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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, May 17, 2005
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 70, No. 89

Tuesday, May 10, 2005

Agriculture Department
See Animal and Plant Health Inspection Service
See Food Safety and Inspection Service
See Forest Service
See Rural Utilities Service

Animal and Plant Health Inspection Service
NOTICES
Committees; establishment, renewal, termination, etc.:
National Wildlife Services Advisory Committee; membership, 24498
Environmental statements; availability, etc.:
Escherichis coli vaccine, live culture; field test, 24498–24499

Army Department
See Engineers Corps
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Electrospun fibers and an apparatus therefor, 24556

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Disparities in Elderly Pneumococcal Vaccination, 24590–24594
Poliovirus antibody seroprevalence among inner city preschool children; post-OPV era, 24594–24598
Pro-active Pharmacist Pneumococcal Vaccination Programs, 24598–24603

Coast Guard
RULES
Drawbridge operations:
Iowa and Illinois, 24482–24483
PROPOSED RULES
Drawbridge operations:
Virginia, 24492–24494
NOTICES
Committees; establishment, renewal, termination, etc.:
Prince William Sound Regional Citizens' Advisory Committee, 24607–24608
Meetings:
Houston/Galveston Navigation Safety Advisory Committee, 24608–24609

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

Committee for the Implementation of Textile Agreements
NOTICES
Textile and apparel categories:
Singapore Free Trade Agreement; commercial availability—
Vicose filament yarn, 100 percent cotton, woven flannel fabrics, etc., 24553–24556

Defense Department
See Army Department
See Engineers Corps
See Navy Department

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Angeluzzi, Jay D., M.D., 24614–24615
Elk International, Inc., 24615–24619
Goodrich, James M., M.D., 24619–24620
Jay Enterprises of Spartanburg, Inc., 24620–24622
Jones, Stephen K., M.D., 24622
Millette, Michael J., M.D., 24622–24625
Mulhearn, Thomas J. III, M.D., 24625–24626
Net Wholesale, 24626–24627
Poulter, John S., D.D.S., 24628–24629
Smith, Robert A., M.D., 24629–24631

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24557–24559

Energy Department
See Federal Energy Regulatory Commission

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Boston Harbor, MA; Inner Harbor Maintenance Dredging Project, 24556

Environmental Protection Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24573–24574
Meetings:
Nanoscale Materials, 24574–24576

Executive Office of the President
See Presidential Documents

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 24576

Federal Aviation Administration
RULES
Airworthiness directives:
CENTRAIR; correction, 24480–24481
CFM International, 24481–24482
Airworthiness standards:
Special conditions—
Cessna Model 650 airplanes, 24478–24480
Class E airspace
Correction, 24677
PROPOSED RULES
Airworthiness directives:
Boeing, 24488–24490
NOTICES
Airport noise compatibility program:
Noise exposure maps—
McClellan-Palomar Airport, Carlsbad, CA, 24671
Passenger facility charges; applications, etc.:
Dayton International Airport, OH, 24671–24672

Federal Energy Regulatory Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24559–24560
Complaints filed:
Mystic Development, LLC, 24567
Electric rate and corporate regulation filings, 24567–24572
Environmental statements; availability, etc.:
Borel Hydroelectric Project, CA, 24572
Meetings:
California Independent System Operator Corp.; conference call, 24572
Midwest Independent Transmission System Operator, Inc., 24572–24573
Applications, hearings, determinations, etc.:
Colorado Interstate Gas Co., 24560
Columbia Gas Transmission Co., 24560–24561
Discovery Gas Transmission LLC, 24561
El Paso Natural Gas Co., 24561
Enbridge Pipelines, 24562
Gulfstream Natural Gas System, L.L.C., 24562
Kinder Morgan Interstate Gas Transmission LLC, 24562–24563
Northern Natural Gas Co., 24563
Northwest Pipeline Corp., 24563
Panhandle Eastern Pipe Line Co., LP, 24564
Phoenix Energy Trading, LLC, 24564–24565
PPL Montana, LLC, 24565
Regional Transmission Organizations, et al., 24565
Sea Robin Pipeline Company, LLC, 24565–24566
TransColorado Gas Transmission Co., 24566
Trunkline Gas Co., LLC, 24566–24567
Vermont Electric Cooperative, Inc., 24567

Federal Financial Institutions Examination Council
NOTICES
Reports and guidance documents; availability, etc.:
Liability provisions limitation; unsafe and unsound use; alternative dispute resolution provisions; interagency advisory, 24576–24581

Federal Maritime Commission
NOTICES
Controlled carriers:
Foreign carriers in U.S.-foreign trades; list, 24581

Federal Reserve System
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24581–24583

Federal Trade Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24583–24586
Premerger notification waiting periods; early terminations, 24587–24588
Prohibited trade practices:
New Millennium Orthopaedics, LLC, et al., 24588–24590

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 24611–24612

Food and Drug Administration
PROPOSED RULES
Food for human consumption:
Salmonella; shell egg producers to implement prevention measures, 24490–24491
Human drugs:
Radioactive drugs for research uses; meeting, 24491–24492
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24603–24605
Meetings:
Medical Devices Advisory Committee, 24605
Pulmonary-Allergy Drugs Advisory Committee, 24605–24606
Reports and guidance documents; availability, etc.:
FDA's Drug Watch for Emerging Drug Safety Information, 24606–24607

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
Meat and meat product exportation to United States; eligible countries; addition—
Chile, 24485–24488

Forest Service
NOTICES
Environmental statements; notice of intent:
Sawtooth National Forest, ID, 24499–24500
Meetings:
Resource Advisory Committees—
Sanders County, 24501

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Discretionary programs (SuperNOFA); correction, 24609–24611

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24675
Meetings:
Taxpayer Advocacy Panels, 24675–24676

International Trade Administration
NOTICES
Antidumping:
Chlorinated isocyanurates from—
China, 24502–24506
Spain, 24506–24510
Granular polytetrafluoroethylene resin from—
Japan, 24510–24511
Iron construction castings from—
Brazil, 24513–24514

Canada, 24512–24513
China, 24511–24512
Large newspaper printing presses and components from—
Japan, 24514–24516
Low enriched uranium from—
France, 24516
Oil country tubular goods from—
Mexico, 24517–24520
Oil country tubular goods, other than drill pipe, from—
Argentina, 24516–24517
Potassium permanganate from—
China, 24520
Small diameter carbon and alloy seamless standard, line, and pressure pipe from—
Romania, 24520–24524
Small diameter seamless carbon and alloy steel standard, line and pressure pipe from—
Brazil, 24524–24528
Solid urea from—
Russian Federation, 24528–24529
Countervailing duties:
Iron construction castings from—
Brazil, 24529–24530
Pure magnesium and alloy magnesium from—
Canada, 24530–24533
Practice and procedure:
Next business day rule; application for administrative determination deadlines, 24533
Scope rulings and anticircumvention determinations; list, 24533–24537

International Trade Commission
NOTICES
Import investigations:
Diamond sawblades and parts from—
China and Korea, 24612–24613
Granular polytetrafluoroethylene resin from—
Italy and Japan, 24613–24614

Justice Department
See Drug Enforcement Administration

Labor Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Guyana; combating exploitive child labor through education, 24631–24644

Land Management Bureau
NOTICES
Environmental statements; notice of intent:
Sawtooth National Forest, ID, 24499–24500
Oil and gas leases:
Montana, 24612

Maritime Administration
RULES
Merchant Marine training:
Merchant Marine Academy and State maritime academy graduates; service obligation reporting requirements, 24483–24484

National Aeronautics and Space Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
NASA Advisory Council, etc., 24644–24645

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Atlantic highly migratory species—
Atlantic shark, 24494–24495
Northeastern United States fisheries—
Lobster, 24495–24497
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24537–24538
Meetings:
Pacific Fishery Management Council, 24538
Permits:
Marine mammals, 24538–24553

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 24645

Navy Department
NOTICES
Inventions, Government-owned; availability for licensing, 24556–24557
Meetings:
Chief of Naval Operations Executive Panel; correction, 24557
Chief of Naval Operations Executive Panel, 24557

Nuclear Regulatory Commission
NOTICES
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 24645–24662

Personnel Management Office
RULES
Pay administration:
Bi-weekly pay periods; pay computation, 24477–24478

Presidential Documents
PROCLAMATIONS
Special observances:
Jewish Heritage Week (Proc. 7898), 24693–24695
ADMINISTRATIVE ORDERS
Syria; continuation of national emergency (Notice of May 5, 2005), 24697

Research and Innovative Technology Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24672

Rural Utilities Service
NOTICES
Environmental statements; notice of intent:
Georgia Transmission Corp., 24501–24502

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 24663–24665
Fixed Income Clearing Corp., 24665–24666
National Securities Clearing Corp., 24666–24668
Philadelphia Stock Exchange, Inc., 24668
Applications, hearings, determinations, etc.:
Centrue Financial Corporation, 24662–24663

Social Security Administration
NOTICES
Meetings:
Ticket to Work and Work Incentives Advisory Panel, 24668–24669

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

Transportation Department
See Federal Aviation Administration
See Maritime Administration
See Research and Innovative Technology Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24669–24671

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24672–24675

Veterans Affairs Department
PROPOSED RULES
Adjudication; pensions, compensation, dependency, etc.:
Rights and responsibilities of claimants and beneficiaries; plain language rewrite, 24680–24691

Separate Parts In This Issue

Part II
Veterans Affairs Department, 24680–24691

Part III
Executive Office of the President, Presidential Documents, 24693–24695, 24697

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:
7898 24695

Executive Orders:
13338 (See Notice of May 5, 2005) 24697

Administrative Orders:
Notices:
Notice of May 5, 2005 24697

5 CFR
550 24477

9 CFR

Proposed Rules:
327 24485

14 CFR
25 24478
39 (2 documents) 24480, 24481
71 24677

Proposed Rules:
39 24488

21 CFR

Proposed Rules:
1 24490
361 24491

33 CFR
117 24482

Proposed Rules:
117 24492

38 CFR

Proposed Rules:
5 24680

46 CFR
310 24483

50 CFR

Proposed Rules:
635 24494
697 24495

Rules and Regulations

Federal Register
Vol. 70, No. 89
Tuesday, May 10, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–AK62

Computation of Pay for Biweekly Pay Periods

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to implement a change in law that requires the pay of heads of agencies and other designated employees to be calculated and paid on a biweekly basis instead of on a monthly basis. The final regulations also prescribe the circumstances under which an agency may calculate the pay of an employee on a biweekly pay period basis whose pay otherwise would be calculated on a monthly or other basis.

DATES: The regulations are effective June 9, 2005.

