith-based, and community-based organizations, along with those applicants not selected in the other funding priorities will be considered in the fourth funding priority. Of those eligible entities that are legally fundable, the highest-ranked applications for which funding is available, will be conditionally selected for eligibility to receive a capital grant in accordance with their ranked order until funding is expended (approximately $4 million).

METROPOLITAN STATISTICAL AREAS FOR FUNDING PRIORITY 3

NEW YORK—NEWARK—EDISON NY—NJ—PA			
COUNTIES IN MSA			
Queens NY	Kings NY	New York NY	Nassau NY
Putnam NY	Bronx NY	Suffolk NY	Westchester NY
Rockland NY	Bergen NJ	Passaic NJ	Sussex NJ
Pike PA	Morris NJ	Essex NJ	Hudson NJ
Union NJ	Hunterdon NJ	Somerset NJ	Middlesex NJ
Richmond NJ	Monmouth NJ	Ocean NJ	
WASHINGTON—ARLINGTON—ALEXANDRIA DC—VA—MD			
COUNTIES IN MSA			
Washington DC	Montgomery MD	Charles MD	Stafford VA
Frederick MD	Prince George MD	Clarke VA	Prince William VA
Jefferson WV	Calvert MD	Warren VA	Spotsylvania VA
Fauquier VA	Fairfax VA	Loudoun VA	
CHICAGO—NAPERVILLE—JOLIET IL—IN—WI			
COUNTIES IN MSA			
Kenosha WI	Lake-Kenosha IL	Du Page IL	Newton IN
McHenry IL	Kendall IL	Cook IL	Jasper IN
De Kalb IL	Grundy IL	Lake IN	Porter IN
Kane IL	Will IL		
PHILADELPHIA—CAMDEN—WILMINGTON PA—NJ—DE—MD			
COUNTIES IN MSA			
Bucks PA	Montgomery PA	Philadelphia PA	Chester PA
Delaware PA	Cecil MD	New Castle DE	Salem NJ
Gloucester NJ	Camden NJ	Burlington NJ	

Methodology: VA will review all capital grants applications in response to this notice of funding availability as follows: VA will group the applicants into the funding priorities categories. Applicants will then be ranked within

their respective funding category based on score and any ranking criteria set forth in that funding category only if the applicant scores at least 600 cumulative points from paragraphs (b), (c), (d), (e), and (i) of § 61.13.

The highest-ranked application for which funding is available, within the highest funding category, will be conditionally selected in accordance with their ranked order until VA reaches the projected amount of funding for each category. If funds are still available after selection of those applications in the highest priority group, VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in the final rule § 61.14.

Application Requirements: The specific grant application requirements will be specified in the application package. Applicants should be careful to complete the proper application package. Submission of the incorrect application package will result in the application being rejected at threshold. The packages include all required forms and certifications. Selections will be made based on criteria described in the application, final rule, and NOFA. Applicants who are conditionally selected will be notified of any additional information needed to confirm or clarify information provided in the application. Applicants will then be notified of the deadline to submit such information. If an applicant is unable to meet any conditions for grant award within the specified timeframe, VA reserves the right to not award funds and to use the funds available for other grant and per diem applicants.

Dated: March 25, 2005.

R. James Nicholson,

Secretary of Veterans Affairs.

[FR Doc. E5–1437 Filed 3–31–05; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 70, No. 62

Friday, April 1, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AC02

National Forest System Land Management Planning Directives

Correction

In notice document 05–5652 beginning on page 14637 in the issue of Wednesday, March 23, 2005, make the following correction:

On page 14637, in the first column, under the **ADDRESSES** heading, in the seventh and eighth lines, the e–mail address should read, ''*planningdirectives @contentanalysisgroup.com*.''

[FR Doc. C5–5652 Filed 3–31–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

NAF Contracting Regulation, AR 215–4

Correction

In notice document 05–5925 appearing on page 15297 in the issue of Friday, March 25, make the following corrections:

1. On page 15297, in the first column, under the **FOR FURTHER INFORMATION CONTACT** heading, in the second line, ''Maary'' should read ''Mary.''

2. In the second column, in the second full paragraph, under *Regulatory Flexibility Act:*, in the third line, ''maning'' should read ''meaning.''

[FR Doc. C5–5925 Filed 3–31–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933—Petroleum Environmental Research Forum (''PERF'') Project No. 2003–01, ''Mercury Cooperative ''

Correction

In notice document 05–3924 beginning on page 9980 in the issue of Tuesday, March 1, 2005, make the following corrections:

1. On page 9980, in the third column, in the second paragraph, in the ninth line, ''Sugerland, TX'' should read ''Sugarland, TX''.

2. On the same page, in the same column, in the same paragraph, in the 12th line, ''crate'' should read ''create''.

[FR Doc. C5–3924 Filed 3–31–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Airborne Law Enforcement Accreditation Commission, Inc.

Correction

In notice document 05–5888 appearing on page 15350 in the issue of Friday, March 25, 2005, make the following correction:

On page 15350, in the third column, in the first full paragraph, in the second line from the bottom, ''operational safety'' should read ''operational and safety.

[FR Doc. C5–5888 Filed 3–31–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
April 1, 2005

Part II

Department of Justice

Drug Enforcement Administration

21 CFR Parts 1305 and 1311

Electronic Orders for Controlled Substances and Notice of Meeting; Final Rule and Notice

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1305 and 1311

[Docket No. DEA–217F]

RIN 1117–AA60

Electronic Orders for Controlled Substances

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: DEA is revising its regulations to provide an electronic equivalent to the DEA official order form, which is legally required for all distributions involving Schedule I and II controlled substances. These regulations will allow, but not require, registrants to order Schedule I and II substances electronically and maintain the records of these orders electronically. The regulations will reduce paperwork and transaction times for DEA registrants who handle, sell, or buy these controlled substances. This rule has no effect on patients' ability to receive prescriptions for controlled substances from practitioners, nor on their ability to have those prescriptions filled at pharmacies.

DATES: *Effective Date:* This rule is effective on May 31, 2005. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of May 31, 2005.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

I. Background

DEA's Legal Authority for These Regulations

DEA enforces the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*), as amended. DEA regulations implementing this statute are published in Title 21 of the Code of Federal Regulations (CFR), Part 1300 to 1399. These regulations are designed to establish a framework for the legal distribution of controlled substances to deter their diversion to illegal purposes and to ensure that there is a sufficient supply of these drugs for legitimate medical purposes.

Requirements for Distributing Schedule I and II Controlled Substances

The CSA prohibits distribution of Schedule I and II controlled substances except in response to a written order from the purchaser on a form DEA issues (21 U.S.C. 828(a)). DEA issues Form 222 to registrants for this purpose, preprinting on each form the registrant's name, registered location, DEA registration number, schedules, and business activity. DEA serially numbers the forms and requires registrants to maintain and account for all forms issued. Executed and unexecuted Forms 222 must be available for DEA inspection. The CSA requires that executed Forms 222 be maintained for two years (21 U.S.C. 828(c)).

When ordering a Schedule I or II substance, the purchaser must provide two copies of the Form 222 to the supplier and retain one copy. Upon filling the order, the supplier must annotate both copies of the form with details of the controlled substances distributed, retain one copy as the official record of the distribution, and send the second copy of the annotated Form 222 to DEA. Upon receipt of the order, the purchasers must also annotate their copy, noting the quantity of controlled substances received and date of receipt.

Regulatory History

Although the paper-based regulatory structure limits diversion, it does not address or provide for the use of modern computer technologies. DEA issued more than six million individual order forms in fiscal year 2003. Because both the purchaser and supplier must maintain copies of the form for two years, the order system requires the maintenance of more than 24 million forms. Many, if not most, of the registrants using Form 222 place all their orders for Schedules III–V controlled substances electronically. Many suppliers receive electronic notice from their purchasers of their intention to place Schedule I and II orders, but the orders cannot be filled until the supplier receives the DEA-issued Form 222 from the purchaser. The processing of the Form 222 takes one to three days from the time the form is completed to the time the order is delivered; electronic orders can be processed and filled immediately.

DEA Pilot Project

Industry asked DEA to provide an electronic means to satisfy the legal requirements for order forms. DEA began discussions with the regulated industry regarding CSOS standards in 1999. On January 11, 2002, DEA published a notice in the **Federal Register** expressing its intent to conduct a pilot project to conduct performance verification testing of public key infrastructure enabled controlled substances orders. This pilot project was conducted in partnership with two industry associations—the Health Care Distribution Management Association and the National Association of Chain Drug Stores. A total of 22 DEA registrants were listed as initial pilot participants. Initial pilot objectives were to ascertain the level of compatibility and usability of CSOS standards for electronic controlled substances ordering applications and to test industry's ability to deploy these systems. All technical test objectives were successfully realized in early phases of the pilot with registrants demonstrating the ability to retrieve and manage their CSOS digital certificates. Where participants expressed difficulty or reported undue burden with processes (*e.g.*, with initial notarization requirements for enrollment) proposed technical standards were reviewed and modified, where possible, without compromising necessary nonrepudiation and security services objectives.

In August 2002, pilot participants began using CSOS certificates in simulated environments with DEA providing access to a test suite of CSOS certificates. Pilot participants demonstrated the ability to send, receive and validate digitally signed controlled substances orders in a test environment, and also demonstrated the ability to accurately reject orders, as appropriate. Pilot outcomes allowed DEA to identify and resolve potential challenges before the controlled substances ordering system was proposed. DEA continues to provide test resources to industry through the use of its pilot system, allowing continued refinement of CSOS applications.

Summary of Proposed Rule

On June 27, 2003, DEA issued a Notice of Proposed Rulemaking (NPRM) in which DEA proposed revisions to its regulations to allow electronic orders if those orders were signed using an electronic signature that met three criteria—authentication, non-repudiation, and record integrity (68 FR 38558). Because only digital signatures based on certificates issued by a Certification Authority as part of a public key infrastructure (PKI) meet all three criteria, DEA proposed requirements that apply to obtaining and using digital certificates.

DEA proposed allowing regulated entities who are eligible to order Schedule I and II controlled substances to issue and process electronic orders if those orders are signed using a digital certificate issued by a Certification Authority run by DEA; the approach is called the Controlled Substance Ordering System or CSOS. Use of electronic orders is optional; registrants may continue to issue orders on Form 222.

DEA proposed minor organizational revisions to the existing requirements in Part 1305 to create subparts. Subpart A includes those requirements that apply to all orders. Subpart B covers the requirements for handling Form 222 orders. Other than minor editorial changes to make the regulations easier to read, the existing requirements for paper orders are unchanged. A new subpart C was proposed to cover the requirements for issuing and filling electronic orders. These requirements parallel those for Form 222 orders, but include some differences based on the different constraints on the two systems. For example, the regulation specifies the data elements required on an electronic order; because these elements are part of the Form 222, they are not specified for paper orders. Orders submitted on paper must be filled by a single registered location because the original order form must be maintained at the distribution location in support of the distribution; electronic orders may be divided and filled from separate registered locations owned by the same company, since the order can be retrieved directly in verifiable form at each distributing location.

In addition to its revision of Part 1305, DEA proposed a new Part 1311 that includes the requirements for obtaining, storing, using, and renewing digital certificates. Registrants and people granted power of attorney by registrants to sign orders will be eligible to obtain digital certificates. A registrant must appoint a CSOS coordinator who will serve as that registrant's recognized agent regarding issues pertaining to issuance of, revocation of, and changes to digital certificates issued under that registrant's DEA registration. These individuals serve as knowledgeable liaisons between one or more DEA registered locations and the CSOS Certification Authority (CA). The coordinators will collect applications, ensure that they include all of the required information, and send them to the CA. Part 1311 also specifies the requirements that the digital signature software will have to meet to ensure that it is capable of creating and validating digitally signed orders.

Procedures for Obtaining a Digital Certificate

Procedures for enrolling to obtain a digital certificate are available on the DEA Diversion Control Program Web site, *http://www.deadiversion.usdoj.gov,* and on the DEA E-Commerce Web site at *http://www.deaecom.gov.* Applicants can download the Diversion PKI CSOS Enrollment document and the CSOS Subscriber's Manual for guidance on enrollment procedures. DEA will begin accepting applications to obtain digital certificates May 31, 2005. Upon receiving a completed application DEA estimates that it will take the Certification Authority 10 business days to process the application. DEA's Certification Authority will maintain a support line to assist applicants and subscribers with issues pertaining to certificate enrollment, issuance, revocation, and renewal.

PKI and Digital Certificates

A public key infrastructure is comprised of a Certification Authority, which must verify the identity of applicants before issuing digital certificates, and public-private key pairs. PKI systems are based on asymmetric cryptography: the holder of the digital certificate has a private key, which only the certificate holder can access, and a public key, which is available to anyone. What one key encrypts, only the other key can decrypt. It is computationally infeasible for the two keys to be derived from each other. Only one public key will validate signatures made using its corresponding private key. Because the private key is held by only one person, it is that person's responsibility to ensure that it is not divulged or compromised.

The DEA Certification Authority (CA) will issue digital certificates, which will serve as an electronic equivalent of the Form 222. DEA must serve as the CA because a digital certificate is the functional equivalent of a Form 222 that the CSA requires DEA to issue. In the same manner as DEA pre-prints the registration information on the paper order forms that are issued to registrants, DEA will enter the registration information in extensions within the certificates that are issued to registrants and those granted power of attorney by registrants.

As DEA explained in the NPRM, the process of digitally signing an order is technically complicated (the software uses several complex algorithms to create an encrypted digest of the text), but the user needs only to activate the key and then enter one or two key strokes to sign an order or validate it. Existing electronic order systems will have to be PKI-enabled, which can be done with commercially available toolkits. DEA has been working with industry to develop systems and procedures that allow PKI-enabling existing systems to reduce the cost of implementation.

CSOS Certificates

All of the information currently preprinted on the Form 222 will be part of the extension data of the CSOS digital certificate, which will be included with each order that is digitally signed. Attaching the digital certificate, with the registration information in the extension data, to an electronic order signed with the digital signature is the functional equivalent to DEA pre-printing the registrant information on the paper forms, thus creating an electronic equivalent of the Form 222.

A CSOS certificate will be valid until the DEA registration under which it is issued expires or until the CSOS CA is notified that the certificate should be revoked. Certificates will be revoked if the certificate holder is no longer authorized to sign Schedule I and II orders for the registrant, if the information on which the certificate is based changes, or if access to the private key has been compromised or lost.

II. Discussion of Comments on the NPRM

DEA received 11 comments on its proposed rule. Commenters included the major trade associations representing pharmacies and distributors as well as individual companies and one vendor. This section summarizes the comments and provides DEA's response.

Listed schedules. Several commenters were concerned with proposed rule language that implied that the digital certificate would include extension data that indicated the schedules the certificate holder rather than the registrant was authorized to order. The commenters stated that it would be an additional burden on suppliers if they had to verify the eligibility of the signer, as well as the registrant, to order specific schedules.

DEA has revised the rule language to clarify that only the registrant's authorized schedules will be included in the extension data. If a registrant limits an individual's signing authority, it is incumbent on the registrant to ensure that the individual does not sign orders for schedules he/she is not authorized to order. The supplier is not required to verify information on schedules beyond confirming that the

registrant is authorized to order the schedules.

Attaching the digital certificate. One commenter expressed concern about the statements in the preamble that a digital certificate be attached to each order.

Because the digital certificate serves as the equivalent of the CSA-mandated form, the certificate, with its extension data, must be attached to each order. Including the certificate with each order ensures that, just as with the paper forms, an accurate copy of the DEA registration information for the customer is with the order. It should be noted that the requirement that the digital certificate be attached to the order applies to when the order is transmitted by the purchaser to the supplier. Once orders have been archived, each order does not have to have the specific digital certificate attached, as long as the certificate is associated with the order. Thus, an archive may have one copy of a specific certificate that is associated with a number of orders that have been archived, provided that retrieval of an order includes a copy of the certificate.

FIPS 140–1. Commenters noted that the proposed rule referenced FIPS 140–2, but did not mention FIPS 140–1, causing concern that systems validated and approved under 140–1 might not be allowed under the new standard. They were further concerned because the rule did not specify the security level required. Commenters stated that requiring a standard beyond security level 1 would cause difficulties for participants.

FIPS 140–2 grandfathers FIPS 140–1; any system validated and approved under FIPS 140–1 is considered to be approved and validated under FIPS 140–2. Therefore, the regulatory provision that implementations be certified under FIPS 140–2 incorporates, by reference, any implementations previously certified under FIPS 140–1. With respect to the security level required, DEA agrees with comments that Security Level 1 is appropriate and has included it in the final rule.

Commenters objected to the requirement that the private keys be stored on a FIPS-approved module. As DEA explained in the NPRM, government agencies must adopt FIPS requirements for any federal system, such as CSOS. DEA, therefore, must require that storage of keys be on FIPS-approved systems. While DEA encourages the use of smartcards, biometrics, or other secure hardware devices for private key storage within the CSOS architecture, use of such devices is voluntary. The regulations only require that the private key be stored on a FIPS-approved cryptographic module.

Power of Attorney. A number of commenters raised issues related to the power of attorney (POA) provisions. Several suggested that the existing requirement that the POA letter be signed by the person who signed the most recent registration application is impractical for companies that have national or regional distribution operations. Other commenters suggested that the application for a digital certificate, handled through the CSOS coordinator, could replace the POA letter and process.

The intent of this rulemaking is to establish an electronic means of satisfying the order form requirements—not to change the existing order form requirements. DEA did not propose to change the POA requirement or process, which was established to ensure that all activities by a registrant with respect to order forms be under the ultimate control of one responsible individual within the registrant. Any concerns regarding existing requirements with respect to POA will have to be considered in a separate action; they are beyond the scope of this CSOS rulemaking.

With respect to the suggestion that application for a digital certificate serve as a substitute for granting power of attorney, DEA wishes to note that the granting of power of attorney is an explicit legal act of assignment of authority from an authorized individual to another; accepting the application for a digital certificate as a substitution would make the assignment implicit, which would not be acceptable to DEA. Any assignment of the authority to obtain and execute order forms on behalf of a registrant must be an explicit legal act.

One commenter noted that the language in § 1305.12(d) that states that orders must be signed by a person authorized to sign an application for registration was wrong and should state that orders must be signed either by a person who is authorized to sign a registration application or a person granted POA to sign orders. DEA agrees and has changed the rule.

Tracking number. Several commenters stated that the format of the unique tracking number that a registrant assigns to an order was incorrect, that the last two digits of the year should come first. DEA agrees and has corrected the rule.

Order contents. Commenters suggested several changes to the requirements for order contents. DEA agrees that the complete address of the supplier could be provided by either the purchaser or the supplier and has changed the rule. Similarly, DEA agrees that the order could include either the National Drug Code (NDC) number or the drug name. DEA emphasizes that the system used to view the orders must provide the drug description if the NDC code is used in the order.

Linked records. Commenters objected to the use of the phrase ''electronically linked'' records because they think that links could be electronic or manual. In technical discussions with DEA, industry clarified that their concern was that DEA might interpret ''electronically linked'' to require active rather than passive links, where all order data are linked automatically. Passive links would allow the data to be stored in separate databases linked by one or more data elements common to all records.

DEA emphasizes that it is not requiring any specific type of link; DEA's only concern is that if it requests copies of orders (*e.g.*, for a particular customer or substance), the registrant must be able to produce the requested records (*i.e.*, both the electronic orders and the linked distribution records) upon request in a format that an agent can read and understand. DEA has revised the rule to clarify that ''readable format'' means that a person, not a computer, can easily read the documents.

Corrections. Several commenters identified changes needed to correct regulatory language. In § 1305.22(c)(1), DEA proposed that suppliers should verify the signature and order by ''having'' software that complies with Part 1311. The commenter recommended ''using'' instead of ''having.'' DEA agrees and has made the change.

Commenters stated that the proposed language in § 1305.25(b) and (c) that requires the supplier to provide a reason for not filling the order was inconsistent with the existing rule. DEA agrees and has changed the language to clarify that a supplier must notify a purchaser that an order will not be filled, however, the supplier does not need to provide a reason for refusing to fill an order.

Commenters asked DEA to make the definition of digital certificate specific to CSOS. DEA disagrees. The definition is intended to be general and will cover more than CSOS certificates. In the regulatory text, however, DEA has added ''CSOS'' before digital certificate wherever the certificate is limited to the CSOS certificate.

One commenter asked whether ''a registrant's recognized agent'' was different from a CSOS coordinator. The two are the same; DEA has revised the

rule to replace registrant's recognized agent with CSOS coordinator.

Central Ordering. A commenter asked whether the § 1305.22(f) requirement to ship to the registered location of the purchaser allowed for shipment to a different registered location if the order was issued by a central ordering facility. A number of firms issue orders for all their registered locations from a central location which may not, itself, be registered. Each order, however, can be for only one specific registered location and the supplier must ship to that location. If the registered location identified within the order deviates from that identified within the digital certificate, the supplier cannot fill the order; a new order must be requested from the purchaser.

Commenters also recommended that for central processing of orders that DEA allow either the central location or the location filling part of the order to create the record. DEA agrees that either location may create the record and has revised the rule. DEA's concern is not with the creation of the record, but with its maintenance. The registrant that distributes a controlled substance must maintain a full record of the order and make it available for DEA on request.

One commenter raised the issue of linking a single certificate to multiple locations. As DEA explained in the NPRM, DEA understands the concern and has taken steps to reduce the burden for individuals who hold keys for many locations, but to serve as an equivalent of a Form 222, each digital certificate must be specific to a single registered location.

Endorsed, lost, and canceled orders. Commenters questioned whether the proposed rule for endorsing electronic orders could be implemented, noting that the requirements were confusing and cumbersome. DEA has reviewed this issue and agrees with the commenters that endorsing electronic orders in a manner that provides adequate safeguards may be technically too complicated. Consequently, DEA has decided to not allow endorsement of electronic orders. Because orders are rarely endorsed and the almost instantaneous communication of electronic orders and confirmations mean that a purchaser will learn that the supplier cannot fill all or part of an order shortly after the order is submitted, DEA does not expect this to pose any significant problem for registrants. The purchaser can quickly issue a new electronic order to another supplier for any items the first supplier cannot fill. Finally, if the order is originally submitted to a firm that processes orders centrally, the central processing supplier can fill the order from multiple locations without endorsement.

Commenters also stated that the meaning of § 1305.26 on lost orders was confusing and requested that only the purchaser maintain records of lost orders. DEA agrees and has revised the rule to specify that a supplier need maintain only those orders that the supplier fills.

Commenters stated that suppliers should not be required to maintain records of orders that are canceled. DEA agrees. Suppliers are only required to maintain records of orders that they fill. Suppliers need not return the electronic order to the purchaser, however, the supplier must notify the purchaser of the cancellation of the order. Commenters also said that purchasers should be able to use any method to notify the supplier that an order was canceled. DEA disagrees. Notification of an order cancellation must be written so that the purchaser can maintain a verifiable record. Written notification includes paper, facsimile, or electronically transmitted notifications such as e-mail; notification by telephone is not allowed.

Validity of a signature. Commenters asked whether it was feasible to determine whether a signature was valid at the time of signing. Commenters were particularly concerned that, if there was a delay in processing an order, they should be able to reject an order if the signature was no longer valid at the time of shipping.

The purpose of the requirement for consistent time systems is to allow suppliers to determine whether a signature was valid at the time of signing. If a digital signature was valid on Friday when the order was signed, but expired on Monday, DEA considers that the order is valid. Unless DEA or the purchaser has notified a supplier that orders issued by a specific person should not be filled, an order signed with a digital certificate that was valid at the time of signing is a valid order. A registrant may choose not to fill the order for any reason; if registrants want to require that the signature still be valid at the time of filling, they may do so. Suppliers have the option of imposing more stringent standards. As a secondary note, DEA wishes to stress that once a supplier has validated a signature on an order, it is not necessary to re-validate the signature prior to actually shipping the order to the purchaser.

Time period for reporting key compromise or loss of privilege. Commenters objected to the requirement that they report loss, theft, or compromise of the key within 24 hours of such loss, theft, or compromise, and that they report a certificate holder's loss of signing privilege within six hours. They also stated that they wanted to be able to report loss of signing privilege in advance (*e.g.*, when they learn an employee will be leaving the firm on a certain date). They stated that the 24-hour and 6-hour time frames were unrealistic and could result in notifications filed outside of business hours.

Registrants may notify the CA in advance of revocations. DEA agrees that the 24-hour period should be within 24 hours of substantiation of key compromise, etc., and has changed the rule. On the 6-hour notification, DEA disagrees with the commenters. DEA believes it is important that the CA be notified as soon as someone's signing privileges are revoked. The digital certificate is the equivalent of a Form 222—a former employee still in possession of their digital certificate and keys would have all they needed to generate orders that would be otherwise indistinguishable from legitimate orders. In the paper world, this concern does not exist since a former employee would no longer have access to the order forms and, thus, could not engage in any mischief. DEA notes that the CA will be staffed 24/7 so there is no need to wait until the next business day. An e-mail to the CA that is digitally signed by the coordinator or registrant will be sufficient notification.

Certification Authority. Commenters raised concerns about the DEA CA being run by a contractor and asked about the safety of information. DEA emphasizes that although a contractor may be used to carry out the day-to-day operations of the CA, the contractor will operate under direct DEA supervision and control. All Federal contractors are subject to the same legal requirements as government employees in regard to protection of information. DEA may use information submitted in its investigations, but the information would not be released for other purposes.

Reports to DEA. Commenters objected to the requirement that suppliers file reports on orders with DEA every other business day. They stated that this frequency of filing would not provide them with an opportunity to review and correct minor discrepancies. With paper orders, DEA knows which registrants have executed Form 222, which provides a control on the system. DEA needs frequent reports on electronic orders because it has no other means of determining who is ordering and in what volume. DEA recognizes that some

of the data may be imprecise due to changes in orders, but DEA needs frequent submissions of reports to account for all orders generated by a given purchasing registrant and as a means to identify and account for all outstanding orders for a given registrant.