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

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing final regulations to calculate pay on a biweekly pay period basis for employees whose pay was formerly calculated on a monthly basis. Section 1124 of Public Law 108–136 (November 24, 2003) amended 5 U.S.C. 5504 to require the pay of heads of agencies (including the heads of military departments) to be calculated and paid on a biweekly basis instead of on a monthly basis. This law also amended 5 U.S.C. 5504 to cover members of the Foreign Service, the Senior Foreign Service, and the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service. In addition, 5 U.S.C. 5504(c)(3), as amended, allows an agency to make exceptions and elect to calculate the pay of employees on a biweekly pay period basis whose pay otherwise would be calculated on a monthly or other basis. The law requires OPM to issue regulations providing guidelines for such exceptions.

OPM issued proposed regulations on October 7, 2004, providing guidelines for agencies to use when electing to calculate the pay of employees on a biweekly pay period basis whose pay otherwise would be calculated on a monthly or other basis (69 FR 60097). The comment period for these proposed regulations ended on December 6, 2004. During the comment period, OPM received one comment from a Federal agency. The agency's concern dealt with the discussion in the Supplementary Information section of the **Federal Register** notice for the proposed regulations regarding how an agency head would be paid when he or she worked only a portion of a pay period. The agency thought the information in the ''Computation of Pay'' paragraph implied that an agency head who separated in the middle of a pay period would be paid for a full pay period of service. This was not the intent. An agency head who works only a portion of a pay period may be paid only for the number of hours worked in that pay period. Under 5 U.S.C. 5504, an agency must calculate the pay for fractional pay periods of work by dividing the agency head's annual salary by 2,087 to determine an hourly rate, and multiplying the hourly rate by the number of hours worked in the pay period.

Since this was the only comment received, the proposed regulations are being adopted as final without any changes.

Regulatory Flexibility Act

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

E.O. 12866, Regulatory Review

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

List of Subjects in 5 CFR 550

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

Office of Personnel Management.

Dan G. Blair,

Acting Director.

■ Accordingly, OPM is amending part 550 of title 5 of the Code of Federal Regulations as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

■ 1. A new subpart F is added to part 550 to read as follows:

Subpart F—Computation of Pay for Biweekly Pay Periods

Sec.
550.601 Purpose.
550.602 Coverage.
550.603 Definitions.
550.604 Biweekly pay periods and computation of pay.
550.605 Exceptions.
550.606 Reporting exceptions to OPM.

Authority: 5 U.S.C. 5504; Public Law 108–136, 117 Stat. 1637.

Subpart F—Computation of Pay for Biweekly Pay Periods

§ 550.601 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5504 to compute pay on a biweekly pay period basis for employees in an agency, as defined in § 550.603.

§ 550.602 Coverage.

(a) This subpart applies to—

(1) An employee in or under an agency, except an employee excluded by paragraph (b) of this section;

(2) The head of an agency;

(3) The head of a military department, as defined in 5 U.S.C. 102;

(4) A Foreign Service officer;

(5) A member of the Senior Foreign Service;

(6) A member of the Senior Executive Service; or

(7) A member of the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

(b) This subpart does not apply to—

(1) An employee on the Isthmus of Panama in the service of the Panama Canal Commission; or

(2) An employee or individual excluded from the definition of

employee in 5 U.S.C. 5541(2), except employees excluded by 5 U.S.C. 5541(2)(ii), (iii), and (xiv) through (xvii) are covered by this subpart.

§ 550.603 Definitions.

In this subpart—

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

Employee has the meaning given that term in 5 U.S.C. 2105.

§ 550.604 Biweekly pay periods and computation of pay.

Agencies must apply the biweekly pay period and computation of pay provisions of 5 U.S.C. 5504 for employees covered by § 550.602(a).

§ 550.605 Exceptions.

An agency head or designee may deem that an employee excluded from coverage under § 550.602(b)(2) is covered by 5 U.S.C. 5504 in situations where he or she determines that continuing to calculate the pay of such employees on a monthly or other basis would diminish the level of services provided to the public by the agency. An agency head or designee also may deem that otherwise excluded employees are covered by 5 U.S.C. 5504 when he or she determines that computing the pay of such employees under that provision of law would provide cost savings in agency operations.

§ 550.606 Reporting exceptions to OPM.

Each agency must notify OPM in writing of any exceptions made under § 550.605.

[FR Doc. 05–9191 Filed 5–9–05; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM306; Special Conditions No. 25–287–SC]

Special Conditions: Cessna Aircraft Company Model 650 Citation III Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Cessna Aircraft Company Model 650 Citation III airplanes modified by Pro Star Aviation, LLC. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of Honeywell Primus Epic Control Display System (CDS)/Retrofit Electronic Flight Instrument System (EFIS) system, and a second air data computer. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is April 27, 2005. Comments must be received on or before June 24, 2005.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM306, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM306.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplanes and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, we invite interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments received.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On March 18, 2005, Pro Star Aviation, LLC, Manchester Airport, 5 Industrial Drive, Londonderry, NH 03053, applied for a supplemental type certificate (STC) to modify Cessna Aircraft Company Model 650 Citation III airplanes. These models are currently approved under Type Certificate No. A9NM. These Cessna airplane models are small transport category airplanes powered by two Garrett engines. The Cessna Model 650 airplanes carry a total of 15 people (a pilot, co-pilot, and 13 passengers), and have two wing tanks and a fuselage tank. The modification incorporates the installation of the Honeywell Primus Epic CDS/Retrofit EFIS system, EGPWS, and a second air data computer. The avionics/electronics and electrical systems installed in these airplanes have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplanes.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Pro Star Aviation, LLC must show that the Cessna Aircraft Company Model 650 Citation III airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A9NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The certification

basis for the Cessna Model 650 airplanes include part 25 of 14 CFR effective February 1, 1965, as amended by amendments 25–1 through 25–39; §§ 25.901(c) and 25.1199 as amended by Amendments 25–1 through 25–40; §§ 25.1309 and 25.1351(d) as amended by Amendments 25–1 through 25–41; §§ 25.177, 25.255, and 25.703 as amended by Amendments 25–1 through 25–42; § 25.1326 as amended by Amendments 25–1 through 25–43; § 25.1413 as amended by Amendments 25–1 through 25–44; §§ 25.1305 and 25.1529 as amended by Amendments 25–1 through 25–54. In addition, the certification basis includes certain special conditions, exemptions, equivalent levels of safety, or later amended sections of the applicable part 25 that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for modified Cessna Aircraft Company Model 650 airplanes, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Cessna Model 650 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Pro Star Aviation LLC apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A9NM to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

As noted earlier, the Cessna Aircraft Company Model 650 airplanes modified by Pro Star Aviation will incorporate electrical and electronic systems that will perform critical functions. These systems may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electronic and electrical systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Cessna Model 650 airplanes modified by Pro Star Aviation. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance is shown with either HIRF protection special condition paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Cessna Aircraft Company Model 650 airplanes. Should Pro Star Aviation LLC apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A9NM to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on the Cessna Model 650 airplanes modified by Pro Star Aviation LLC. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been

submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Cessna Aircraft Company Model 650 Citation III airplanes modified by Pro Star Aviation LLC.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electronic and electrical system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on April 27, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–9306 Filed 5–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19616; Directorate Identifier 2004–CE–38–AD; Amendment 39–14058; AD 2005–08–06]

RIN 2120–AA64

Airworthiness Directives; CENTRAIR 101 Series Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document incorporates corrections to clarify the intent of Airworthiness Directive (AD) 2005–08–06, which was published in the **Federal Register** on April 19, 2005 (70 FR 20271). AD 2005–08–06 applies to all CENTRAIR 101 series gliders. This action clarifies the applicability to point out that the affected hinge pins were installed at manufacturer on serial numbers 101A600 through 101A637 and could be replaced on other serial number gliders with hinge pins that Centrair delivered between February 20, 1995, and February 28, 2001. We are re-issuing the AD in its entirety to help eliminate any confusion that this AD may have created.

DATES: *Effective Date:* The effective date of this AD remains June 2, 2005.

ADDRESSES: To get the service information identified in this AD, contact CENTRAIR, Aerodome B.P.N. 44, 36300 Le Blanc, France; telephone: 02.54.37.07.96; facsimile: 02.54.37.48.64. To review this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030.

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 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2004–19089.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

On April 11, 2005, FAA issued AD 2005–08–06, Amendment 39–14058 (70 FR 20271, April 19, 2005), which applies to all CENTRAIR 101 series gliders. That AD requires you to replace any installed elevator or aileron hinge pins that are not P/N SY991A hinge pins with P/N SY991A pins.

Need for the This Action

The intent of including all serial numbers was to affect those hinge pins that:

1. Were installed at manufacturer on serial numbers 101A600 through 101A637; and

2. Could be replaced on other serial number gliders with hinge pins that Centrair delivered between February 20, 1995, and February 28, 2001.

Consequently, we are clarifying and re-issuing the AD in its entirety to help eliminate any confusion that this AD may have created.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2005–08–06 Centrair: Amendment 39–14058; Docket No. FAA–2004–19616; Directorate Identifier 2004–CE–38–AD.

When Does This AD Become Effective?

(a) The effective date of this AD (2005–08–06) remains June 2, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Gliders Are Affected by This AD?

(c) This AD affects Models 101, 101A, 101AP, and 101P gliders, serial numbers as specified below, that are certificated in any catergory:

(1) Serial numbers 101A600 through 101A637 where the original manufacturer's hinge pins are installed; and

(2) All gliders that had hinge pins replaced with hinge pins that Centrair delivered between February 20, 1995, and February 28, 2001.

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 France. The actions specified in this AD are intended to replace incorrectly heat-treated elevator or aileron hinge pins, which could result in failure of the elevator or ailerons. Such failure during takeoff, landing, or flight operations could lead to loss of glider control.

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

Actions	Compliance	Procedures
(1) *For serial numbers 101A600 through 101A637 where the original manufacturer's hinge pins are installed and all gliders that had hinge pins replaced with hinge pins that Centrair delivered between February 20, 1995, and February 28, 2001:* replace the hinge pins with part number (P/N) SY991A hinge pins.	Within the next 25 hours time-in-service (TIS) after June 2, 2005 (the effective date of this AD), unless already done.	Follow Société Nouvelle Centrair Service Bulletin No. 101–22, dated March 13, 2001.
(2) *For all serial numbers:* Do not install any elevator and aileron hinge pins that are not P/N SY991A hinge pins.	As of June 2, 2005 (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, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) French AD Number 2001–247(A), dated June 27, 2001, also addresses the subject of this AD.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in Société Nouvelle Centrair Service Bulletin No. 101–22, dated March 13, 2001. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact CENTRAIR, Aerodome B.P.N. 44, 36300 Le Blanc, France; telephone: 02.54.37.07.96; facsimile: 02.54.37.48.64. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. 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 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–19616.

Issued in Kansas City, Missouri, on May 3, 2005.

Kim Smith,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–9271 Filed 5–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19928; Directorate Identifier 2004–NE–27–AD; Amendment 39–14082; AD 2005–10–05]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–5, –5B, and –5C Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for CFM International CFM56–5, –5B, and –5C series turbofan engines. This AD requires removing certain part number (P/N) air turbine starters from service. This AD results from several reports of uncontained failures of air turbine starters where high-energy particles were not contained within the containment feature of the starter. We are issuing this AD to prevent uncontained failures of air turbine starters, which could result in damage to the airplane.

DATES: This AD becomes effective June 14, 2005.

ADDRESSES: You can get the service information identified in this AD from CFM International, Technical Information Operation, One Neumann Way, Cincinnati, OH 45215–1988.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7152; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to CFM International CFM56–5, –5B, and –5C series turbofan engines. We published the proposed AD in the **Federal Register** on December 28, 2004 (69 FR 77677). That action proposed to require removing certain P/N air turbine starters from service.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Comments

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

One commenter states that the AD should mention only ''CFM56–5'' not ''CFM56–5 and CFM56–5A'' turbofan engines.

We agree. We have replaced references to ''CFM56–5 and CFM56–5A'' with ''CFM56–5''.

This commenter also indicated that the acronym ''CFMI'' is no longer in use and should be replaced with ''CFM''.

We agree that this acronym is no longer used although the company is still known as ''CFM International.'' We have, therefore, removed references to ''CFMI'' and replaced them with ''CFM International'' or ''CFM.''

Conclusion

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

Costs of Compliance

There are about 3,579 CFM International CFM56–5, –5B, and –5C series turbofan engines of the affected design in the worldwide fleet. We estimate that this AD will affect 600 air turbine starters installed on airplanes of U.S. registry. We also estimate that it will take about 1 work hour per engine to perform these actions, and that the average labor rate is $65 per work hour. Required parts will cost about $5,000 per air turbine starter. Based on these figures, we estimate the total cost of the AD to U.S. operators to be approximately $3,039,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–10–05 CFM International: Amendment 39–14082. Docket No. FAA–2004–19928; Directorate Identifier 2004–NE–27–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 14, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to CFM International CFM56–5, –5B, and –5C series turbofan engines with air turbine starters, part numbers (P/Ns) VIN 3505582–24 (301–807–004–0), VIN 3505582–25 (301–807–005–0), VIN 3505582–40 (301–781–203–0), VIN 3505582–41 (301–806–602–0), VIN 3505582–42 (301–806–802–0), VIN 3505582–60 (301–790–903–0), VIN 3505582–61 (301–806–702–0), and VIN 3505582–62 (301–806–902–0), installed. These engines are installed on, but not limited to, Airbus A319, A320, A321, and A340 airplanes.

Unsafe Condition

(d) This AD results from several reports of failures of uncontained air turbine starters where high-energy particles were not contained within the containment feature of the starter. We are issuing this AD to prevent uncontained failures of air turbine starters, which could result in damage to the airplane.

Compliance

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

Removing Air Turbine Starters

(f) At the next air turbine starter shop visit, but no later than December 31, 2009, remove any air turbine starter, that has a P/N specified in this AD, from service.

Prohibition of Air Turbine Starters Not Reworked or Remarked

(g) After the effective date of this AD, do not install any air turbine starters that have a P/N specified in this AD into any engine.

Alternative Methods of Compliance

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

Related Information

(i) The following documents also pertain to the subject of this AD:

(1) Direction Generale de L'Aviation Civile (DGAC) AD F–2003–456, Revision 2, dated September 29, 2004.

(2) CFM Service Bulletin (SB) No. (CFM56–5) 80–0018, Revision 1, dated November 26, 2003.

(3) CFM SB No. (CFM56–5) 80–0020, Revision 1, dated November 26, 2003.

(4) CFM SB No. (CFM56–5B) 80–0011, Revision 1, dated November 26, 2003.

(5) CFM SB No. (CFM56–5C) 80–0013, Revision 1, dated November 26, 2003.

Issued in Burlington, Massachusetts, on May 3, 2005.

Francis A. Favara,

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

[FR Doc. 05–9275 Filed 5–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–05–027]

RIN 1625–AA09

Drawbridge Operation Regulation; Upper Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operations of the Rock Island Railroad and Highway Drawbridge, Mile 482.9, Rock Island, Illinois across the Upper Mississippi River. This deviation allows the bridge to remain closed-to-navigation from 9 a.m. until 11 a.m., June 4, 2005. The deviation is necessary to allow time for making repairs to mechanical components essential to the continued safe operation of the drawbridge.

DATES: This temporary deviation is effective from 9 a.m. until 11 a.m., June 4, 2005.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Room 2.107F in the Robert A. Young Federal Building, 1222 Spruce

Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION: The Rock Island Arsenal requested a temporary deviation to allow time to conduct repairs to the Rock Island Railroad and Highway Drawbridge, mile 482.9, at Rock Island, Illinois across the Upper Mississippi River. The Rock Island Railroad and Highway Drawbridge currently operates in accordance with 33 CFR 117.5 which requires the drawbridge to open promptly and fully for passage of vessels when a request to open is given in accordance with 33 CFR 117, subpart A. In order to facilitate required bridge maintenance, the bridge must be kept in the closed-to-navigation position. This deviation allows the drawbridge to remain closed-to-navigation for two hours from 9 a.m. until 11 a.m., June 4, 2005. There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

The Rock Island Railroad and Highway Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 23.8 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 3, 2005.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. 05–9302 Filed 5–9–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 310

[Docket Number: MARAD–2004–19397]

RIN 2133–AB61

Amended Service Obligation Reporting Requirements for State Maritime Academy Graduates

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule adopts as final, without change, the interim final rule published in the **Federal Register** (69 FR 61605) on October 20, 2004. The Maritime Administration (MARAD, we, us, or our) is publishing this final rule to change the service obligation reporting requirements for State maritime academy graduates who receive Student Incentive Payments (SIPs). The new reporting requirements create standard reporting dates that coincide with the U.S. Naval Reserve/Merchant Marine Reserve (USNR/MMR) service reporting dates. This rulemaking also provides for the electronic submission of reports as the primary means of submission to MARAD.

DATES: This final rule is effective May 10, 2005.

ADDRESSES: This final rule is available for inspection and copying between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays at the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590. An electronic version of this document along with all documents entered into this docket are available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Rita Jackson, Academies Program Officer, Office of Policy and Plans, Maritime Administration, Department of Transportation, 400 7th St., SW., Room 7123, Washington, DC 20590, telephone: (202) 366–0284.

SUPPLEMENTARY INFORMATION: The Student Incentive Payment Program provides financial assistance to certain eligible State maritime academy students to help offset educational costs. Students who receive Student Incentive Payments must sign service obligation contracts that obligate the students to certain post-graduate service requirements. The requirements include: (1) Serving for three (3) years after graduation in the foreign or domestic commerce or the national defense of the United States in maritime-related employment; (2) maintaining a valid license as an officer in the merchant marine of the United States for at least six (6) years following the date of graduation, accompanied by the appropriate national and international endorsements and certification as required by the United States Coast Guard for service aboard vessels on domestic and international voyages; and (3) accepting if tendered an appointment as, and serving as a commissioned officer in the United States Naval Reserve, the United States Coast Guard Reserve, or any other reserve unit of an armed force of the United States for six (6) years following graduation. The above requirements are set forth in 46 App. U.S.C. 1295c(g)(3)(C), (D), and (E). In addition to the above service obligations, graduates are required, under 46 App. U.S.C. 1295c(g)(3)(F), to submit reports to MARAD indicating compliance with their service obligations.

Prior to the issuance of this rulemaking, regulations at 46 CFR 310.7(b)(6)(i) required State maritime academy SIP graduates to submit their service obligation reports thirteen (13) months following graduation and each succeeding twelve (12) months for a total of three (3) years. The three (3) year reporting period, however, did not accurately reflect the requirement in 46 App. U.S.C. 1295c(g)(3)(F) that graduates report compliance with all of their service obligations, because graduates must submit reports indicating their compliance not only with the three (3) year service (*i.e.*, employment) requirement, but also with the six (6) year licensing and reserve components of the service obligation. Thus, under the law, graduates must submit compliance reports for a minimum of six (6) years to account for all of their service obligations. The six (6) year reporting requirement dates back to the Maritime Education and Training Act of 1980 (Pub. L. 96–453) but has not been reflected in MARAD's regulations. However, as a matter of agency practice, MARAD has long required graduates to submit reports for six (6) years to report compliance with their service obligation requirements.

In this final rule, MARAD is amending its regulations to reflect the requirement that graduates report for six (6) years (or until all components of the service obligation are fulfilled, whichever is latest). In addition, MARAD is amending the service obligation reporting requirements to require each graduate to file a report between January 1 and March 1

following graduation and during the same January 1 to March 1 time frame for a minimum of six (6) years thereafter.

The new reporting dates coincide with the USNR/MMR's service reporting dates to create a standard reporting period. This standardized reporting period should make reporting less burdensome because graduates will be able to compile and submit information to MARAD and to the USNR during the same time frame each year.

This rulemaking also provides for the electronic submission of reports as the primary means of submission. Graduates must submit annually the Maritime Administration Service Obligation Compliance Report and Merchant Marine Reserve, U.S. Naval Reserve (USNR), Annual Report (Form MA–930). Graduates may submit their Service Obligation Compliance Reports electronically via the Maritime Service Compliance System at *https://mscs.marad.dot.gov.*

On October 20, 2004, the Maritime Administration published the interim final rule that preceded this action in the **Federal Register**. Comments on the interim rule were due by November 19, 2004, and no comments were received.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This final rule is not likely to result in an annual effect on the economy of $100 million or more. This final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and economic impact associated with this rulemaking are considered to be so minimal that no further analysis is necessary. This final rule merely changes the reporting requirements for submission of service obligation report forms to make reporting less burdensome, amends the number of report submissions to conform to requirements set forth in the U.S. Code, and provides the option of electronic submission of such reports to MARAD.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553) provides an exception to notice and comment procedures when they are unnecessary or contrary to the public interest. MARAD found that under 5 U.S.C. 553(b)(3)(B), good cause existed for not providing notice and comment since the interim final rule only changed the service obligation reporting dates of State maritime academy graduates who receive SIP payments to make reporting less burdensome, amended the number of report submissions to conform to requirements set forth in the U.S. Code, and provided the option of electronic submission of such reports to MARAD. While MARAD solicited public comments on the interim final rule, no comments were received.