Commenters also recommended changes to the information provided in the daily reports to make the data elements consistent with ARCOS data elements and to add four elements on the substances ordered. DEA agrees with the commenters. DEA will specify a format for the report that is consistent with the ARCOS reports plus the data fields on what was ordered. DEA notes that ARCOS is preparing to allow electronic filing of reports; when this occurs, DEA plans to develop a process by which the summary reports can be accepted as a substitute for ARCOS reporting for Schedule I and II substances, with the usual ARCOS provisions for filing corrections.

Adoption of new technologies. Commenters stated that it was unclear how DEA would evaluate new technologies and recommended that DEA develop a rapid means for evaluating and approving new technologies. DEA understands the commenters' concern, but approval of any new technology would be subject to the Administrative Procedure Act requirements for public notice and comment prior to adoption. Beyond the statutory mandates, DEA thinks it is vital that the regulated community have an opportunity to consider and discuss new methods to ensure that any new rules can be accommodated by existing systems. Although the development of this rule took several years, DEA believes that the time was well spent because discussions that DEA and industry held made it possible for all parties to identify potential problems and find solutions prior to publishing a regulation. DEA does not anticipate that review and recognition of suitable alternative technologies should take that long.

Audits. Comments expressed concern about the scope of the third-party audits and DEA audits. They specifically stated that the reports to DEA should not be included in the third-party audits.

DEA agrees with the commenters that the reports to DEA would not be part of third-party audits. The independent third-party audit is intended to ensure that the digital signature system functions properly for both the supplier and purchaser.

Reverse Distributors. Several commenters asked how the electronic order system will work for reverse distributors. DEA recognizes that the ordering system has different characteristics in reverse distribution and intends to address issues related to those distributions in a separate rulemaking.

Other Issues. Commenters objected to the mention of biometrics and smart cards. DEA notes that certificate holders may want to consider using biometric passwords or smart cards, but DEA is not requiring them to do so. Keys may be stored on any secure system provided that the storage module is approved under FIPS 140–2.

Commenters questioned the use of ''system.'' DEA agrees with commenters that systems for creating and processing digitally signed orders may be one or more software systems. As noted above, DEA's concern is the integrity and availability of the records of orders, not the technologies and software used to create and store the information.

Commenters asked that DEA include a definition or description of the subscriber agreement. DEA does not believe that it is necessary to define the subscriber agreement. The DEA CA will provide the agreement, appropriately titled, to each certificate holder.

Commenters objected to the statement in the NPRM that the practical implementation of PKI systems is simple. DEA understands and explained in the NPRM that the technologies involved in PKI systems are complex, but from the user's standpoint, digital signatures are simple because so much of the work is actually done by machine. After authenticating themselves to the system and activating the key, the signer generally digitally ''signs'' the document with a single key stroke.

One commenter raised issues related to digital certificates for pharmacists for use in the electronic prescription system. This issue is beyond the scope of this notice; DEA will address the issue when it proposes its rule for electronic prescriptions.

A commenter noted that the five-year transition period used in the economic analysis may be optimistic. DEA recognizes that the electronic orders may phase in at a different rate; some registrants may continue to use Forms 222 indefinitely, as the rule allows. The five-year period was simply used to estimate costs to avoid understating those costs.

One commenter supported the proposed rule, but expressed the hope that pharmacies would not bear the cost of implementation. DEA notes that use of electronic orders is voluntary. DEA believes that the system will provide cost savings to both purchasers and suppliers, but no registrant is required to adopt electronic orders.

One vendor recommended that DEA adopt an approach more consistent with the vendor's technology. DEA is not dictating a particular technology or PKI implementation. Any approved system that meets the criteria for authentication, non-repudiation, and record integrity may be used.

Special Note Regarding Certificate Extension Data

Finally, following publication of the proposed rule, DEA modified the specification for the certificate extensions. Certain registrants had expressed concerns regarding using the certificates for other health care purposes because their DEA registration number appeared in plain text in the certificate, thus making it easily accessible to the recipient. To address this concern, DEA has modified the certificate profile to allow that, in lieu of listing the plain text DEA number, the DEA number extension will contain a hash value generated from the DEA number and the specific certificate subject distinguished name serial number using the SHA–1 hashing algorithm. Because the DEA number will no longer be available in plain text in the certificate, DEA is modifying the order format requirement in Section 1305.21 to require that the purchaser include their DEA registration number in the body of the order. Further, Section 1311.55 is being amended to require that a supplier must verify that the DEA number listed in the body of the order is the same as the DEA number associated with the certificate. The verification is necessary to avoid circumstances where a person who has been granted POA for multiple registered locations does not inadvertently sign an order with the wrong certificate/private key.

III. Discussion of the Final Rule

Except for the changes discussed above, DEA is adopting the rule as proposed. Part 1305 has been reorganized to place requirements that apply to all Schedule I and II orders in subpart A; these include old §§ 1305.01, 1305.02, 1305.03, 1305.04, which retain their numbers, old § 1305.07 (power of attorney), which is redesignated as § 1305.05, old § 1305.08 (persons entitled to fill orders), which is redesignated as § 1305.06, and old § 1305.16 (special procedures for filling certain orders), which is redesignated as § 1305.07. The remainder of old Part 1305 is subpart B, which covers the requirements for obtaining, executing, and filling orders on Form 222. Subpart B includes old §§ 1305.05 and 1305.06 (procedures for obtaining and executing

Forms 222), which are redesignated as §§ 1305.11 and 1305.12, and old §§ 1305.09–1305.15, which are redesignated as §§ 1305.13–1305.19. These sections include specific references to orders on Form 222.

Subpart C covers the requirements for electronic orders.

Section 1305.21 specifies that an electronic order must be signed with a CSOS digital certificate and that the order may include substances other than Schedule I and II controlled substances. The section specifies the data fields that must be included in electronic orders.

Section 1305.22 specifies procedures for filling electronic orders.

Section 1305.23 covers endorsing electronic orders. As discussed above, endorsement of electronic orders will not be allowed.

Section 1305.24 covers central processing of orders. These requirements are also different for electronic orders because with electronic orders, the supplier may have multiple registered locations fill parts of an order provided that the supplying company owns and operates all of the locations filling an order.

Sections 1305.25 and 1305.26 specify the requirements for handling unaccepted and defective electronic orders and lost orders.

Section 1305.27 covers preservation of electronic orders.

Section 1305.28 covers canceling and voiding electronic orders.

Section 1305.29 specifies the requirements for reporting electronic orders to DEA. Suppliers may submit either a copy of the order and its linked records or a report in a format DEA specifies. DEA intends that the report will be identical to the ARCOS report in format with four additional data elements: the NDC number, quantity, unit, and strength ordered.

New Part 1311 covers the requirements for digital certificates. Subpart A includes the scope, definitions, standards for electronic orders, and incorporations by reference. Subpart B covers the requirements for obtaining and using CSOS digital certificates.

Section 1311.10 specifies who is eligible to obtain a CSOS certificate; § 1311.15 covers the limitation of certificates to the schedules authorized for the DEA registration under which the certificate is issued. The revised section states that the registrant is responsible for ensuring that any person whose signing authority the registrant limits abides by those limits.

Section 1311.20 specifies the requirements for CSOS coordinators.

Section 1311.25 specifies the requirements for obtaining a CSOS certificate.

Section 1311.30 provides the requirements for using and storing a digital certificate.

Section 1311.35 specifies the number of certificates needed.

Section 1311.40 specifies when a new certificate must be obtained.

Section 1311.45 specifies requirements for registrants that grant power of attorney authority.

Section 1311.50 specifies requirements for recipients handling electronic orders prior to filling them.

Section 1311.55 specifies software requirements for handling electronic orders.

Section 1311.60 specifies recordkeeping requirements.

PART 1305.—DISTRIBUTION TABLE

Old section	New section
1305.01—Scope of part 1305	1305.01—Scope of part 1305.
1305.02—Definitions	1305.02—Definitions.
1305.03—Distributions requiring order forms	1305.03—Distributions requiring order forms.
1305.04—Persons entitled to obtain and execute order forms	1305.04—Persons entitled to obtain and execute order forms.
1305.05—Procedure for obtaining order forms	1305.11—Procedure for obtaining DEA Forms 222.
1305.06—Procedure for executing order forms	1305.12—Procedure for executing DEA Forms 222.
1305.07—Power of attorney	1305.05—Power of attorney.
1305.08—Persons entitled to fill order forms	1305.06—Persons entitled to fill DEA Forms 222.
1305.09—Procedure for filling order forms	1305.13—Procedure for filling DEA Forms 222.
1305.10—Procedure for endorsing order forms	1305.14—Procedure for endorsing DEA Forms 222.
1305.11—Unaccepted and defective order forms	1305.15—Unaccepted and defective DEA Forms 222.
1305.12—Lost and stolen order forms	1305.16—Lost and stolen DEA Forms 222.
1305.13—Preservation of order forms	1305.17—Preservation of DEA Forms 222.
1305.14—Return of unused order forms	1305.18—Return of unused DEA Forms 222.
1305.15—Cancellation and voiding of order forms	1305.19—Cancellation and voiding of DEA Forms 222.
1305.16—Special procedure for filling certain order forms	1305.07—Special procedure for filling certain DEA Forms 222.

Incorporation by Reference

The following standards are incorporated by reference:

- FIPS 140–2, Security Requirements for Cryptographic Modules.
- FIPS 180–2, Secure Hash Standard.
- FIPS 186–2, Digital Signature Standard.

These standards are available from the National Institute of Standards and Technology, Computer Security Division, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899–8930 and are available at *http://csrc.nist.gov/.*

V. Required Analyses

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'', Section 1(b), Principles of Regulation. It has been determined that this is a ''significant regulatory action'' under Executive Order 12866, Section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget.

DEA has conducted a cost-benefit analysis of the rule, which the Office of Management and Budget has reviewed. The Economic Impact Analysis for the proposed rule was posted on the Diversion Control Program Web site. That analysis has been updated to account for the number of orders expected in 2004 (6,561,000), the first year of implementation, and to adjust registrant estimates based on data from DEA's ARCOS reporting system. DEA estimates that about 98,000 registrants order Schedule I and II controlled substances and will apply for about 145,000 digital certificates. Over ten years, DEA estimates that electronic orders will reduce the annualized cost of Schedule I and II orders by $284 million; the annualized costs of digital

certificates are estimated to be $20 million. The annualized net benefit of the rule, therefore, is $264 million.

As discussed in the NPRM, DEA developed estimates of the time required for each step in the process of issuing and processing an order and used weighted wage rates based on the number of orders registrant groups are estimated to issue. DEA estimates that issuing and processing a Form 222 order costs purchasers about $26 and suppliers about $13. In contrast, issuing and processing a digitally signed order will cost about $2.60 for purchasers and $3.00 for suppliers. (These costs do not include the cost of obtaining a digital certificate or installing software, most of which are one-time costs.) The costs for a single registrant vary depending on the number of orders issued and filled. DEA estimates that annual costs for Form 222 orders range from $26 for a registrant who issues a single order to more than $184,000 for distributors who both issue and fill orders. The annual costs for electronic orders range from $2.60 to about $40,000. The initial registrant costs of obtaining a digital certificate range from $156 to about $600, varying with the number of applicants a registrant has.

Table 1 presents the total annual hours and costs for the Form 222 system for 2004 orders. Tables 2–4 present the total annual hours and costs for obtaining digital certificates, issuing electronic orders, and developing and installing software, if these activities occurred in a single year.

TABLE 1.—TOTAL ANNUAL HOURS AND COSTS FOR THE FORM 222 SYSTEM

[2004 orders]

	Hours	Labor	Capital	O&M	Total
Purchaser:					
Complete and send order	1,640,250	$139,323,000		$7,355,000	$146,677,000
Requisition order	3,124	265,000		23,000	288,000
Annotate order	328,050	27,865,000			27,865,000
File orders	109,350	3,087,000	$129,700	2,668,000	4,472,000
Supplier:					
Enter order	1,640,250	58,770,000			58,770,000
Annotate order	328,050	21,212,000			21,212,000
Compile and send to DEA	90,936	3,258,000		174,000	3,433,000
File orders	109,350	3,918,000	129,700	2,668,000	5,303,000
Total	4,249,360	257,698,000	259,000	12,887,000	270,844,000

TABLE 2.—TOTAL HOURS AND COSTS FOR DIGITAL CERTIFICATES

	Hours	Labor	O&M	Total
Purchaser:				
Complete application	58,950	$5,007,000		$5,007,000
Complete application—coordinator	78,755	6,689,000	$638,000	7,328,000
Generate keys	12,116	1,029,000		1,029,000
Learn to use signature	20,778	1,765,000		1,765,000
Renewal—one year	1,234	105,000		105,000
Renewal—3 year-annual	3,627	308,000		308,000
Supplier:				
Complete application	3,311	214,000		214,000
Complete application—coordinator	345	22,000	2,790	25,000
Generate keys	406	26,000		26,000
Learn to use signature	2,032	131,000		131,000
Renewal	406	26,000		26,000
Total	181,960	15,324,000	641,000	15,965,000

TABLE 3.—TOTAL HOURS AND COSTS FOR ELECTRONIC ORDERS

	Hours	Activities	Total cost
Purchaser:			
Sign orders	36,450	6,561,000	$3,096,000
Edit and archive	164,025	6,561,000	13,932,000
Supplier:			
Validate orders	27,338	6,561,000	1,768,000
Collect and send to DEA	5,473	109,460	354,000
Edit and archive	273,375	6,561,000	17,676,000
Total	506,661		36,826,000

TABLE 4.—TOTAL HOURS AND COSTS FOR THE ELECTRONIC ORDER SOFTWARE

	Hours	Labor	O&M	Total
Purchaser:				
Install—chains	8,680	$666,000		$666,000
Install software—other	314,408	13,010,000		13,010,000
Install—practitioner	43,940	1,818,000		1,818,000
Supplier:				
Install software	280	11,600		11,600
Software Developer:				
Development	103,600	9,700,000		9,700,000
Maintenance	89,000	3,683,000		3,683,000
Upgrades	17,800	1,367,000		1,367,000
Audit	2,314	96,000	$593,000	689,000
Total	580,022	30,352,000	593,000	30,945,000

To estimate costs over the first ten years, DEA assumed that implementation would be phased in over the first five years (*i.e.*, it would be five years before all registrants were using the electronic order system). Based on discussions with industry, the phase-in was estimated to occur at 20 percent in the first year, 40 percent in the second, 20 percent in the third, and 10 percent each in the fourth and fifth years. DEA made the conservative estimate that orders would phase in at the same rate as digital certificates. Because a few distributors and large chain drug stores supply and order a large proportion of the drugs, it is likely that orders will phase in more quickly than digital certificates will. A faster phase-in will increase the net benefits; a slower rate would lower the benefits.

DEA also assumed that the number of orders would increase seven percent annually. The seven percent increase is based on the average annual increase in orders over the last seven years. The total cost of both systems was estimated using a seven percent and a three percent discount rate. Table 5 presents the ten-year total cost of orders under the Form 222 system, the electronic system, and the combined systems as the electronic system is phased in over the first five years as well as the annualized cost of the three systems over ten years. Table 6 presents the costs of digital certificates and software needed to create digitally signed orders.

TABLE 5.—TOTAL COST OF ORDERS OVER TEN YEARS

[Present value]

	Paper system	Electronic system	Combined phase-in
Total (7%)	$2,699,913,000	$298,086,000	$704,112,000
Annualized (7%)	384,407,000	42,441,000	100,250,000
Total (3%)	3,223,440,000	363,653,000	781,438,000
Annualized (3%)	377,886,000	42,631,000	91,608,000

TABLE 6.—TOTAL COSTS OF DIGITAL CERTIFICATES AND SOFTWARE OVER 10 YEARS

[Present value]

	New costs
Total (7%)	$149,308,000
Annualized (7%)	21,258,000
Total (3%)	172,093,000
Annualized (3%)	20,275,000

In addition to the cost savings, electronic orders will also provide a number of other benefits that cannot be quantified. Purchasers will be able to create and send single unified controlled substance orders to their suppliers. With Forms 222, purchasers must create the separate Form 222 for the Schedule I and II controlled substances and complete other orders for all other controlled substance purchases from a particular supplier. If a purchaser needs more than 10 Schedule I or II substances, multiple Forms 222 must be completed because the form is limited to ten items. With the electronic orders, they will be able to submit a single order covering all controlled substance and other prescription drugs being purchased from the supplier. The combined orders should reduce the orders that need to be logged, tracked, and handled by both purchasers and suppliers.

Electronic orders should also bring faster receipt of controlled substances. Under the present system, the purchaser has the choice of sending the order by overnight service at considerable cost, mailing it and waiting several days, or sending the order back with the delivery truck, which may not be returning directly to the distributor. In most cases, the purchaser is likely to have to wait at least two days and possibly four or five days when the order is mailed or is shipped back by truck. If the distributor that receives the order cannot fill it, the distributor may endorse it to another distributor and ship it on to another distribution point, further delaying the final shipment. Electronic orders will be received almost instantly and can be shipped the same day. This speed may allow purchasers to order only when they need an item and limit the quantity of controlled substances that they stock. Limiting the quantity of Schedule I and II controlled substances in stock reduces the possibility of diversion and the cost of security.

With the Form 222, if a supplier cannot fill all of an order, the supplier may endorse the entire order over to another supplier. The order cannot be divided and filled in part by one supplier and in part by a second, even if both suppliers belong to the same company. Because each location holds a separate registration, a distributor with multiple locations must maintain stocks of all Schedule I and II controlled substances at each location to be able to fill orders for these substances from that location. Some distributors have created centralized systems where all orders are

processed through the central distribution office, which then transmits parts of the orders to the warehouses that hold specific items. The Form 222 system cannot take advantage of this arrangement because the paper must accompany the order. With electronic orders, DEA will allow a distributor with a central distribution system to divide an order and ship parts of the order from different distribution points. New orders will not need to be generated because the central computer system can track each item in the order and ensure that it is shipped to the appropriate registrant only once. DEA and the supplier will have the records necessary to maintain the closed system of control while allowing the supplier to take advantage of its own system of distribution.

A copy of the Economic Impact Analysis of the Electronic Orders Rule is available on the Diversion Control Program's Web site.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to determine whether regulations have a significant economic impact on a substantial number of small entities or have a disproportionate effect on small entities. DEA, as part of its economic analysis, considered the costs of the existing system and the electronic system on small entities. The annualized costs of the Form 222 system for the smallest entities (Narcotic Treatment Programs with less than $100,000 in revenues), are 1.66 percent of annual revenues; for these registrants, the annual costs of the electronic orders are about 0.24 percent of annual revenues. For most small entities affected by the rule, the cost of the electronic system will be less than 0.1 percent of revenues or sales. Consequently, the Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

A copy of the small business analysis for this proposed rule, which is section 7 of the economic analysis, can be obtained from the Diversion Control Program web site or by contacting the Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule has been determined to be a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will result in an annual effect on the economy of $100,000,000 or more, but will not impose a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. In fact, this rule will result in a significant reduction in the cost of ordering Schedule I and II controlled substances.

Paperwork Reduction Act

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) submitted the following information collection requests to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act, DEA is required to estimate the burden hours and other costs of any requirement for recordkeeping and reporting over a three-year period. Therefore, DEA proposed the revision of an existing collection of information *U.S. Official Order Forms for Schedules I and II Controlled Substances (Accountable Forms), Order Form Requisition, (OMB Control # 1117–0010)*, and the creation of a new collection of information *Reporting and Recordkeeping for Digital Certificates* under the Paperwork Reduction Act of 1995. This process is conducted in accordance with 5 CFR 1320.11. The Information Collection Request was submitted to the Office of Management and Budget for review under section 307 of the Paperwork Reduction Act.

Overview of U.S. Official Order Forms for Schedules I and II Controlled Substances (Accountable Forms), Order Form Requisition Information Collection

(1) Type of information collection: Revision of existing collection.

(2) The title of the form/collection: U.S. Official Order Forms for Schedule I and II Controlled Substances (Accountable Forms), Order Form Requisition.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection:

Form No.: DEA Form 222, U.S. Official Order Forms for Schedule I and II Controlled Substances (Accountable Forms)

DEA Form 222a: Order Form Requisition

Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Business or other for-profit.

Other: Non-profit, state and local governments.

Abstract: DEA–222 is used to transfer or purchase Schedule I and II controlled substances and data are needed to provide an audit of transfer and purchase. DEA–222a Requisition Form is used to obtain the DEA–222 Order Form. Persons may also digitally sign and transmit orders for controlled substances electronically, using a digital certificate. Orders for Schedule I and II controlled substances are archived and transmitted to DEA; both the supplier and purchaser must retain records for two years.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: DEA estimates that the rule will affect 98,000 registrants. The average time for requisitioning Form 222 is 0.05 hours. The average time for completing, annotating and filing paper orders for purchasers is 0.317 hours. It is estimated that suppliers spend, on average, 0.317 hours annotating, entering and filing the DEA Forms 222. Suppliers spend, on average, 9 hours a month logging and tracking order forms and preparing the mailing to DEA. The average time for signing and annotating electronic orders is estimated to be 0.031 hours per order for purchasers; the average time for validating and annotating electronic orders is estimated to be 0.046 hours per order for suppliers, who also spend 0.05 hours every other business day sending reports to DEA.

(6) An estimate of the total public burden (in hours) associated with the collection: As registrants adopt the electronic ordering, the annual burden hours would average 2.5 million hours a year. During this period, DEA assumes that 20 percent of orders would be electronic in year 1, 60 percent in year 2, and 80 percent in year 3, with a 7 percent growth rate for orders per year.

Overview of Reporting and Recordkeeping for Digital Certificates Information Collection

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Reporting and Recordkeeping for Digital Certificates.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection:

Form No.:

DEA Form 251: CSOS DEA Registrant Certificate Application.

DEA Form 252: CSOS Principal Coordinator/Alternate Coordinator Certificate Application.

DEA Form 253: CSOS Power of Attorney Certificate Application.

DEA Form 254: CSOS Certificate Application Registrant List Addendum.

CSOS Certificate Revocation.

Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Business or other for-profit.

Other: Non-profit, state and local governments.

Abstract: Persons use these forms to apply for DEA-issued digital certificates to order Schedule I and II controlled substances. Certificates must be renewed upon renewal of the DEA registration to which the certificate is linked. Certificates may be revoked and/or replaced when information on which the certificate is based changes.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: DEA estimates that the rule will affect 98,000 registrants and 145,000 certificate holders. The average time for completing the application for a digital certificate to order controlled substances is estimated to be from 0.72 hours to 1.24 hours. Certificate renewal is estimated to take 0.083 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: As registrants adopt the electronic ordering, the annual burden hours would average 48,500 hours a year. During this period, DEA assumes that 80 percent of the certificate holders will apply for certificates.

If additional information is required regarding these collections of information, contact: Brenda E. Dyer, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $114,540,000 (inflation-adjusted to 2003) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects

21 CFR Part 1305

Drug traffic control, Reporting requirements.

21 CFR Part 1311

Administrative practice and procedure, Certification authorities, Controlled substances, Digital certificates, Drug traffic control, Electronic signatures, Incorporation by reference, Prescription drugs, Reporting and recordkeeping requirements.

■ For the reasons set out above, 21 CFR Part 1305 is revised, and Part 1311 is added as follows:

■ 1. Part 1305 is revised to read as follows:

PART 1305—ORDERS FOR SCHEDULE I AND II CONTROLLED SUBSTANCES

Subpart A—General Requirements

Sec.
1305.01 Scope of part 1305.
1305.02 Definitions.
1305.03 Distributions requiring a Form 222 or digitally signed electronic order.
1305.04 Persons entitled to order Schedule I and II controlled substances.
1305.05 Power of attorney.
1305.06 Persons entitled to fill orders for Schedule I and II controlled substances.
1305.07 Special procedure for filling certain orders.

Subpart B—DEA Form 222

1305.11 Procedure for obtaining DEA Forms 222.
1305.12 Procedure for executing DEA Forms 222.
1305.13 Procedure for filling DEA Forms 222.
1305.14 Procedure for endorsing DEA Forms 222.
1305.15 Unaccepted and defective DEA Forms 222.
1305.16 Lost and stolen DEA Forms 222.
1305.17 Preservation of DEA Forms 222.
1305.18 Return of unused DEA Forms 222.
1305.19 Cancellation and voiding of DEA Forms 222.

Subpart C—Electronic Orders

1305.21 Requirements for electronic orders.
1305.22 Procedure for filling electronic orders.
1305.23 Endorsing electronic orders.
1305.24 Central processing of orders.
1305.25 Unaccepted and defective electronic orders.
1305.26 Lost electronic orders.
1305.27 Preservation of electronic orders.
1305.28 Canceling and voiding electronic orders.
1305.29 Reporting to DEA.

Authority: 21 U.S.C. 821, 828, 871(b), unless otherwise noted.

Subpart A—General Requirements

§ 1305.01 Scope of part 1305.

Procedures governing the issuance, use, and preservation of orders for Schedule I and II controlled substances are set forth generally by section 308 of the Act (21 U.S.C. 828) and specifically by the sections of this part.

§ 1305.02 Definitions.

Any term contained in this part shall have the definition set forth in the Act or part 1300 of this chapter.

§ 1305.03 Distributions requiring a Form 222 or a digitally signed electronic order.

Either a DEA Form 222 or its electronic equivalent as set forth in subpart C of this part and Part 1311 of this chapter is required for each distribution of a Schedule I or II controlled substance except for the following:

(a) Distributions to persons exempted from registration under Part 1301 of this chapter.

(b) Exports from the United States that conform with the requirements of the Act.

(c) Deliveries to a registered analytical laboratory or its agent approved by DEA.

(d) Delivery from a central fill pharmacy, as defined in § 1300.01(b)(44) of this chapter, to a retail pharmacy.

§ 1305.04 Persons entitled to order Schedule I and II controlled substances.