Under 5 U.S.C. 553(d)(3), MARAD finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Regulatory Flexibility Act

The Maritime Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule only changes the service obligation reporting requirements for State maritime academy graduates who receive SIP payments. Thus, this rule only affects individuals and not businesses or other entities.

Federalism

We have analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132 (Federalism) and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. These regulations have no substantial effect on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among local officials. Therefore, consultation with State and local officials is not necessary.

Executive Order 13175

MARAD does not believe that this final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Environmental Impact Statement

We have analyzed this final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions in section 4.05 of Maritime Administrative Order (MAO) 600–1, ''Procedures for Considering Environmental Impacts,'' 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this final rule is required. This final rule involves administrative and procedural regulations that have no environmental impact.

Unfunded Mandates Reform Act of 1995

This final rule does not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule is the least burdensome alternative that achieves this objective of U.S. policy.

Paperwork Reduction Act

This final rule contains information collection requirements covered by the Office of Management and Budget approval number 2133–0509. The changes have no impact on the reporting burden.

List of Subjects in 46 CFR Part 310

Federal Aid Programs, Reporting and recordkeeping requirements, Schools, and Seamen.

Interim Rule Adopted as Final Without Change

■ Accordingly, MARAD adopts the interim final rule amending 46 CFR part 310 that was published in the **Federal Register** on October 20, 2004 (69 FR 61605) as a final rule without change.

By order of the Maritime Administrator.

Dated: May 5, 2005.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–9307 Filed 5–9–05; 8:45 am]

BILLING CODE 4910–81–P

Proposed Rules

Federal Register
Vol. 70, No. 89
Tuesday, May 10, 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

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 02–019P]

RIN 0583–AD16

Addition of Chile to the List of Countries Eligible To Export Meat and Meat Products to the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to add Chile to the list of countries eligible to export meat and meat products to the United States. Reviews by FSIS of Chile's laws, regulations, and other materials show that its meat inspection system includes requirements equivalent to all provisions in the Federal Meat Inspection Act (FMIA) and its implementing regulations.

Although a foreign country may be listed as eligible to export meat and meat products, products from that country must also comply with all other U.S. requirements, including those of the U.S. Customs Service and the restrictions under Title 9, part 94 of the Animal and Plant Health Inspection Service (APHIS) regulations that relate to the importation of meat and meat products from foreign countries into the United States. FSIS and APHIS work closely together to ensure that meat and meat products imported into the United States comply with the regulatory requirements of both agencies.

Under this proposal, meat and meat products processed in certified Chilean establishments may be exported to the United States. All such products will be subject to re-inspection at United States ports-of-entry by FSIS inspectors.

DATES: Comments must be received on or before July 11, 2005.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD–ROM's, and hand-or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.

All submissions received must include the Agency name and docket number 02–019P.

All comments submitted in response to this proposal, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site *http://www.fsis.usda.gov/regulations_&_policies/2005_Proposed_Rules_Index/index.asp.*

FOR FURTHER INFORMATION CONTACT: Ms. Sally White, Director, International Equivalence Staff (IES), Office of International Affairs; (202) 720–6400.

SUPPLEMENTARY INFORMATION:

Background

FSIS is proposing to amend the Federal meat inspection regulations to add Chile to the list of countries eligible to export meat and meat products to the United States (9 CFR 327(b)), as was requested by the Chilean government. Chile is not currently listed as eligible to export such products to the United States.

Listing Chile as eligible to export meat products to the United States would expand international markets and enhance the free flow of trade with Chile as required under World Trade Organization (WTO) provisions. This proposed action would support U.S. trade initiatives and USDA's policy of liberalizing agricultural trade with Chile, and would honor U.S. obligations to WTO. Under the Uruguay Round Agreement, FSIS is obligated to make equivalence determinations of the inspection systems of foreign countries requesting to import meat, poultry, or egg products into the United States.

Section 20 of the FMIA (21 U.S.C. 620) prohibits the importation into the United States of carcasses, parts of carcasses, meat, or meat food products of cattle, sheep, swine, goats, horses, mules, or other equines that are capable of use as human food that are adulterated or misbranded. The FMIA also requires that livestock from which imported meat products are produced be slaughtered and handled in connection with slaughter in accordance with the Humane Slaughter Act (7 U.S.C. 1901–1906). Imported meat products must be in compliance with part 327 of title 9, Code of Federal Regulations (9 CFR part 327), to ensure that they meet the standards provided in the FMIA. Section 327.2 establishes the procedures by which foreign countries that want to export meat and meat products to the United States may become eligible to do so.

Section 327.2(a) requires authorities in a foreign country's meat inspection system to certify that (1) the system provides standards equivalent to those of the United States, and (2) the legal authority for the system and its implementing regulations are equivalent to those of the United States. Specifically, a country's regulations must impose requirements equivalent to those of the United States in the following areas: (1) Ante-mortem and post-mortem inspection; (2) official controls by the national government over plant construction, facilities, and equipment; (3) direct and continuous supervision of slaughter activities, where applicable, and product preparation by official inspection personnel; (4) separation of establishments certified to export from those not certified; (5) maintenance of a single standard of inspection and sanitation throughout certified establishments; (6) official controls over condemned product; and (7) requirements of a Hazard Analysis and Critical Control Point (HACCP) system within certified establishments.

Section 327.2 also requires a meat inspection system maintained by a foreign country, with respect to establishments preparing products in that country for export to the United States, to ensure that those establishments and their meat products comply with requirements equivalent to the provisions of the FMIA and the meat product inspection regulations. Foreign

country authorities must be able to ensure that all certifications required under Part 327 of the meat product inspection regulations (Imported Products) can be relied upon before USDA–FSIS will grant approval to export meat products to the United States.

In addition to meeting the certification requirements, a foreign country's inspection system must be evaluated by FSIS before eligibility to export meat products can be granted. This evaluation consists of two processes: A document review and an on-site review. The document review is an evaluation of the laws, regulations, and other written materials used by the country to operate its meat inspection program. To help the country in organizing its material, FSIS gives the country questionnaires asking for detailed information about the country's inspection practices and procedures in five risk areas, which are the focus of the evaluation. These five risk areas are sanitation, animal disease, slaughter/processing, residues, and enforcement. FSIS evaluates the information to verify that the critical points in the five risk areas are addressed satisfactorily with respect to standards, activities, resources, and enforcement. If the document review is satisfactory, an on-site review is scheduled using a multi-disciplinary team to evaluate all aspects of the country's inspection program, including laboratories and individual establishments within the country.

The process of determining equivalence is described fully on the FSIS Web site at *http://www.fsis.usda.gov/OPPDE/IPS/EQ/EQProcess.htm.* Besides relying on its initial determination of a country's eligibility, coupled with ongoing reviews to ensure that products shipped to the United States are safe, wholesome, and properly labeled and packaged, FSIS randomly reinspects meat and poultry products as they are offered for entry into the United States.

Evaluation of the Chilean Meat Inspection System

FSIS conducted a thorough review of the Chile meat inspection system to determine if it is equivalent to the U.S. meat inspection system. First, FSIS compared Chile's meat inspection laws and regulations with U.S. requirements. The study concluded that the requirements contained in Chile's meat inspection laws and regulations are equivalent to those mandated by the FMIA and implementing regulations. FSIS then conducted an on-site review of the Chile meat inspection system in operation. The FSIS review team concluded that Chile's implementation of meat slaughter and processing standards and procedures was equivalent to those of the United States. The audit reports on Chile can be found on the FSIS Web site at *http://www.fsis.usda.gov/OPPDE/Far/index.htm.*

The FSIS process to determine the equivalence of a country's meat or poultry inspection system is independent from any APHIS animal health status determination that may be made for the same given country. The APHIS declaration regarding animal health or disease status, however, also determines whether a country can export product to the U.S., as well as the types of products that would be eligible.

Even though a foreign country is listed in FSIS regulations as eligible to export meat products to the U.S., those meat products must also comply with all other U.S. requirements before entry. Before a shipment of meat or meat products may be presented for re-inspection at the port-of entry by FSIS, it must have first met the requirements of both the U.S. Customs Service and APHIS.

APHIS is responsible for keeping foreign animal diseases out of the United States. Under title 9, part 94 of the Code of Federal Regulations (9 CFR part 94), APHIS sets forth restrictions on the importation of any fresh, frozen, and chilled meat, meat products, and edible products from countries in which certain animal diseases exist. APHIS can independently restrict an eligibility listing through a ''regionalization'' process (9 CFR part 92—Importation of Animals and Animal Products: Procedures for Requesting Recognition of Regions). Those products that APHIS has restricted from entering the United States because of animal disease conditions in the country of origin will be refused entry before reaching an FSIS import inspection facility.

FSIS and APHIS work closely together to ensure that meat and meat products imported into the United States comply with the regulatory requirements of both agencies. In 1985, FSIS and APHIS signed a memorandum of understanding (MOU) in which both agencies agreed to cooperate in meeting their respective needs relative to information exchange of disease surveillance, diagnostic testing, investigations, trace backs, and animal and public health emergencies to achieve their related objectives of reducing the spread of animal diseases, and of providing a wholesome and economical food supply. The MOU is updated periodically to ensure that it addresses areas of importance to both agencies. In accord with this MOU, FSIS and APHIS established procedures for communication between the two agencies regarding the inspection, handling, and disposition of imported meat products. APHIS and FSIS communicate regularly to ensure that products APHIS has restricted from entering the United States because of animal disease concerns are not imported into the United States.

FSIS notes that APHIS has found no current evidence of animal disease of consequence in Chile. Certain animal diseases can be highly communicable and could have a devastating economic impact on the U.S. meat industry were they to enter the United States. For example, bovine Foot and Mouth Disease (FMD) is not currently present in Chile but does occur in nearby Argentina. Due to the proximity of Argentina, APHIS and Chilean officials closely monitor this animal disease and have found no cause for concern.

For these reasons, FSIS believes that sufficient controls are in place to ensure that meat and meat products processed in Chile will not pose a risk in the U.S.

Accordingly, FSIS is proposing to amend Part 327 of the Federal meat inspection regulations to add Chile as a country from which meat and meat products may be eligible for import into the United States. As a country eligible to export meat products to the United States, the government of Chile would certify to FSIS those establishments wishing to export such products to the U.S. and operating according to U.S. requirements. FSIS would retain the right to verify that establishments certified by the Chile government are meeting the U.S. requirements. This verification would be done through annual on-site reviews of the establishments while they are in operation.

All meat products exported to the United States from Chile would be subject to reinspection at the ports-of-entry for transportation damage, labeling, proper certification, general condition, and accurate count. Other types of inspection would also be conducted, including examining product for defects and performing laboratory analyses to detect chemical residues or microbial contamination.

Products that pass reinspection will be stamped with the official mark of inspection and allowed to enter U.S. commerce. If they do not meet U.S. requirements, they will be ''Refused Entry'' and must be re-exported, destroyed, or allowed entry for the purpose of converting to animal food.

Economic Impact Analysis

The United States annually imports about 14 million metric tons (MT) of meat products, worth about $4.2 billion. These amounts are projected to increase by 2011 to about 17 million MT, worth $5.1 billion.

Current information indicates that several establishments in Chile would be able to ship meat and, potentially, meat products to the United States—largely beef, pork, and lamb. The exports would consist of an estimated 600 MT of bone-in and boneless beef valued at $1.8 million; an estimated 500 MT of bone-in pork cuts (ribs) valued at $2.65 million; and about 500 MT of lamb carcasses, carcass halves, and quarters, valued at $1.5 million. Listing Chile as eligible to export meat to the United States would therefore add a very small portion to total U.S. meat imports.

The additional product shipments are likely to have only a slight effect on the Agency's assignment of import inspection resources at points of entry on the East and West coasts. It is unlikely, on the basis of current information, that any additional import inspection personnel would need to be hired.

Benefits would include increased trade with Chile and the availability to U.S. consumers of a greater quantity of meat of the kinds mentioned. Wholesale prices of all grades of these products have been moving upward during the last several years. Importing beef, pork, and lamb from Chile would not affect this trend or would do so only very slightly. Both nations would benefit from an expansion of trade in meat as part of a wide range of commodities.

Constraints on the expansion of trade in meat between the United States and Chile are expected to occur mainly in the form of restrictions imposed under U.S. animal health laws. APHIS has agreed to supply FSIS with evaluations and current updates of the animal disease status of regions in Chile where establishments likely to export product to the United States are located.

Estimates of benefits and costs of increased trade in meat with Chile are based on data supplied by FSIS Office of International Affairs and Field Operations staffs; Foreign Agricultural Service (FAS) databases and trade reports; Economic Research Service (ERS) databases, reports, and analyses; and Census Bureau databases and reports. Standard economic analytical techniques were used in estimating effects of the proposed rulemakings.

The major source of uncertainty in estimating the effects of the proposed rulemaking is in forecasting the number of establishments likely to be certified for importation of products into the United States. Other, less important, sources of uncertainty include imprecision in the economic data to be consulted, *e.g.,* estimates of demand elasticities and probable errors in multi-year forecasts of prices for the commodities to be regulated under the proposed rulemakings.

Effect on Small Entities

The Administrator, FSIS, has made an initial determination that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This proposed rule would add Chile to the list of countries eligible to export meat and meat products to the United States. The volume of trade stimulated by this rule would be very small and would have relatively little effect on supply and prices. Therefore, this proposed rule is not expected to have a significant impact on small entities that produce these types of products domestically.

Paperwork Requirements

No new paperwork requirements are associated with this proposed rule. Foreign countries wanting to export meat and meat products to the United States are required to provide information to FSIS certifying that their inspection systems provide standards equivalent to those of the United States, and that the legal authority for the systems and their implementing regulations are equivalent to those of the United States, before they may start exporting such product to the United States. FSIS collects this information one time only. FSIS gave Chile questionnaires asking for detailed information about the country's inspection practices and procedures to assist the country in organizing its materials. This information collection was approved under OMB number 0583–0094. The proposed rule contains no other paperwork requirements.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. It has been determined to be not significant for purposes of E.O. 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this final rule, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2005_Proposed_Rules_Index/index.asp.* The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal Government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov/.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an email subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations,

directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

List of Subjects in 9 CFR Part 327

Imported products.

For the reasons set out in the preamble, FSIS is proposing to amend 9 CFR part 327 as follows:

PART 327—IMPORTED PRODUCTS

1. The authority citation for part 327 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 327.2 [Amended]

2. Section 327.2 is amended by adding Chile in alphabetical order to the list of countries in paragraph (b).

Done at Washington, DC, on May 4, 2005.

Barbara J. Masters,

Acting Administrator.

[FR Doc. 05–9279 Filed 5–9–05; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21170; Directorate Identifier 2002–NM–124–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and 767–300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 767–200 and 767–300 series airplanes. This proposed AD would require performing a general visual inspection to determine the part number of the I-beams of the center overhead stowage bin modules to identify I-beams having 9.0g (gravitational acceleration) tie rods attached and to determine the configuration of the center overhead stowage bin modules; and, for certain center overhead stowage bin modules, installation of support straps. This AD was prompted by the results of tests conducted by the airplane manufacturer. We are proposing this AD to prevent failure of the attachment of the 9.0g tie rods to the center overhead stowage bin modules. This failure could result in collapse of those stowage bin modules, and consequent injury to passengers and crew and interference with their ability to evacuate the airplane in an emergency.

DATES: We must receive comments on this proposed AD by June 24, 2005.

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

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

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

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–21170; the directorate identifier for this docket is 2002–NM–124–AD.

FOR FURTHER INFORMATION CONTACT: Susan Rosanske, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6448; 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–2005–21170; Directorate Identifier 2002–NM–124AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The airplane manufacturer has notified us that, during tests it conducted, some center overhead stowage bin modules failed at 6.6g (gravitational acceleration) along the 9.0g tie rod forward bolt line. Based on the results of these tests, we have determined that center overhead stowage bin modules may not meet the 9.0g forward load requirements of section 25.561 (''General'') of the Federal Aviation Regulations (14 CFR 25.561). As a result, the center overhead stowage bin modules may collapse, causing injury to passengers and crew and interfere with their ability to evacuate the airplane in an emergency. The actions specified by the proposed AD are intended to prevent failure of the attachment of the 9.0g tie rods to the center overhead stowage bin modules. This failure could result in collapse of those stowage bin modules, and consequent injury to passengers and crew and interference with their ability to evacuate the airplane in an emergency.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 767–25–0320, dated April 11, 2002. The service bulletin describes procedures for

performing a general visual inspection to determine the part number (P/N) of the I-beams of the center overhead stowage bin modules to identify I-beams having 9.0g tie rods attached and to determine the configuration of the center overhead stowage bin modules. For I-beams having certain P/Ns and stowage bin modules having certain configurations, the service bulletin also describes procedures for installing reinforcement straps. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

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

Difference Between the Proposed AD and Service Information

The service bulletin does not recommend a compliance time for accomplishing the general visual inspection to determine the P/N of the I-beams of the center overhead stowage bin modules to identify I-beams having 9.0g tie rods attached and to determine the configuration of the center overhead stowage bin modules; or for the installation of support straps for certain center overhead stowage bin modules. In developing an appropriate compliance time for this proposed AD, we considered the degree of urgency associated with the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection and installation (13 hours, per I-beam). In light of all of these factors, we find that a 36-month compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This has been coordinated with the manuafacturer.

Costs of Compliance

There are about 747 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. There are approximately 13 center overhead stowage bin modules per airplane and one I-beam per module.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes
1. Inspection to determine P/N and configuration, per I-beam.	1	$65	None	$65, per I-beam	281
2. Strap installation, per I-beam	12	$65	$816, per I-beam	$1,596, per I-beam	281

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–2005–21170; Directorate Identifier 2002–NM–124–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by June 24, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200 and 767–300 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 767–25–0320, dated April 11, 2002.

Unsafe Condition

(d) This AD was prompted by the results of tests conducted by the airplane manufacturer. We are issuing this AD to prevent failure of the attachment of the 9.0g (gravitational acceleration) tie rods to the center overhead stowage bin modules. This failure could result in collapse of those

stowage bin modules, and consequent injury to passengers and crew and interference with their ability to evacuate the airplane in an emergency.

Compliance

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

Inspection To Determine I-beam Part Number (P/N)

(f) Within 36 months after the effective date of this AD: Perform a general visual inspection of the center overhead stowage bin modules to determine the P/N of each I-beam and to determine the configuration of each center overhead stowage bin module. Do the inspection in accordance with Boeing Special Attention Service Bulletin 767–25–0320, dated April 11, 2002.

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

(g) For any I-beam found having P/N 412T2040–29 during the inspection required by paragraph (f) of this AD: No further action is required by this AD for that I-beam only.

Support Strap Installation

(h) For any I-beam found having a P/N other than P/N 412T2040–29 during the inspection required by paragraph (f) of this AD: Before further flight, do the actions in paragraph (h)(1) or (h)(2) of this AD, as applicable, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–25–0320, dated April 11, 2002.

(1) If the forward-most stowage bin module was inspected: Before further flight, install support straps having P/N 412T2043–101 and 412T2043–102 on the center overhead stowage bin module, in accordance with Figures 3, 4, and 5 of the Accomplishment Instructions of the service bulletin.

(2) If the stowage bin module inspected was other than the forward-most stowage bin module: Before further flight, do the actions specified in paragraph (h)(2)(i) or (h)(2)(ii) of this AD, as applicable.

(i) For center overhead stowage bin modules having ''Configuration A,'' as specified in the service bulletin: Before further flight, do the actions specified in paragraph (h)(1) of this AD.

(ii) For center overhead stowage bin modules having a configuration other than ''Configuration A,'' as specified in the service bulletin: Prior to further flight, install two support straps having P/N 412T2043–119 on the center overhead stowage bin module, in accordance with Figures 3, 4, and 6 of the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance (AMOCs)

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

Issued in Renton, Washington, on May 3, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–9272 Filed 5–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 2000N–0504] (formerly Docket No. 00N–0504)

Prevention of Salmonella Enteritidis in Shell Eggs During Production; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until June 9, 2005, the comment period for the agency's proposed rule entitled ''Prevention of *Salmonella* Enteritidis in Shell Eggs During Production'' that published in the **Federal Register** of September 22, 2004 (69 FR 56824). FDA is reopening the comment period to receive comments and other information regarding industry practices and programs that prevent *Salmonella* Enteritidis (SE)-monitored chicks from becoming infected by SE during the period of pullet rearing until placement into laying hen houses.

DATES: Submit written or electronic comments by June 9, 2005.