(a) Only persons who are registered with DEA under section 303 of the Act (21 U.S.C. 823) to handle Schedule I or II controlled substances, and persons who are registered with DEA under section 1008 of the Act (21 U.S.C. 958) to export these substances may obtain and use DEA Form 222 (order forms) or

issue electronic orders for these substances. Persons not registered to handle Schedule I or II controlled substances and persons registered only to import controlled substances are not entitled to obtain Form 222 or issue electronic orders for these substances.

(b) An order for Schedule I or II controlled substances may be executed only on behalf of the registrant named on the order and only if his or her registration for the substances being purchased has not expired or been revoked or suspended.

§ 1305.05 Power of attorney.

(a) A registrant may authorize one or more individuals, whether or not located at his or her registered location, to issue orders for Schedule I and II controlled substances on the registrant's behalf by executing a power of attorney for each such individual, if the power of attorney is retained in the files, with executed Forms 222 where applicable, for the same period as any order bearing the signature of the attorney. The power of attorney must be available for inspection together with other order records.

(b) A registrant may revoke any power of attorney at any time by executing a notice of revocation.

(c) The power of attorney and notice of revocation must be similar to the following format:

Power of Attorney for DEA Forms 222 and Electronic Orders

_____
(Name of registrant)

_____
(Address of registrant)

_____
(DEA registration number)

I, _____ (name of person granting power), the undersigned, who am authorized to sign the current application for registration of the above-named registrant under the Controlled Substances Act or Controlled Substances Import and Export Act, have made, constituted, and appointed, and by these presents, do make, constitute, and appoint _____ (name of attorney-in-fact), my true and lawful attorney for me in my name, place, and stead, to execute applications for Forms 222 and to sign orders for Schedule I and II controlled substances, whether these orders be on Form 222 or electronic, in accordance with 21 U.S.C. 828 and Part 1305 of Title 21 of the Code of Federal Regulations. I hereby ratify and confirm all that said attorney must lawfully do or cause to be done by virtue hereof.

_____
(Signature of person granting power)

I, _____ (name of attorney-in-fact), hereby affirm that I am the person named herein as attorney-in-fact and that the signature affixed hereto is my signature.

(signature of attorney-in-fact)

Witnesses:

1. _____
2. _____

Signed and dated on the _____ day of _____, (year), at _____ .

Notice of Revocation

The foregoing power of attorney is hereby revoked by the undersigned, who is authorized to sign the current application for registration of the above-named registrant under the Controlled Substances Act or the Controlled Substances Import and Export Act. Written notice of this revocation has been given to the attorney-in-fact _____ this same day.

_____
(Signature of person revoking power)

Witnesses:

1. _____
2. _____

Signed and dated on the _____ day of _____ , (year), at _____ .

(d) A power of attorney must be executed by the person who signed the most recent application for DEA registration or reregistration; the person to whom the power of attorney is being granted; and two witnesses.

(e) A power of attorney must be revoked by the person who signed the most recent application for DEA registration or reregistration, and two witnesses.

§ 1305.06 Persons entitled to fill orders for Schedule I and II controlled substances.

An order for Schedule I and II controlled substances, whether on a DEA Form 222 or an electronic order, may be filled only by a person registered with DEA as a manufacturer or distributor of controlled substances listed in Schedule I or II pursuant to section 303 of the Act (21 U.S.C. 823) or as an importer of such substances pursuant to section 1008 of the Act (21 U.S.C. 958), except for the following:

(a) A person registered with DEA to dispense the substances, or to export the substances, if he/she is discontinuing business or if his/her registration is expiring without reregistration, may dispose of any Schedule I or II controlled substances in his/her possession with a DEA Form 222 or an electronic order in accordance with § 1301.52 of this chapter.

(b) A purchaser who has obtained any Schedule I or II controlled substance by either a DEA Form 222 or an electronic order may return the substance to the supplier of the substance with either a DEA Form 222 or an electronic order from the supplier.

(c) A person registered to dispense Schedule II substances may distribute the substances to another dispenser with either a DEA Form 222 or an electronic order only in the circumstances described in § 1307.11 of this chapter.

(d) A person registered or authorized to conduct chemical analysis or research with controlled substances may distribute a Schedule I or II controlled substance to another person registered or authorized to conduct chemical analysis, instructional activities, or research with the substances with either a DEA Form 222 or an electronic order, if the distribution is for the purpose of furthering the chemical analysis, instructional activities, or research.

(e) A person registered as a compounder of narcotic substances for use at off-site locations in conjunction with a narcotic treatment program at the compounding location, who is authorized to handle Schedule II narcotics, is authorized to fill either a DEA Form 222 or an electronic order for distribution of narcotic drugs to off-site narcotic treatment programs only.

§ 1305.07 Special procedure for filling certain orders.

A supplier of carfentanil, etorphine hydrochloride, or diprenorphine, if he or she determines that the purchaser is a veterinarian engaged in zoo and exotic animal practice, wildlife management programs, or research, and is authorized by the Administrator to handle these substances, may fill the order in accordance with the procedures set forth in § 1305.17 except that:

(a) A DEA Form 222 or an electronic order for carfentanil, etorphine hydrochloride, and diprenorphine must contain only these substances in reasonable quantities.

(b) The substances must be shipped, under secure conditions using substantial packaging material with no markings on the outside that would indicate the content, only to the purchaser's registered location.

Subpart B—DEA Form 222

§ 1305.11 Procedure for obtaining DEA Forms 222.

(a) DEA Forms 222 are issued in mailing envelopes containing either seven or fourteen forms, each form containing an original, duplicate, and triplicate copy (respectively, Copy 1, Copy 2, and Copy 3). A limit, which is

based on the business activity of the registrant, will be imposed on the number of DEA Forms 222, which will be furnished on any requisition unless additional forms are specifically requested and a reasonable need for such additional forms is shown.

(b) Any person applying for a registration that would entitle him or her to obtain a DEA Form 222 may requisition the forms by so indicating on the application form; a DEA Form 222 will be supplied upon the registration of the applicant. Any person holding a registration entitling him or her to obtain a DEA Form 222 may requisition the forms for the first time by contacting any Division Office or the Registration Section of the Administration. Any person already holding a DEA Form 222 may requisition additional forms on DEA Form 222a, which is mailed to a registrant approximately 30 days after each shipment of DEA Forms 222 to that registrant, or by contacting any Division Office or the Registration Section of the Administration. All requisition forms (DEA Form 222a) must be submitted to the DEA Registration Section.

(c) Each requisition must show the name, address, and registration number of the registrant and the number of books of DEA Forms 222 desired. Each requisition must be signed and dated by the same person who signed the most recent application for registration or for reregistration, or by any person authorized to obtain and execute DEA Forms 222 by a power of attorney under § 1305.05.

(d) DEA Forms 222 will be serially numbered and issued with the name, address, and registration number of the registrant, the authorized activity, and schedules of the registrant. This information cannot be altered or changed by the registrant; any errors must be corrected by the Registration Section of the Administration by returning the forms with notification of the error.

§ 1305.12 Procedure for executing DEA Forms 222.

(a) A purchaser must prepare and execute a DEA Form 222 simultaneously in triplicate by means of interleaved carbon sheets that are part of the DEA Form 222. DEA Form 222 must be prepared by use of a typewriter, pen, or indelible pencil.

(b) Only one item may be entered on each numbered line. An item must consist of one or more commercial or bulk containers of the same finished or bulk form and quantity of the same substance. The number of lines completed must be noted on that form at the bottom of the form, in the space provided. DEA Forms 222 for carfentanil, etorphine hydrochloride, and diprenorphine must contain only these substances.

(c) The name and address of the supplier from whom the controlled substances are being ordered must be entered on the form. Only one supplier may be listed on any form.

(d) Each DEA Form 222 must be signed and dated by a person authorized to sign an application for registration or a person granted power of attorney to sign a Form 222 under § 1305.05. The name of the purchaser, if different from the individual signing the DEA Form 222, must also be inserted in the signature space.

(e) Unexecuted DEA Forms 222 may be kept and may be executed at a location other than the registered location printed on the form, provided that all unexecuted forms are delivered promptly to the registered location upon an inspection of the location by any officer authorized to make inspections, or to enforce, any Federal, State, or local law regarding controlled substances.

§ 1305.13 Procedure for filling DEA Forms 222.

(a) A purchaser must submit Copy 1 and Copy 2 of the DEA Form 222 to the supplier and retain Copy 3 in the purchaser's files.

(b) A supplier may fill the order, if possible and if the supplier desires to do so, and must record on Copies 1 and 2 the number of commercial or bulk containers furnished on each item and the date on which the containers are shipped to the purchaser. If an order cannot be filled in its entirety, it may be filled in part and the balance supplied by additional shipments within 60 days following the date of the DEA Form 222. No DEA Form 222 is valid more than 60 days after its execution by the purchaser, except as specified in paragraph (f) of this section.

(c) The controlled substances must be shipped only to the purchaser and the location printed by the Administration on the DEA Form 222, except as specified in paragraph (f) of this section.

(d) The supplier must retain Copy 1 of the DEA Form 222 for his or her files and forward Copy 2 to the Special Agent in Charge of the Drug Enforcement Administration in the area in which the supplier is located. Copy 2 must be forwarded at the close of the month during which the order is filled. If an order is filled by partial shipments, Copy 2 must be forwarded at the close of the month during which the final shipment is made or the 60-day validity period expires.

(e) The purchaser must record on Copy 3 of the DEA Form 222 the number of commercial or bulk containers furnished on each item and the dates on which the containers are received by the purchaser.

(f) DEA Forms 222 submitted by registered procurement officers of the Defense Supply Center of the Defense Logistics Agency for delivery to armed services establishments within the United States may be shipped to locations other than the location printed on the DEA Form 222, and in partial shipments at different times not to exceed six months from the date of the order, as designated by the procurement officer when submitting the order.

§ 1305.14 Procedure for endorsing DEA Forms 222.

(a) A DEA Form 222, made out to any supplier who cannot fill all or a part of the order within the time limitation set forth in § 1305.13, may be endorsed to another supplier for filling. The endorsement must be made only by the supplier to whom the DEA Form 222 was first made, must state (in the spaces provided on the reverse sides of Copies 1 and 2 of the DEA Form 222) the name and address of the second supplier, and must be signed by a person authorized to obtain and execute DEA Forms 222 on behalf of the first supplier. The first supplier may not fill any part of an order on an endorsed form. The second supplier may fill the order, if possible and if the supplier desires to do so, in accordance with § 1305.13(b), (c), and (d), including shipping all substances directly to the purchaser.

(b) Distributions made on endorsed DEA Forms 222 must be reported by the second supplier in the same manner as all other distributions except that where the name of the supplier is requested on the reporting form, the second supplier must record the name, address, and registration number of the first supplier.

§ 1305.15 Unaccepted and defective DEA Forms 222.

(a) A DEA Form 222 must not be filled if either of the following apply:

(1) The order is not complete, legible, or properly prepared, executed, or endorsed.

(2) The order shows any alteration, erasure, or change of any description.

(b) If a DEA Form 222 cannot be filled for any reason under this section, the supplier must return Copies 1 and 2 to the purchaser with a statement as to the reason (*e.g.*, illegible or altered).

(c) A supplier may for any reason refuse to accept any order and if a supplier refuses to accept the order, a statement that the order is not accepted

is sufficient for purposes of this paragraph.

(d) When a purchaser receives an unaccepted order, Copies 1 and 2 of the DEA Form 222 and the statement must be attached to Copy 3 and retained in the files of the purchaser in accordance with § 1305.17. A defective DEA Form 222 may not be corrected; it must be replaced by a new DEA Form 222 for the order to be filled.

§ 1305.16 Lost and stolen DEA Forms 222.

(a) If a purchaser ascertains that an unfilled DEA Form 222 has been lost, he or she must execute another in triplicate and attach a statement containing the serial number and date of the lost form, and stating that the goods covered by the first DEA Form 222 were not received through loss of that DEA Form 222. Copy 3 of the second form and a copy of the statement must be retained with Copy 3 of the DEA Form 222 first executed. A copy of the statement must be attached to Copies 1 and 2 of the second DEA Form 222 sent to the supplier. If the first DEA Form 222 is subsequently received by the supplier to whom it was directed, the supplier must mark upon the face ''Not accepted'' and return Copies 1 and 2 to the purchaser, who must attach it to Copy 3 and the statement.

(b) Whenever any used or unused DEA Forms 222 are stolen or lost (other than in the course of transmission) by any purchaser or supplier, the purchaser or supplier must immediately upon discovery of the theft or loss, report the theft or loss to the Special Agent in Charge of the Drug Enforcement Administration in the Divisional Office responsible for the area in which the registrant is located, stating the serial number of each form stolen or lost.

(c) If the theft or loss includes any original DEA Forms 222 received from purchasers and the supplier is unable to state the serial numbers of the DEA Forms 222, the supplier must report the date or approximate date of receipt and the names and addresses of the purchasers.

(d) If an entire book of DEA Forms 222 is lost or stolen, and the purchaser is unable to state the serial numbers of the DEA Forms 222 in the book, the purchaser must report, in lieu of the numbers of the forms contained in the book, the date or approximate date of issuance.

(e) If any unused DEA Form 222 reported stolen or lost is subsequently recovered or found, the Special Agent in Charge of the Drug Enforcement Administration in the Divisional Office responsible for the area in which the registrant is located must immediately be notified.