ADDRESSES: You may submit comments, identified by Docket No. 2000N–0504, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.
- E-mail: *fdadockets@oc.fda.gov*. Include Docket No. 2000N–0504 in the subject line of your e-mail message.
- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and docket number or regulatory information number for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the relevant docket number, 2000N–0504, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lou Carson, Center for Food Safety and Applied Nutrition (HFS–032), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2130.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 22, 2004 (69 FR 56824), FDA proposed regulations that would require egg safety measures to prevent the contamination of shell eggs with SE during egg production. The proposal would reduce SE prevalence in the egg production environment and consequently in the eggs themselves. The proposed SE prevention measures include: (1) Provisions for procurement of chicks and pullets, (2) a biosecurity program, (3) a pest and rodent control program, (4) cleaning and disinfection of poultry houses that have had an environmental sample or egg test positive for SE, and (5) refrigerated storage of eggs at the farm. In addition, the proposal would require that producers test the environment for SE in poultry houses. If the environmental test is positive, the proposal would require that egg testing for SE be undertaken, and that if an egg test is positive, eggs be diverted from the table egg market to a technology or process that achieves at least a 5-log destruction of SE for shell eggs, or to processing in accordance with the Egg

Products Inspection Act. The proposed rule had a 90-day comment period, which ended December 21, 2004. To discuss the proposed rule and solicit comments from interested stakeholders, FDA held three public meetings in 2004: October 28 in College Park, MD; November 9 in Chicago, IL; and November 16 in Los Angeles, CA.

II. Request for Comments

Based on comments received in response to the proposal, FDA is seeking further comment and information on industry practices and programs that prevent SE-monitored chicks from being infected by SE during the period of pullet rearing until placement into laying hen houses. Specifically, FDA seeks additional comment and supportive data or other information on the following questions:

1. How many pullet growing facilities are there in the United States? What is the range in the number of houses on those facilities?

• What percentage of pullet growers are under programs or have practices aimed at preventing SE-monitored chicks from becoming infected by SE during the period of pullet rearing until placement into layer hen houses?

• Do State or regional Egg Quality Assurance Programs include provisions to prevent SE-monitored chicks from becoming infected by SE during the period of pullet rearing until placement into layer hen houses? How effective have the pullet programs (whatever the programs entail—cleaning, testing, etc.) been in reducing the prevalence of SE in layer flocks? How is effectiveness measured?

2. During pullet rearing, what programs or industry practices are currently taken to prevent SE-monitored chicks from becoming infected by SE during the period of pullet rearing until placement into layer hen houses?

• Are pullets, or their environment, tested for SE between the time they are procured as chicks and the time they enter layer houses? If so, when? When tested, approximately how often do pullets or pullet environments test positive? What happens after a positive test?

• Is vaccination used as a preventive measure, if so, when and how?

• What cleaning and disinfecting practices are common?

• Are measures taken to reduce the prevalence of rodents and pests in the pullet rearing houses?

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 3, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–9327 Filed 5–9–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 361

[Docket No. 2004N–0432]

Radioactive Drugs for Certain Research Uses; Public Meeting; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until July 11, 2005, the comment period on the questions raised and issues addressed in the notice of public meeting, published in the **Federal Register** of October 5, 2004 (69 FR 59569), on the use of certain radioactive drugs for research purposes without an investigational new drug application (IND) under the conditions set forth in FDA regulations. We are taking this action in response to requests to extend the comment period and to allow additional time to review agency guidance on a related matter.

DATES: Submit written or electronic comments on the notice and/or public meeting by July 11, 2005.

ADDRESSES: You may submit comments, identified by Docket No. 2004N–0432, by any of the following methods:

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

• Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

• E-mail: *fdadockets@oc.fda.gov*. Include Docket No. 2004N–0432 in the subject line of your e-mail message.

• FAX: 301–827–6870.

• Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and docket number for this proceeding. All comments received will be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting comments, see the ''Comments'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert Docket No. 2004N–0432 into the ''Search'' box and follow the prompts, or go to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

A transcript of the public meeting is available for review at the Division of Dockets Management and on the Internet at *http://www.fda.gov/ohrms/dockets*.

FOR FURTHER INFORMATION CONTACT: Maria R. Walsh, Center for Drug Evaluation and Research (HFD–103), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3139, FAX: 301–480–3761, e-mail: *walsh@cder.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 5, 2004 (69 FR 59569), we announced a public meeting to be held on November 16, 2004, to discuss research on radioactive drugs that is conducted under § 361.1 (21 CFR 361.1). Under § 361.1, certain radioactive drugs (drugs that exhibit spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons) are considered generally recognized as safe and effective under specified conditions of use when administered to human research subjects for certain basic research uses. These uses include studies intended to obtain basic information regarding the metabolism (including pharmacokinetics, distribution, and localization) of a radioactive drug or regarding human physiology, pathophysiology, or biochemistry, but not studies intended for immediate therapeutic, diagnostic, or similar purposes or studies intended to determine the safety and effectiveness

of the drug. When conducted in accordance with § 361.1, clinical investigations of radioactive drugs are not subject to the requirements for INDs stated in 21 CFR part 312.

To facilitate discussion at the public meeting and assist us in our review of this matter, we invited comments on several questions we set forth in the **Federal Register** notice concerning the application of § 361.1. Interested persons were invited to present information at the public meeting and were given until January 16, 2005, to submit comments on the notice.

We held the public meeting on November 16, 2004. Subsequent to the public meeting, we received requests from the American College of Nuclear Physicists, the Society of Nuclear Medicine, and others that we extend the comment period on the notice on § 361.1 so that persons can consider the issues raised in the notice and at the public meeting in light of the information in the draft guidance on exploratory INDs that we expected to issue in the near future. We published a notice of availability of that draft guidance in the **Federal Register** of April 14, 2005 (70 FR 19764).

In response to these requests, we have decided to reopen the comment period on the questions and issues stated in the October 5, 2004, notice and discussed at the November 16, 2004, public meeting. This will allow interested persons more time to review and comment on these issues in light of the information in the draft guidance on exploratory INDs.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Transcripts

You can examine a transcript of the November 16, 2004, public meeting on the Internet at *http://www.fda.gov/ohrms/dockets/default.htm* or at the Division of Dockets Management (see **ADDRESSES**), Monday through Friday between 9 a.m. and 4 p.m. You may also request a copy of the transcript from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, at a cost of 10 cents per page or on CD at a cost of $14.25 each.

Dated: May 4, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–9326 Filed 5–9–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–05–041]

RIN 1625–AA09

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AICW), Elizabeth River, Southern Branch, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations that govern the operation of the Dominion Boulevard (U.S. 17) Bridge across the Southern Branch of the Elizabeth River, at Atlantic Intracoastal Waterway (AICW) mile 8.8, at Chesapeake, Virginia. The proposal would change the morning rush hour closure period so that it starts at 7 a.m. and ends at 9 a.m., and also allow the bridge to open every hour from 9 a.m. to 4 p.m., Monday through Friday, except holidays. The proposed change is necessary to relieve vehicular traffic congestion and reduce traffic delays between weekday rush hours while still providing for the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before June 24, 2005.

ADDRESSES: You may mail comments and related material to Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004. The Fifth Coast Guard District 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 Commander (obr), Fifth Coast Guard District between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

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 CGD05–05–041, 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 a return receipt, please enclose a stamped, self-addressed postcard or envelope. We will consider all submittals 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 Commander (obr), Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one public meeting at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Current regulations require the Dominion Boulevard (US 17) Bridge across the Southern Branch of Elizabeth River, at AICW mile 8.8, to open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials and for commercial vessels that provide a two-hour advance notice. In addition, from Memorial Day to Labor Day, from 8:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays, the draw is opened only every hour on the half-hour. From 6:30 a.m. to 8:30 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of recreational vessels and commercial vessels carrying non-hazardous material that do not provide a 2-hour advance notice.

On December 17, 2004, we published a notice of temporary deviation from the regulations and request for comments entitled ''Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AICW), Elizabeth River, Southern Branch, VA'' in the **Federal Register** (69 FR 75472). The temporary deviation was an effort to test an alternate drawbridge operation schedule for 90 days and to solicit comments from the public. In accordance with the temporary deviation, from December 13,

2004, to March 13, 2005, from 8:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays, the draw was opened only every hour on the half hour.

The Coast Guard received 52 e-mail messages and 4 on-paper responses commenting on the provisions of the temporary deviation. The majority of the comments, from motorists, favored scheduled versus unscheduled bridge openings, so they could better plan their movements. Many respondents indicated that even though the vehicular rush hour traffic starts at 6:30 a.m., the weekday rush hour traffic peaks between 7 a.m. and 9 a.m. In addition, they stated a preference that commercial vessels carrying non-hazardous materials be regulated. However, since tugs and tugs with tows have no place to tie up in the proximity of the bridge in order to wait for a bridge opening, the Coast Guard will continue to include them in the 2-hour advance notice requirement.

During the spring and fall months, the flow of recreational vessels is constant due to vessel owners referred to as ''snowbirds''. Owners of these recreational vessels are either transiting north to south towards a warmer climate in the fall or south to north towards a cooler climate in the spring and this can result in excessive bridge openings. From Memorial Day to Labor Day, the current regulations restrict openings for vessels between the rush hour periods to every hour on the half hour.

In an effort to ease vehicle traffic congestion as a result of vessel openings of the drawbridge, the proposal will change the morning rush hour period so that it starts at 7 a.m. and ends at 9 a.m., Monday to Friday, except Federal holidays. Therefore, the first drawbridge opening for vessels after the morning rush hour will occur at 9 a.m. and the last opening before the evening rush hour will be at 4 p.m.

Also, the Coast Guard proposes that the hourly opening occur on the hour, between the rush hour closure periods from 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Coast Guard examined the operation of the Great Bridge (S168) Bridge across the Albemarle and Chesapeake at AICW mile 12.0 and the Great Bridge Locks (the Locks) located just south of the Dominion Boulevard Bridge. The Great Bridge (S168) Bridge provides vessel openings on the hour between 6 a.m. to 7 p.m., seven days a week, year round. The Locks, owned and operated by the U.S. Army Corps of Engineers, opens for vessels on demand from 7 a.m. to 6 p.m. Mariners suggested that if the Dominion Boulevard Bridge must open only once each hour, on the hour is better.

Based on the above information, we have proposed to change the regulations that govern the Dominion Boulevard Bridge to open year round, every hour between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays, to coincide with the operation of the Great Bridge (S168) Bridge and the Locks. The proposal will enable transient craft to reduce delays in navigating the AICW, while also helping to ease vehicular traffic congestion.

Discussion of Proposed Rule

The Coast Guard proposes to amend 33 CFR § 117.997(g), by revising paragraphs (g)(2), (g)(3), and (g)(4).

Paragraph (g)(2) would modify the morning closure period, during rush hour, to 7 a.m. to 9 a.m., Monday to Friday, except Federal holidays. Paragraph (g)(3) would delete the phrase ''From Memorial Day to Labor Day'' and modify the paragraph to read ''Year round from 9 a.m. to 4 p.m., Monday to Friday, except Federal holidays, the draw need be opened every hour''. Paragraph (g)(4) would replace the wording from ''on the half hour'' to ''on the hour.''