§ 1305.17 Preservation of DEA Forms 222.

(a) The purchaser must retain Copy 3 of each executed DEA Form 222 and all copies of unaccepted or defective forms with each statement attached.

(b) The supplier must retain Copy 1 of each DEA Form 222 that it has filled.

(c) DEA Forms 222 must be maintained separately from all other records of the registrant. DEA Forms 222 are required to be kept available for inspection for a period of two years. If a purchaser has several registered locations, the purchaser must retain Copy 3 of the executed DEA Form 222 and any attached statements or other related documents (not including unexecuted DEA Forms 222, which may be kept elsewhere under § 1305.12(e)), at the registered location printed on the DEA Form 222.

(d) The supplier of carfentanil, etorphine hydrochloride, and diprenorphine must maintain DEA Forms 222 for these substances separately from all other DEA Forms 222 and records required to be maintained by the registrant.

§ 1305.18 Return of unused DEA Forms 222.

If the registration of any purchaser terminates (because the purchaser dies, ceases legal existence, discontinues business or professional practice, or changes the name or address as shown on the purchaser's registration) or is suspended or revoked under § 1301.36 of this chapter for all Schedule I and II controlled substances for which the purchaser is registered, the purchaser must return all unused DEA Forms 222 to the nearest office of the Administration.

§ 1305.19 Cancellation and voiding of DEA Forms 222.

(a) A purchaser may cancel part or all of an order on a DEA Form 222 by notifying the supplier in writing of the cancellation. The supplier must indicate the cancellation on Copies 1 and 2 of the DEA Form 222 by drawing a line through the canceled items and printing ''canceled'' in the space provided for number of items shipped.

(b) A supplier may void part or all of an order on a DEA Form 222 by notifying the purchaser in writing of the voiding. The supplier must indicate the voiding in the manner prescribed for cancellation in paragraph (a) of this section.

Subpart C—Electronic Orders

§ 1305.21 Requirements for electronic orders.

(a) To be valid, the purchaser must sign an electronic order for a Schedule I or II controlled substance with a digital signature issued to the purchaser, or the purchaser's agent, by DEA as provided in part 1311 of this chapter.

(b) The following data fields must be included on an electronic order for Schedule I and II controlled substances:

(1) A unique number the purchaser assigns to track the order. The number must be in the following 9-character format: the last two digits of the year, X, and six characters as selected by the purchaser.

(2) The purchaser's DEA registration number.

(3) The name of the supplier.

(4) The complete address of the supplier (may be completed by either the purchaser or the supplier).

(5) The supplier's DEA registration number (may be completed by either the purchaser or the supplier).

(6) The date the order is signed.

(7) The name (including strength where appropriate) of the controlled substance product or the National Drug Code (NDC) number (the NDC number may be completed by either the purchaser or the supplier).

(8) The quantity in a single package or container.

(9) The number of packages or containers of each item ordered.

(c) An electronic order may include controlled substances that are not in schedules I and II and non-controlled substances.

§ 1305.22 Procedure for filling electronic orders.

(a) A purchaser must submit the order to a specific supplier. The supplier may initially process the order (*e.g.*, entry of the order into the computer system, billing functions, inventory identification, etc.) centrally at any location, regardless of the location's registration with DEA. Following centralized processing, the supplier may distribute the order to one or more registered locations maintained by the supplier for filling. The registrant must maintain control of the processing of the order at all times.

(b) A supplier may fill the order for a Schedule I or II controlled substance, if possible and if the supplier desires to do so and is authorized to do so under § 1305.06.

(c) A supplier must do the following before filling the order:

(1) Verify the integrity of the signature and the order by using software that

complies with Part 1311 of this chapter to validate the order.

(2) Verify that the digital certificate has not expired.

(3) Check the validity of the certificate holder's certificate by checking the Certificate Revocation List. The supplier may cache the Certificate Revocation List until it expires.

(4) Verify the registrant's eligibility to order the controlled substances by checking the certificate extension data.

(d) The supplier must retain an electronic record of every order, and, linked to each order, a record of the number of commercial or bulk containers furnished on each item and the date on which the supplier shipped the containers to the purchaser. The linked record must also include any data on the original order that the supplier completes. Software used to handle digitally signed orders must comply with part 1311 of this chapter.

(e) If an order cannot be filled in its entirety, a supplier may fill it in part and supply the balance by additional shipments within 60 days following the date of the order. No order is valid more than 60 days after its execution by the purchaser, except as specified in paragraph (h) of this section.

(f) A supplier must ship the controlled substances to the registered location associated with the digital certificate used to sign the order, except as specified in paragraph (h) of this section.

(g) When a purchaser receives a shipment, the purchaser must create a record of the quantity of each item received and the date received. The record must be electronically linked to the original order and archived.

(h) Registered procurement officers of the Defense Supply Center of the Defense Logistics Agency may order controlled substances for delivery to armed services establishments within the United States. These orders may be shipped to locations other than the registered location, and in partial shipments at different times not to exceed six months from the date of the order, as designated by the procurement officer when submitting the order.

§ 1305.23 Endorsing electronic orders.

A supplier may not endorse an electronic order to another supplier to fill.

§ 1305.24 Central processing of orders.

(a) A supplier that has one or more registered locations and maintains a central processing computer system in which orders are stored may have one or more of the supplier's registered locations fill an electronic order if the supplier does the following:

(1) Assigns each item on the order to a specific registered location for filling.

(2) Creates a record linked to the central file noting both which items a location filled and the location identity.

(3) Ensures that no item is filled by more than one location.

(4) Maintains the original order with all linked records on the central computer system.

(b) A company that has central processing of orders must assign responsibility for filling parts of orders only to registered locations that the company owns and operates.

§ 1305.25 Unaccepted and defective electronic orders.

(a) No electronic order may be filled if:

(1) The required data fields have not been completed.

(2) The order is not signed using a digital certificate issued by DEA.

(3) The digital certificate used had expired or had been revoked prior to signature.

(4) The purchaser's public key will not validate the digital signature.

(5) The validation of the order shows that the order is invalid for any reason.

(b) If an order cannot be filled for any reason under this section, the supplier must notify the purchaser and provide a statement as to the reason (*e.g.*, improperly prepared or altered). A supplier may, for any reason, refuse to accept any order, and if a supplier refuses to accept the order, a statement that the order is not accepted is sufficient for purposes of this paragraph.

(c) When a purchaser receives an unaccepted electronic order from the supplier, the purchaser must electronically link the statement of nonacceptance to the original order. The original order and the statement must be retained in accordance with § 1305.27.

(d) Neither a purchaser nor a supplier may correct a defective order; the purchaser must issue a new order for the order to be filled.

§ 1305.26 Lost electronic orders.

(a) If a purchaser determines that an unfilled electronic order has been lost before or after receipt, the purchaser must provide, to the supplier, a signed statement containing the unique tracking number and date of the lost order and stating that the goods covered by the first order were not received through loss of that order.

(b) If the purchaser executes an order to replace the lost order, the purchaser must electronically link an electronic record of the second order and a copy of the statement with the record of the first order and retain them.

(c) If the supplier to whom the order was directed subsequently receives the first order, the supplier must indicate that it is ''Not Accepted'' and return it to the purchaser. The purchaser must link the returned order to the record of that order and the statement.

§ 1305.27 Preservation of electronic orders.

(a) A purchaser must, for each order filled, retain the original signed order and all linked records for that order for two years. The purchaser must also retain all copies of each unaccepted or defective order and each linked statement.

(b) A supplier must retain each original order filled and the linked records for two years.

(c) If electronic order records are maintained on a central server, the records must be readily retrievable at the registered location.

§ 1305.28 Canceling and voiding electronic orders.

(a) A supplier may void all or part of an electronic order by notifying the purchaser of the voiding. If the entire order is voided, the supplier must make an electronic copy of the order, indicate on the copy ''Void,'' and return it to the purchaser. The supplier is not required to retain a record of orders that are not filled.

(b) The purchaser must retain an electronic copy of the voided order.

(c) To partially void an order, the supplier must indicate in the linked record that nothing was shipped for each item voided.

§ 1305.29 Reporting to DEA.

A supplier must, for each electronic order filled, forward either a copy of the electronic order or an electronic report of the order in a format that DEA specifies to DEA within two business days.

■ 2. Part 1311 is added to read as follows:

PART 1311 ''DIGITAL CERTIFICATES

Subpart A—General

Sec.

1311.01 Scope.
1311.02 Definitions.
1311.05 Standards for technologies for electronic transmission of orders.
1311.08 Incorporation by reference.

Subpart B—Obtaining and Using Digital Certificates for Electronic Orders

1311.10 Eligibility to obtain a CSOS digital certificate.
1311.15 Limitations on CSOS digital certificates.
1311.20 Coordinators for CSOS digital certificate holders.

1311.25 Requirements for obtaining a CSOS digital certificate.
1311.30 Requirements for storing and using a private key for digitally signing orders.
1311.35 Number of CSOS digital certificates needed.
1311.40 Renewal of CSOS digital certificates.
1311.45 Requirements for registrants that allow powers of attorney to obtain CSOS digital certificates under their DEA registration.
1311.50 Requirements for recipients of digitally signed orders.
1311.55 Requirements for systems used to process digitally signed orders.
1311.60 Recordkeeping.

Authority: 21 U.S.C. 821, 828, 829, 871(b), 958(e), 965, unless otherwise noted.

Subpart A—General

§ 1311.01 Scope.

This part sets forth the rules governing the use of digital signatures and the protection of private keys by registrants.

§ 1311.02 Definitions.

For the purposes of this chapter:

Biometric authentication means authentication based on measurement of the individual's physical features or repeatable actions where those features or actions are both unique to the individual and measurable.

Cache means to download and store information on a local server or hard drive.

Certificate Policy means a named set of rules that sets forth the applicability of the specific digital certificate to a particular community or class of application with common security requirements.

Certificate Revocation List (CRL) means a list of revoked, but unexpired certificates issued by a Certification Authority.

Certification Authority (CA) means an organization that is responsible for verifying the identity of applicants, authorizing and issuing a digital certificate, maintaining a directory of public keys, and maintaining a Certificate Revocation List.

CSOS means controlled substance ordering system.

Digital certificate means a data record that, at a minimum:

(1) Identifies the certification authority issuing it;

(2) Names or otherwise identifies the certificate holder;

(3) Contains a public key that corresponds to a private key under the sole control of the certificate holder;

(4) Identifies the operational period; and

(5) Contains a serial number and is digitally signed by the Certification Authority issuing it.

Digital signature means a record created when a file is algorithmically transformed into a fixed length digest that is then encrypted using an asymmetric cryptographic private key associated with a digital certificate. The combination of the encryption and algorithm transformation ensure that the signer's identity and the integrity of the file can be confirmed.

Electronic signature means a method of signing an electronic message that identifies a particular person as the source of the message and indicates the person's approval of the information contained in the message.

FIPS means Federal Information Processing Standards. These Federal standards, as incorporated by reference in § 1311.08, prescribe specific performance requirements, practices, formats, communications protocols, etc., for hardware, software, data, etc.

FIPS 140–2, as incorporated by reference in § 1311.08, means a Federal standard for security requirements for cryptographic modules.

FIPS 180–2, as incorporated by reference in § 1311.08, means a Federal secure hash standard.

FIPS 186–2, as incorporated by reference in § 1311.08, means a Federal standard for applications used to generate and rely upon digital signatures.

Key pair means two mathematically related keys having the properties that:

(1) One key can be used to encrypt a message that can only be decrypted using the other key; and

(2) Even knowing one key, it is computationally infeasible to discover the other key.

NIST means the National Institute of Standards and Technology.

Private key means the key of a key pair that is used to create a digital signature.

Public key means the key of a key pair that is used to verify a digital signature. The public key is made available to anyone who will receive digitally signed messages from the holder of the key pair.

Public Key Infrastructure (PKI) means a structure under which a Certification Authority verifies the identity of applicants, issues, renews, and revokes digital certificates, maintains a registry of public keys, and maintains an up-to-date Certificate Revocation List.

§ 1311.05 Standards for technologies for electronic transmission of orders.

(a) A registrant or a person with power of attorney to sign orders for Schedule I and II controlled substances may use any technology to sign and electronically transmit orders if the technology provides all of the following:

(1) *Authentication:* The system must enable a recipient to positively verify the signer without direct communication with the signer and subsequently demonstrate to a third party, if needed, that the sender's identity was properly verified.

(2) *Nonrepudiation:* The system must ensure that strong and substantial evidence is available to the recipient of the sender's identity, sufficient to prevent the sender from successfully denying having sent the data. This criterion includes the ability of a third party to verify the origin of the document.

(3) *Message integrity:* The system must ensure that the recipient, or a third party, can determine whether the contents of the document have been altered during transmission or after receipt.

(b) DEA has identified the following means of electronically signing and transmitting order forms as meeting all of the standards set forth in paragraph (a) of this section.

(1) Digital signatures using Public Key Infrastructure (PKI) technology.

(2) [Reserved]

§ 1311.08 Incorporation by reference.

(a) The following standards are incorporated by reference:

(1) FIPS 140–2, Security Requirements for Cryptographic Modules, May 25, 2001, as amended by Change Notices 2 through 4, December 3, 2002.

(i) Annex A: Approved Security Functions for FIPS PUB 140–2, Security Requirements for Cryptographic Modules, September 23, 2004.

(ii) Annex B: Approved Protection Profiles for FIPS PUB 140–2, Security Requirements for Cryptographic Modules, November 4, 2004.

(iii) Annex C: Approved Random Number Generators for FIPS PUB 140–2, Security Requirements for Cryptographic Modules, January 31, 2005.

(iv) Annex D: Approved Key Establishment Techniques for FIPS PUB 140–2, Security Requirements for Cryptographic Modules, February 23, 2004.

(2) FIPS 180–2, Secure Hash Standard, August 1, 2002, as amended by change notice 1, February 25, 2004.

(3) FIPS 186–2, Digital Signature Standard, January 27, 2000, as amended by Change Notice 1, October 5, 2001.

(b) These standards are available from the National Institute of Standards and Technology, Computer Security Division, Information Technology Laboratory, National Institute of Standards and Technology, 100

Bureau Drive, Gaithersburg, MD 20899–8930 and are available at *http://csrc.nist.gov/*.

(c) These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Drug Enforcement Administration, 600 Army Navy Drive, Arlington, VA 22202 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Subpart B—Obtaining and Using Digital Certificates for Electronic Orders

§ 1311.10 Eligibility to obtain a CSOS digital certificate.

The following persons are eligible to obtain a CSOS digital certificate from the DEA Certification Authority to sign electronic orders for controlled substances.

(a) The person who signed the most recent DEA registration application or renewal application and a person authorized to sign a registration application.

(b) A person granted power of attorney by a DEA registrant to sign orders for one or more schedules of controlled substances.

§ 1311.15 Limitations on CSOS digital certificates.

(a) A CSOS digital certificate issued by the DEA Certification Authority will authorize the certificate holder to sign orders for only those schedules of controlled substances covered by the registration under which the certificate is issued.

(b) When a registrant, in a power of attorney letter, limits a certificate applicant to a subset of the registrant's authorized schedules, the registrant is responsible for ensuring that the certificate holder signs orders only for that subset of schedules.

§ 1311.20 Coordinators for CSOS digital certificate holders.

(a) Each registrant, regardless of number of digital certificates issued, must designate one or more responsible persons to serve as that registrant's CSOS coordinator regarding issues pertaining to issuance of, revocation of, and changes to digital certificates issued under that registrant's DEA registration. While the coordinator will be the main point of contact between one or more DEA registered locations and the CSOS Certification Authority, all digital certificate activities are the responsibility of the registrant with whom the digital certificate is associated. Even when an individual registrant, *i.e.*, an individual practitioner, is applying for a digital certificate to order controlled substances a CSOS Coordinator must be designated; though in such a case, the individual practitioner may also serve as the coordinator.

(b) Once designated, coordinators must identify themselves, on a one-time basis, to the Certification Authority. If a designated coordinator changes, the Certification Authority must be notified of the change and the new responsibilities assumed by each of the registrant's coordinators, if applicable. Coordinators must complete the application that the DEA Certification Authority provides and submit the following:

(1) Two copies of identification, one of which must be a government-issued photographic identification.

(2) A copy of each current DEA Certificate of Registration (DEA form 223) for each registered location for which the coordinator will be responsible or, if the applicant (or their employer) has not been issued a DEA registration, a copy of each application for registration of the applicant or the applicant's employer.

(3) The applicant must have the completed application notarized and forward the completed application and accompanying documentation to the DEA Certification Authority.

(c) Coordinators will communicate with the Certification Authority regarding digital certificate applications, renewals and revocations. For applicants applying for a digital certificate from the DEA Certification Authority, and for applicants applying for a power of attorney digital certificate for a DEA registrant, the registrant's Coordinator must verify the applicant's identity, review the application package, and submit the completed package to the Certification Authority.

§ 1311.25 Requirements for obtaining a CSOS digital certificate.

(a) To obtain a certificate to use for signing electronic orders for controlled substances, a registrant or person with power of attorney for a registrant must complete the application that the DEA Certification Authority provides and submit the following:

(1) Two copies of identification, one of which must be a government-issued photographic identification.

(2) A current listing of DEA registrations for which the individual has authority to sign controlled substances orders.

(3) A copy of the power of attorney from the registrant, if applicable.

(4) An acknowledgment that the applicant has read and understands the Subscriber Agreement and agrees to the statement of subscriber obligations that DEA provides.

(b) The applicant must provide the completed application to the registrant's coordinator for CSOS digital certificate holders who will review the application and submit the completed application and accompanying documentation to the DEA Certification Authority.

(c) When the Certification Authority approves the application, it will send the applicant a one-time use reference number and access code, via separate channels, and information on how to use them. Using this information, the applicant must then electronically submit a request for certification of the public digital signature key. After the request is approved, the Certification Authority will provide the applicant with the signed public key certificate.

(d) Once the applicant has generated the key pair, the Certification Authority must prove that the user has possession of the key. For public keys, the corresponding private key must be used to sign the certificate request. Verification of the signature using the public key in the request will serve as proof of possession of the private key.

§ 1311.30 Requirements for storing and using a private key for digitally signing orders.

(a) Only the certificate holder may access or use his or her digital certificate and private key.

(b) The certificate holder must provide FIPS-approved secure storage for the private key, as discussed by FIPS 140–2, 180–2, 186–2, and accompanying change notices and annexes, as incorporated by reference in § 1311.08.

(c) A certificate holder must ensure that no one else uses the private key. While the private key is activated, the certificate holder must prevent unauthorized use of that private key.

(d) A certificate holder must not make back-up copies of the private key.

(e) The certificate holder must report the loss, theft, or compromise of the private key or the password, via a revocation request, to the Certification Authority within 24 hours of substantiation of the loss, theft, or compromise. Upon receipt and verification of a signed revocation request, the Certification Authority will revoke the certificate. The certificate holder must apply for a new certificate under the requirements of § 1311.25.

§ 1311.35 Number of CSOS digital certificates needed.

A purchaser of Schedule I and II controlled substances must obtain a separate CSOS certificate for each registered location for which the purchaser will order these controlled substances.

§ 1311.40 Renewal of CSOS digital certificates.

(a) A CSOS certificate holder must generate a new key pair and obtain a new CSOS digital certificate when the registrant's DEA registration expires or whenever the information on which the certificate is based changes. This information includes the registered name and address, the subscriber's name, and the schedules the registrant is authorized to handle. A CSOS certificate will expire on the date on which the DEA registration on which the certificate is based expires.

(b) The Certification Authority will notify each CSOS certificate holder 45 days in advance of the expiration of the certificate holder's CSOS digital certificate.

(c) If a CSOS certificate holder applies for a renewal before the certificate expires, the certificate holder may renew electronically twice. For every third renewal, the CSOS certificate holder must submit a new application and documentation, as provided in § 1311.25.

(d) If a CSOS certificate expires before the holder applies for a renewal, the certificate holder must submit a new application and documentation, as provided in § 1311.25.

§ 1311.45 Requirements for registrants that allow powers of attorney to obtain CSOS digital certificates under their DEA registration.

(a) A registrant that grants power of attorney must report to the DEA Certification Authority within 6 hours of either of the following (advance notice may be provided, where applicable):

(1) The person with power of attorney has left the employ of the institution.

(2) The person with power of attorney has had his or her privileges revoked.

(b) A registrant must maintain a record that lists each person granted power of attorney to sign controlled substances orders.

§ 1311.50 Requirements for recipients of digitally signed orders.

(a) The recipient of a digitally signed order must do the following before filling the order:

(1) Verify the integrity of the signature and the order by having the system validate the order.

(2) Verify that the certificate holder's CSOS digital certificate has not expired by checking the expiration date against the date the order was signed.

(3) Check the validity of the certificate holder's certificate by checking the Certificate Revocation List.

(4) Check the certificate extension data to determine whether the sender has the authority to order the controlled substance.

(b) A recipient may cache Certificate Revocation Lists for use until they expire.

§ 1311.55 Requirements for systems used to process digitally signed orders.

(a) A CSOS certificate holder and recipient of an electronic order may use any system to write, track, or maintain orders provided that the system has been enabled to process digitally signed documents and that it meets the requirements of paragraph (b) or (c) of this section.

(b) A system used to digitally sign Schedule I or II orders must meet the following requirements:

(1) The cryptographic module must be FIPS 140–2, Level 1 validated, as incorporated by reference in § 1311.08.

(2) The digital signature system and hash function must be compliant with FIPS 186–2 and FIPS 180–2, as incorporated by reference in § 1311.08.

(3) The private key must be stored on a FIPS 140–2 Level 1 validated cryptographic module using a FIPS-approved encryption algorithm, as incorporated by reference in § 1311.08.

(4) The system must use either a user identification and password combination or biometric authentication to access the private key. Activation data must not be displayed as they are entered.

(5) The system must set a 10-minute inactivity time period after which the certificate holder must reauthenticate the password to access the private key.

(6) For software implementations, when the signing module is deactivated, the system must clear the plain text private key from the system memory to prevent the unauthorized access to, or use of, the private key.

(7) The system must be able to digitally sign and transmit an order.

(8) The system must have a time system that is within five minutes of the official National Institute of Standards and Technology time source.

(9) The system must archive the digitally signed orders and any other records required in part 1305 of this chapter, including any linked data.

(10) The system must create an order that includes all data fields listed under § 1305.21(b) of this chapter.

(c) A system used to receive, verify, and create linked records for orders signed with a CSOS digital certificate must meet the following requirements:

(1) The cryptographic module must be FIPS 140–2, Level 1 validated, as incorporated by reference in § 1311.08.

(2) The digital signature system and hash function must be compliant with FIPS 186–2 and FIPS 180–2, as incorporated by reference in § 1311.08.

(3) The system must determine that an order has not been altered during transmission. The system must invalidate any order that has been altered.

(4) The system must validate the digital signature using the signer's public key. The system must invalidate any order in which the digital signature cannot be validated.

(5) The system must validate that the DEA registration number contained in the body of the order corresponds to the registration number associated with the specific certificate by separately generating the hash value of the registration number and certificate subject distinguished name serial number and comparing that hash value to the hash value contained in the certificate extension for the DEA registration number. If the hash values are not equal the system must invalidate the order.

(6) The system must check the Certificate Revocation List automatically and invalidate any order with a certificate listed on the Certificate Revocation List.

(7) The system must check the validity of the certificate and the Certification Authority certificate and invalidate any order that fails these validity checks.

(8) The system must have a time system that is within five minutes of the official National Institute of Standards and Technology time source.

(9) The system must check the substances ordered against the schedules that the registrant is allowed to order and invalidate any order that includes substances the registrant is not allowed to order.

(10) The system must ensure that an invalid finding cannot be bypassed or ignored and the order filled.

(11) The system must archive the order and associate with it the digital certificate received with the order.

(12) If a registrant sends reports on orders to DEA, the system must create a report in the format DEA specifies, as provided in § 1305.29 of this chapter.

(d) For systems used to process CSOS orders, the system developer or vendor must have an initial independent third-party audit of the system and an

additional independent third-party audit whenever the signing or verifying functionality is changed to determine whether it correctly performs the functions listed under paragraphs (b) and (c) of this section. The system developer must retain the most recent audit results and retain the results of any other audits of the software completed within the previous two years.

§ 1311.60 Recordkeeping.

(a) A supplier and purchaser must maintain records of CSOS electronic orders and any linked records for two years. Records may be maintained electronically. Records regarding controlled substances that are maintained electronically must be readily retrievable from all other records.

(b) Electronic records must be easily readable or easily rendered into a format that a person can read. They must be made available to the Administration upon request.

(c) CSOS certificate holders must maintain a copy of the subscriber agreement that the Certification Authority provides for the life of the certificate.

Dated: March 28, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–6504 Filed 3–31–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–217N]

RIN 1117–AA60

Electronic Orders for Controlled Substances: Notice of Meeting

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of meeting.

SUMMARY: The Drug Enforcement Administration (DEA) will hold a public meeting to provide technical details regarding the use of digital signatures and public key infrastructure (PKI) technology within DEA's system for electronic orders for Schedule I and II controlled substances.

DATES: Wednesday, May 18, 2005, 9 a.m. until 4:30 p.m.

ADDRESSES: Sheraton National Hotel, 900 South Orme Street, Arlington, VA 22204.

Persons wishing to attend this meeting, space permitting, must provide attendee information to the Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, via e-mail to *mandy.a.healy@usdoj.gov,* or via facsimile at (202) 353–1079 as specified below. Persons wishing to attend the meeting must provide this information to the Liaison and Policy Section no later than Monday, May 16, 2005.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Background

In a separate Final Rule published in today's **Federal Register**, the Drug Enforcement Administration (DEA) is implementing regulations regarding the electronic transmission of Schedule I and II controlled substances orders from purchasers (DEA-registered distributors, pharmacies and practitioners) to suppliers (DEA-registered manufacturers and distributors) and the electronic retention of records pertaining to those orders. DEA is requiring that these electronic orders be conducted using public key infrastructure (PKI) technology, including the use of digital certificates issued by the DEA Bridge Certification Authority.