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. We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their transits in accordance with the scheduled bridge openings, to minimize delays.

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 would not have a significant economic impact on a substantial number of small entities because the proposed rule only adds minimal restrictions to the movement of navigation, and mariners who plan their transits in accordance with the schedule bridge openings minimizes delays.

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 (Pub. L. 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 Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222. 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 will 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 affect 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 M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation because it has been determined that the promulgation of operating regulations for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. In §117.997, paragraphs (g)(2) introductory text, (g)(3) and (g)(4) are revised to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albermarle and Chesapeake Canal.

* * * * *

(g) * * *

(1) * * *

(2) From 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays:

(i) * * *

(ii) * * *

(3) From 9 a.m. to 4 p.m., Monday to Friday, except Federal holidays, the draw need be opened every hour on the hour.

(4) If any vessel is approaching the bridge and cannot reach the draw exactly on the hour, the drawtender may delay the opening up to ten minutes past the hour for the passage of the approaching vessel and any other vessels that are waiting to pass.

* * * * *

Dated: May 2, 2005.

Lawrence J. Bowling,

Captain, United States Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 05–9303 Filed 5–9–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 040605D]

Atlantic Highly Migratory Species; Commercial Shark Management Measures

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

ACTION: Receipt of a petition for rulemaking; request for comments.

SUMMARY: NMFS announces the receipt of, and requests public comment on, a petition from the North Carolina Department of Environment and Natural Resources, Division of Marine Fisheries (Petitioner) to initiate rulemaking to amend the extent of the current time/area closure for Atlantic sharks off the Mid-Atlantic region.

DATES: Written comments must be received no later than 5 p.m., eastern standard time, on July 11, 2005.

ADDRESSES: Written comments on the petition should be sent to Jackie Wilson, Highly Migratory Species Management Division:

- E-mail: *SF1.040605D@noaa.gov*.
- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comments on Petition for Rulemaking for Sharks.''
- Fax: 301–713–1917.

• Federal e-Rulemaing Portal: *http://www.regulations.gov*. Include in the subject line the following identifier: I.D. 040605D.

Copies of the petition are available upon request at the address specified above and are also available on the internet at *http://www.nmfs.noaa.gov/sfa/hms*.

FOR FURTHER INFORMATION CONTACT: Jackie Wilson or Karyl Brewster-Geisz by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION:

Petition for Rulemaking

On March 7, 2005, NMFS received a request from the Petitioner to initiate rulemaking for a regulatory amendment to 50 CFR 635.2 in the definition of the ''Mid-Atlantic shark closed area.'' The proposal would reduce the current closed area by changing the boundary from 55 fathoms to only include waters out to 15 fathoms coastwide for North Carolina. The Petitioner has stated that this action would allow North Carolina fishermen access to the larger sharks in deeper waters from 15 to 55 fathoms and minimize discards of juvenile and protected sharks to a reasonable extent. The Petitioner states that the available data suggest that juvenile sharks occur predominately near shore. Thus, the Petitioner proposes that closing out to 15 fathoms along the entire North Carolina coastline instead of out to 55 fathoms for the northern part of North Carolina will still attain the management goal of protecting juvenile sandbar and prohibited dusky sharks. The Petitioner believes that the offshore extent of the current closed area encompasses the primary shark fishing grounds off North Carolina and severely restricts access to the shark quota off North Carolina, particularly during the first trimester.

The Petitioner asserts that the current time/area closure off of North Carolina is not justified based on available data, and has been implemented in violation of at least three National Standards (e.g., ı4, 8, and 10) of the Magnuson-Stevens Fishery Conservation and Management Act. The Petitioner notes that the proposed change could address the above concerns and have positive significant economic benefits to fishermen, dealers, and fishing communities in the South Atlantic.

During the proposed rule stage of Amendment 1 (August 1, 2003, 68 FR 45196) of the Highly Migratory Species Fishery Management Plan, NMFS took comment on a much larger time/area closure (31,387 square nautical miles from VA to SC) than the current time/area closure. Based on comments from fishermen, NMFS conducted additional analyses and adjusted the time/area closure's seaward boundary to follow the 60 to 80 fathom contour (4,490 square nautical miles). This area was selected to include all observed catches of dusky and sandbar sharks while mitigating social and economic impacts on fishing communities in North Carolina compared to the originally proposed closed area. The analyses conducted in Amendment 1 indicated that the current time/area closure should reduce dusky shark catch by 79 percent, and neonate and juvenile sandbar shark catch by 55 percent. Because the rebuilding plan for large coastal sharks (LCS) incorporated the mortality reductions anticipated for the existing time/area closure, it is possible that changes to the closure of the magnitude suggested by the Petitioner would require an amendment to the rebuilding plan.

In the final rule, NMFS also delayed implementation of the time/area closure for a year to allow fishermen time to adjust to the new regulations (December 24, 2003, 68 FR 74746). Thus, this closure has not yet been in place for a full year.

The Petitioner notes that North Carolina's interest in changing the time/area closure is on record. In addition, on March 23, 2005, the Petitioner presented this issue to the HMS Advisory Panel (AP), stating that the time/area closure disproportionately affects fishermen operating from home ports in the State of North Carolina. AP members noted that the LCS stock assessments determined that sandbar and dusky sharks have been overfished and are not currently rebuilt, thus warranting further management actions to rebuild these stocks. AP members also stated that any amendment to the current time/area closure must not increase mortality on large juvenile sandbar or dusky sharks because rebuilding these stocks requires lowering the mortality rate of large juveniles. AP members also discussed alternatives, such as the Atlantic States Marine Fisheries Commission working with other East Coast states for more statewide compliance with regulations at least as restrictive as Federal regulations.

Request for Comments

NMFS solicits comments from the public regarding the need to proceed with rulemaking to amend the current Mid-Atlantic shark closed area. NMFS is specifically requesting that the public provide comments on the social, economic, and biological impacts that a potential regulatory amendment to the closure would have on the LCS rebuilding plan. NMFS will consider this public input in determining the need to amend regulations.

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

Dated: May 3, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–9332 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 050329085–5085–01; I.D. 032305A]

RIN 0648–AT31

Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

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

ACTION: Advance Notice of Proposed Rulemaking (ANPR), Notice of Intent (NOI) to combine rulemaking and prepare an Environmental Impact Statement (EIS); request for comments.

SUMMARY: NMFS announces its intent to consider revisions to the Federal lobster regulations in response to the effort control recommendations of the Atlantic States Marine Fisheries Commission (Commission) in Addenda II, III, IV, V and VI to Amendment 3 of the Interstate Fishery Management Plan for American Lobster (ISFMP), and prepare an EIS to assess the impact on the human environment of controlling fishing effort in the American lobster fishery, in the U.S. Exclusive Economic Zone (EEZ). Written comments are requested from the public regarding issues that NMFS should address in this EIS relative to fishing effort reduction measures as proposed in Addenda II through VI.

DATES: Written comments must be received no later than 5 p.m. Eastern Standard Time on or before June 9, 2005.

ADDRESSES: Written comments should be sent to Harold C. Mears, Director, State, Federal, and Constituent Programs Office, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments may also be sent via email at *Lob0105@noaa.gov* , via fax (978) 281–

9117, or via the Federal e-Rulemaking Portal at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas Fletcher, (978) 281–9349, fax (978) 281–9117, e-mail *tom.fletcher@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Commission proposed a wide range of measures in Addenda II through VI, such as transferable trap programs, that aim to control lobster fishing effort. Because the effort control measures contain similar interrelated elements and might involve the creation of a single management program, these measures lend themselves to a single rulemaking and analysis. Although Addenda II and III have effort control elements, those addenda principally relate to broodstock protective measures, and the effort control measures are presented in less detail. The Commission's Addenda IV, V, and VI recommendations, however, principally involve effort control measures and more robustly present effort control measures. Accordingly, NMFS proposes to combine measures from all five addenda that control fishing effort for the American Lobster into one rulemaking and a single environmental impacts analysis.

This action augments an earlier ANPR and NOI (67 FR 56800) that NMFS published on September 5, 2002, in response to the Commission's recommendation that NMFS implement regulations in the EEZ that are compatible with Addenda II and III to Amendment 3 of the ISFMP. That earlier document explains NMFS' intention to solicit written comments and inform the public of the development of an EIS relative to Addenda II and III. In addition, that earlier document further stated NMFS' intention to combine the Addendum II and Addendum III rulemakings because the addenda involved similar subject matter - namely management measures designed to increase egg production and protect broodstock. Those measures included: a series of minimum gauge size increases (increases to the minimum legal length of the carapace, defined as the unsegmented body shell of the American lobster), and an increase in the minimum escape vent size of lobster trap gear fished in the following state and Federal waters of Lobster Conservation Management Area 2 (Area 2) (inshore Southern New England), Area 3 (offshore area, comprised entirely of Federal waters), Area 4 (nearshore Northern Mid-Atlantic), Area 5 (nearshore Southern Mid-Atlantic), and the Outer Cape Area (nearshore waters east of Cape Cod); a maximum gauge increase in Areas 4 and 5; a boundary change between Areas 3 and 5; and amending the timeline to end overfishing. The effects of these broodstock measures will be analyzed in a forthcoming environmental assessment.

Although designed principally as broodstock protection plans, Addenda II and III contain other management measures aimed at reducing fishing effort in the American lobster fishery. These measures are set forth in greater detail and relate to different lobster management areas in the subsequently developed Addenda IV, V and VI.

Background

The following is a summary of effort control measures approved by the Commission and recommended for Federal rulemaking.

Addenda II through VI are part of an overall management regime set forth in Amendment 3 to the ISFMP. The intent of Amendment 3, approved by the Commission in December of 1997, is to achieve a healthy American lobster resource and to develop a management regime that provides for sustained harvest, maintains opportunities for participation, and provides for the cooperative development of conservation measures by all stakeholders. Amendment 3 employed a participatory management approach by creating the seven lobster management areas, each with its own lobster conservation management team (LCMT) comprised of industry members.

Amendment 3 tasked the LCMTs with providing recommendations for area-specific management measures to the Commission's American Lobster Management Board (Board) to meet the lobster egg production and effort reduction goals of the ISFMP. Certain effort reduction measures of the area plans were approved by the Board in August of 1999 as part of Addendum I to Amendment 3 (Addendum I). After technical evaluation, the Board approved the egg production measures as Addenda II and III in February 2001, and February 2002, respectively, and recommended that NMFS implement complementary Federal regulations. NMFS has the authority under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) to implement regulations in Federal waters that are compatible with the effective implementation of the ISFMP and consistent with the National Standards of the Magnuson-Stevens Fishery Conservation and Management Act. These Federal regulations are promulgated pursuant to the ACFCMA and are codified at 50 CFR part 697.