This meeting is being held to provide information to interested persons including systems vendors and developers regarding industry's development of electronic systems which conform to the standards and regulations DEA is implementing. Persons interested in learning about the development of such PKI-based systems using DEA's standards may attend this meeting, so long as space permits.

Background and Supporting Documents

Supporting documents regarding DEA's system to permit the electronic transmission of Schedule I and II controlled substances orders and the electronic retention of records pertaining to those orders, including the Certificate Policy, Certificate Profile, applications to obtain a digital certificate from the DEA Bridge Certification Authority, and other pertinent materials may be found within the Electronic Commerce Initiatives/CSOS section on the Diversion Control Program Web site: *http://www.deadiversion.usdoj.gov/ecomm/index.html,* and DEA's E-Commerce Web site: *http://www.deaecom.gov.*

Meeting Registration

Persons wishing to attend this meeting must provide the following information to the Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, via e-mail or facsimile as listed above:

Name: _____
Title: _____
Company/Organization: _____
Address: _____
Telephone: _____
E-mail address: _____

Dated: March 29, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 05–6505 Filed 3–31–05; 8:45 am]

BILLING CODE 4410–09–P

Reader Aids

Federal Register

Vol. 70, No. 62

Friday, April 1, 2005

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, APRIL

16691–16920 1

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 1, 2005

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Milk marketing orders:
- Arizona-Las Vegas; published 3-1-05

Nectarines and peaches grown in—
- California; published 3-31-05

Sweet cherries grown in—
- Washington; published 2-10-05

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Overtime services relating to imports and exports:
- Commuted traveltime allowances; published 4-1-05

AGRICULTURE DEPARTMENT

Forest Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
- Fish and shellfish; subsistence taking; published 3-21-05

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Bering Sea and Aleutian Islands king and tanner crab; correction; published 3-18-05
- Alaska; fisheries of Exclusive Economoic Zone—
  - Bering Sea and Aleutian Islands king and tanner crab; published 3-2-05
- Caribbean, Gulf, and South Atlantic fisheries—
  - Gulf of Mexico and South Atlantic coastal migratory pelagic resources; published 4-1-05
- Northeastern United States fisheries—
  - Yellowtail flounder; published 4-1-05
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; correction; published 3-30-05

ENVIRONMENTAL PROTECTION AGENCY

Water pollution control:
- Ocean dumping; site designations—
  - Columbia River mouth, OR and WA; published 3-2-05

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Federal-State Joint Board on Universal Service—
  - Non-rural carriers; telephone exchange transfers; interim hold-harmless support phase down; published 3-2-05

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
- Connecticut; published 3-30-05
- New York; published 2-28-05

Ports and waterways safety:
- Cape Fear River, Eagle Island, NC; security zone; published 3-31-05

INTERIOR DEPARTMENT

Fish and Wildlife Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
- Fish and shellfish; subsistence taking; published 3-21-05

INTERIOR DEPARTMENT

National Park Service

Special regulations:
- Apostle Islands National Lakeshore, WI; snowmobile and off-road motor vehicle routes designation and portable ice augers and power engines use; published 4-1-05

JUSTICE DEPARTMENT

Executive Office for Immigration Review:
- Background and security investigations in proceedings before immigration judges and Immigration Appeals Board; published 1-31-05

PENSION BENEFIT GUARANTY CORPORATION

Single-employer plans:
- Interest assumptions for valuing and paying benefits; published 3-15-05

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Bombardier; published 3-17-05
- Saab; published 2-25-05

TREASURY DEPARTMENT

Internal Revenue Service

Practice and procedure:
- Administrative summonses; designated IRS officer or employee; published 4-1-05

TREASURY DEPARTMENT

Thrift Supervision Office

Adjudicatory proceedings; practice and procedure:
- Holding companies; special rules; published 3-2-05

Community Reinvestment Act; implementation:
- Savings associations; lending, investment, and service; assigned ratings; published 3-2-05

RULES GOING INTO EFFECT APRIL 2, 2005

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety:
- New London, CT; safety and security zones; published 3-28-05
- Potomac River, DC; safety zone; published 3-30-05

Regattas and marine parades:
- Safety at Sea Seminar; published 3-29-05

RULES GOING INTO EFFECT APRIL 3, 2005

POSTAL SERVICE

Domestic Mail Manual:
- Letter and flat sized mailpieces; repositionable notes; published 2-1-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:
- Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Highly pathogenic avian influenza; list of affected regions—
  - Malaysia; comments due by 4-4-05; published 2-1-05 [FR 05-01796]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Northeastern United States fisheries—
  - Monkfish; comments due by 4-4-05; published 3-18-05 [FR 05-05348]

International fisheries regulations:
- Atlantic highly migratory species—
  - Bluefin tuna, bigeye tuna, and swordfish; comments due by 4-7-05; published 3-8-05 [FR 05-04477]

COMMERCE DEPARTMENT

Patent and Trademark Office

Patent cases:
- Patent Cooperation Treaty applications entering the national stage; fees; comments due by 4-4-05; published 2-1-05 [FR 05-01850]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:
- Extraordinary contractual actions; comments due by 4-8-05; published 2-7-05 [FR 05-02173]
- Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

EDUCATION DEPARTMENT

Grants and cooperative agreements; availability, etc.:
- Vocational and adult education—
  - Smaller Learning Communities Program;

Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT

Meetings:

Environmental Management Site-Specific Advisory Board—

Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:

Test procedures and efficiency standards—

Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Pennsylvania; comments due by 4-4-05; published 3-4-05 [FR 05-04270]

Tennessee; comments due by 4-6-05; published 3-7-05 [FR 05-04336]

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 4-7-05; published 3-8-05 [FR 05-04340]

Washington; comments due by 4-7-05; published 3-8-05 [FR 05-04470]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Water pollution control:

National Pollutant Discharge Elimination System—

Concentrated animal feeding operations in New Mexico and Oklahoma; general permit for discharges; Open for comments until further notice; published 12-7-04 [FR 04-26817]

Water pollution; effluent guidelines for point source categories:

Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

Transportation equipment cleaning operations; correction; comments due by 4-4-05; published 2-1-05 [FR 05-01861]

Water programs:

Federal Insecticide, Fungicide, and Rodenticide Act; implementation—

Pesticides applied to U.S. waters; statement and guidance; comments due by 4-4-05; published 2-1-05 [FR 05-01868]

FEDERAL COMMUNICATIONS COMMISSION

Committees; establishment, renewal, termination, etc.:

Technological Advisory Council; Open for comments until further notice; published 3-18-05 [FR 05-05403]

Common carrier services:

Federal-State Joint Board on Universal Service—

Rural health care support mechanism; comments due by 4-8-05; published 2-7-05 [FR 05-02268]

Interconnection—

Incumbent local exchange carriers unbounding obligations; local competition provisions; wireline services offering advanced telecommunications capability; Open for comments until further notice; published 12-29-04 [FR 04-28531]

Radio stations; table of assignments:

Pennsylvania; comments due by 4-4-05; published 3-3-05 [FR 05-04113]

Television broadcasting:

Cable television systems—

Satellite Home Viewer Extension and Reauthorization Act; Communications Act Section 340; implementation; comments due by 4-8-05; published 3-8-05 [FR 05-03847]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:

Electronic Prescription Drug Program; voluntary Medicare prescription drug benefit; comments due by 4-5-05; published 2-4-05 [FR 05-01773]

Organ procurement organizations; conditions for coverage; comments due by 4-5-05; published 2-4-05 [FR 05-01695]

Organ transplant centers; hospital participation conditions; approval requirements; comments due by 4-5-05; published 2-4-05 [FR 05-01696]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:

Orally administered drug products; symptoms associated with overindulgence in food and drink, relief (OTC); tentative final monograph; comments due by 4-5-05; published 1-5-05 [FR 05-00154]

Reports and guidance documents; availability, etc.:

Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

Medical devices—

Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HEALTH AND HUMAN SERVICES DEPARTMENT

Supplemental standards of ethical conduct and financial disclosure requirements for department employees; comments due by 4-4-05; published 2-3-05 [FR 05-02029]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:

Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

Ports and waterways safety:

Alaska; high capacity passenger vessels protection; regulated navigation area and security zones; comments due by 4-8-05; published 3-9-05 [FR 05-04598]

Fifth Coast Guard District waters; safety and security zones; comments due by 4-8-05; published 3-9-05 [FR 05-04602]

HOMELAND SECURITY DEPARTMENT

Nonimmigrant classes:

Aliens—

H-2B Program; one-step application process for U.S. employers seeking workers to perform temporary labor or services; comments due by 4-8-05; published 3-9-05 [FR 05-04514]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Enterprise Oversight Office

Safety and soundness:

Mortgage fraud reporting; comments due by 4-4-05; published 3-24-05 [FR 05-05776]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species permit applications

Recovery plans—

Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]

Endangered and threatened species:

Salt Creek tiger beetle; comments due by 4-4-05; published 2-1-05 [FR 05-01669]

Scimitar-horned oryx, addax, and dama gazelle; comments due by 4-4-05; published 2-1-05 [FR 05-01698]

LABOR DEPARTMENT

Employment and Training Administration

Aliens; temporary employment in U.S.:

H-2B petitions in all occupations other than excepted occupations; post-adjudication audits; comments due by 4-8-05; published 3-9-05 [FR 05-04534]

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

NARA facilities:

Locations and hours; comments due by 4-8-05; published 2-7-05 [FR 05-02256]

NUCLEAR REGULATORY COMMISSION

Environmental statements; availability, etc.:

Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Practice and procedure:

Practice before Commission; procedural rules; revisions; comments due by 4-4-05; published 3-4-05 [FR 05-04257]

SECURITIES AND EXCHANGE COMMISSION

Securities:

Mutual funds and other securities; point of sale disclosure and transaction confirmation requirements; comments due by 4-4-05; published 3-4-05 [FR 05-04215]

SMALL BUSINESS ADMINISTRATION

Disaster loan areas:

Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

Small business size standards:

Size standards for most industries and SBA programs; restructuring; comments due by 4-3-05; published 1-19-05 [FR 05-01035]

STATE DEPARTMENT

Passports:

Electronic passport; definitions, validity, replacement, and expedited processing; comments due by 4-4-05; published 2-18-05 [FR 05-03080]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Generalized System of Preferences:

2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT

Navigation of foreign civil aircraft within the United States; policy determination request; comments due by 4-8-05; published 2-7-05 [FR 05-02035]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Air Tractor, Inc.; comments due by 4-5-05; published 2-9-05 [FR 05-02507]

Airbus; comments due by 4-4-05; published 3-3-05 [FR 05-04078]

Boeing; Open for comments until further notice; published 8-16-04 [FR 04-18641]

Bombardier; comments due by 4-7-05; published 3-8-05 [FR 05-04407]

Empresa Brasileria de Aeronautica, S.A.; comments due by 4-7-05; published 3-8-05 [FR 05-04409]

Kelly Aerospace Power Systems; comments due by 4-7-05; published 3-9-05 [FR 05-04556]

McDonnell Douglas; comments due by 4-5-05; published 2-4-05 [FR 05-01931]

Rolls-Royce plc; comments due by 4-4-05; published 2-2-05 [FR 05-01799]

TREASURY DEPARTMENT

Internal Revenue Service

Employment taxes and collection of income taxes at source:

Flat rate supplemental wage withholding; comments due by 4-5-05; published 1-5-05 [FR 05-00071]

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcohol; viticultural area designations:

Covelo, Mendocino County, CA; comments due by 4-4-05; published 2-2-05 [FR 05-01875]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 1160/P.L. 109–4

Welfare Reform Extension Act of 2005 (Mar. 25, 2005; 119 Stat. 17)

S. 384/P.L. 109–5

To extend the existence of the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group for 2 years. (Mar. 25, 2005; 119 Stat. 19)

Last List March 22, 2005

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 2005

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
April 1	April 18	May 2	May 16	May 31	June 30
April 4	April 19	May 4	May 19	June 3	July 5
April 5	April 20	May 5	May 20	June 6	July 5
April 6	April 21	May 6	May 23	June 6	July 5
April 7	April 22	May 9	May 23	June 6	July 6
April 8	April 25	May 9	May 23	June 7	July 7
April 11	April 26	May 11	May 26	June 10	July 11
April 12	April 27	May 12	May 27	June 13	July 11
April 13	April 28	May 13	May 31	June 13	July 12
April 14	April 29	May 16	May 31	June 13	July 13
April 15	May 2	May 16	May 31	June 14	July 14
April 18	May 3	May 18	June 2	June 17	July 18
April 19	May 4	May 19	June 3	June 20	July 18
April 20	May 5	May 20	June 6	June 20	July 19
April 21	May 6	May 23	June 6	June 20	July 20
April 22	May 9	May 23	June 6	June 21	July 21
April 25	May 10	May 25	June 9	June 24	July 25
April 26	May 11	May 26	June 10	June 27	July 25
April 27	May 12	May 27	June 13	June 27	July 26
April 28	May 13	May 31	June 13	June 27	July 27
April 29	May 16	May 31	June 13	June 28	July 28