A brief outline of lobster effort control measures in Addenda II through VI are summarized in the following sections.

Addendum II Summary

Addendum II, approved on February 1, 2001, updated the lobster egg production rebuilding schedule and reconvened the LCMTs to develop recommendations for area management based on the stock assessment completed in 2000. The measure that addresses effort control is the following:

Trap Reduction Schedule for Areas 3, 4, and 5

In Addendum I, the Commission implemented a plan that limited fishing access to Areas 3, 4 and 5, allocated traps to qualifiers and capped the number of traps that can be fished. Addendum II established a timeline for additional trap reductions for qualified permit holders in Area 3. Each trap allocation in Area 3, that exceeds 1,200 traps, would be reduced on a sliding scale over four years, with reductions not going below a baseline of 1,200 traps. Allocations of less than 1,200 traps would remain at their initial qualifying level. This measure was implemented by Federal rulemaking dated March 27, 2003, (68 FR 14902).

Addendum III Summary

Addendum III, approved February 20, 2002, was developed in response to an Addendum II requirement whereby each LCMT was asked to review the revised egg rebuilding schedule and area management plan and present the Board with alternative measures that are intended to achieve the stock rebuilding targets. Measures that address lobster effort control include:

Trap Reduction in the Outer Cape Area

In Addendum III, the Commission proposed limiting fishing access to the Outer Cape Area, allocating traps to qualifiers and then reducing the numbers allocated, and allowing traps to be transferred among those permit holders who qualify for access. Beginning in 2002 and extending through 2008, a 20–percent reduction in trap allocations was proposed for the Outer Cape Area. These trap allocations may be transferred among Outer Cape lobster fishers to allow an individual business to build up or down within the maximum allowable 800 trap limit. Any trap transfer invokes a 10–percent trap reduction or ''conservation tax'' on the number of traps involved in the transfer. An additional 5–percent reduction, per year, in trap allocations may be employed in 2006 and 2007, if

necessary, to meet lobster egg production goals and objectives.

Choose and Use in Area 3

The Commission in Addendum III approved a management measure specific to Area 3 entitled ''Choose and Use''. Currently, Federal permit holders are allowed to elect which Area(s) they intend to fish on an annual basis. However, Choose and Use would obligate Area 3 permit holders to designate (i.e. ''choose'') Area 3 on their Federal permits when renewing Federal permits each year. If a permit holder did not choose Area 3, then that permit holder would be prohibited from designating Area 3 on the vessel permit in future years. The permit would still retain its Area 3 qualification, and each successive owner would be given the opportunity to either permanently designate Area 3 or drop the Area 3 designation for the duration of possession of the qualified permit.

Addendum IV Summary

Addendum IV, approved December 17, 2003, addresses four issues: an effort reduction proposal from the Area 3 LCMT; broodstock and effort control measures in Area 2; new information about escape vent selectivity; and a change to the interpretation of the most restrictive rule. Measures that address effort control include:

Trap Reduction in Area 3

Addendum IV includes a plan to increase trap reductions by 10–percent (5–percent in each year for 2007 and 2008) for all qualified Area 3 permit holders.

Trap Transferability and Passive Reduction in Area 3

The Area 3 transferable trap plan includes measures that would allow transfers of trap allocations among qualified Area 3 permit holders. These measures include: trap transfer minimums, an anti-monopoly clause, and a 10–percent trap reduction or ''conservation tax'' on any trap transfers.

Changes to the Most Restrictive Rule

In Amendment 3, the ISFMP for American lobster required multiple area fishermen to comply with the most restrictive management measures of all areas fished including the smallest number of traps allocated to them for each of the areas fished. The original intention of the most restrictive rule was to allow multi-area fishermen to continue to fish in the areas that they historically have fished in while maintaining the conservation benefits unique to each area. With the implementation of Amendment 3, permit holders in all areas were restricted to a maximum of 800 to 1,800 traps; however, qualification for historic participation in several areas resulted in individual area-specific trap allocations that vary from the initial fixed trap limits in Amendment

3. An unintended consequence of this rule limited multi-area fishermen to the lowest number of traps they have been allocated in any Area.

Effort Control in Area 2

The Commission approved an effort control plan developed by the Area 2 LCMT that proposed limiting fishing access to Area 2, allocating traps to qualifiers, allowing traps to be transferred among qualifiers, and a passive trap reduction or ''conservation tax'' on any trap transfers. Due to implementation concerns identified by the impacted regulatory agencies, the effort control components of the Area 2 plan were withdrawn in Addendum VI in February 2005, and will be amended in a forthcoming Addendum.

Addendum V Summary

Addendum V, approved March 2004, was initiated to address one particular aspect of the Area 3 trap transferability program approved in Addendum IV: a new proposal that reduced the overall trap cap from 2,600 to 2,200, with a higher passive reduction or ''conservation tax'' imposed when the purchaser owns 1,800 to 2,200 traps rather than 2,200 to 2,600 traps.

Measures that address effort reduction include:

Total Trap Cap and Conservation Tax

A conservation tax (passive reduction) of 10–percent would be assessed for each transfer that equates to a purchaser owning up to 1,800 traps. For all transfers where the transfer of traps results in a permit exceeding 1,800 traps, those traps over 1,800 would be taxed at 50–percent, up to the total trap cap of 2,200. This measure would be applicable to Area 3 permit holders only.

Addendum VI Summary

Addendum VI withdrew the Addendum IV effort control plan for Area 2 except for two points; a prohibition on issuance of any new lobster permits for Area 2 and the eligibility period for participation in the fishery. It also directs all jurisdictions with Area 2 permit holders and the Area 2 LCMT to develop a new effort control plan, which caps effort at or near current levels with the potential to adjust the levels based on the outcome of the upcoming stock assessment.

Classification

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

Authority: 16 U.S.C. 5101 *et seq.*

Dated: May 5, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 05–9331 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 89
Tuesday, May 10, 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. 04–126–2]

National Wildlife Services Advisory Committee; Notice of Solicitation for Membership

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of solicitation for membership.

SUMMARY: The Secretary of Agriculture has renewed the National Wildlife Services Advisory Committee for a 2-year period. Through this notice, the Secretary is soliciting nominations for membership on this Committee.

DATES: Consideration will be given to nominations received on or before June 24, 2005.

ADDRESSES: Nominations should be addressed to the person listed under **FOR FURTHER INFORMATION CONTACT.**

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 (the Committee) advises the Secretary of Agriculture on 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 Committee Chairperson and Vice Chairperson shall be elected by the Committee from among its members.

Terms will expire for the current members of the Committee in July 2005. We are soliciting nominations from interested organizations and individuals to replace members on the Committee. An organization may nominate individuals from within or outside its membership. The Secretary will select members to obtain the broadest possible representation on the Committee, in accordance with the Federal Advisory Committee Act (5 U.S.C. App. II) and U.S. Department of Agriculture (USDA) Regulation 1041–1. Equal opportunity practices, in line with the USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Done in Washington, DC, this 5th day of May 2005.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–9280 Filed 5–9–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 05–034–1]

Availability of an Environmental Assessment for Field Testing Escherichia Coli Vaccine, Live Culture

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed Escherichia Coli Vaccine, Live Culture for use in chickens. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the field testing of this vaccine, examines the potential effects that field testing this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a U.S. Veterinary Biological Product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and the issuance of a finding of no significant impact and the product meets all other requirements for licensing.

DATES: We will consider all comments that we receive on or before June 9, 2005.

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

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to: Docket No. 05–034–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–034–1.

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

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

FOR FURTHER INFORMATION CONTACT:

Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 734–8245, fax (301) 734–4314.

For information regarding the environmental assessment or the risk analysis, or to request a copy of the environmental assessment (as well as the risk analysis with confidential business information removed), contact Dr. Patricia L. Foley, Risk Manager, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 510 South 17th Street, Suite 104, Ames, IA 50010; phone (515) 232–5785, fax (515) 232–7120.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS conducted a risk analysis to assess the potential effects of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA) concerning the field testing of the following unlicensed veterinary biological product:

Requester: Fort Dodge Animal Health.

Product: Escherichia Coli Vaccine, Live Culture.

Field Test Locations: Delaware, Maryland, Georgia, Virginia, and Arkansas.

The above-mentioned product is a live *aroA* gene-deleted Escherichia Coli Vaccine. The vaccine is for use in chickens as an aid in the prevention of disease caused by *Escherichia coli.*

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provision of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact (FONSI) based on the EA and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensing.

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

Done in Washington, DC, this 4th day of May 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–9281 Filed 5–9–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Intent To Prepare an Environmental Impact Statement for the Sawtooth National Forest, Idaho; Twin Falls BLM District, ID; Bald Mountain Ski Resort Master Development Plan

AGENCIES: Forest Service, Agriculture, Lead Agency; Bureau of Land Management, Interior, Cooperating Agency.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Federal Land Policy and Management Act of 1976 (FLPMA), the USDA Forest Service (Lead Agency) and the USDOI Bureau of Land Management (Cooperating Agency) intend to prepare an Environmental Impact Statement (EIS) to analyze and disclose the effects of the updated Bald Mountain Ski Area Master Development Plan (MDP) and 40-year term ski area permit application. Both agencies have authority over the Bald Mountain ski area, which is also known as the Sun Valley Ski Resort.

DATES: Written comments concerning the proposed action should be postmarked by June 9, 2005. The draft environmental impact statement is expected to be available for public review and comment in July 2006 and the final environmental impact statement is expected to be available March 2007.

ADDRESSES: Written comments should be sent to Kurt Nelson, District Ranger at the Ketchum Ranger Station; P.O. Box 2356, Ketchum, ID 83340. Faxes should be sent to 208–622–3923 and e-mails to: *comments-intermtn-sawtooth-ketchum@fs.fed.us.* Comments received on this proposal, including names and addresses, will be considered part of the public record and will be available for public inspection. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Joe Miczulski, Winter Sports Manager at the Ketchum Ranger District; P.O. Box 2356, Ketchum, ID 83340; or phone at (208) 622–5371.

SUPPLEMENTARY INFORMATION: Sun Valley Company has requested a new 40-year term ski area permit for the Bald Mountain Ski Resort. The existing ski area permit, which was issued in December 1977, expires December 2007. One requirement for a ski area permit is to have an approved Master Development Plan (MDP), which is prepared by the permit holder and encompasses the entire winter sports resort envisioned for development and authorization by the permit. Upon acceptance by the Authorized Officers, the MDP becomes part of the ski area permit. The EIS will analyze the effects of the proposed action and alternatives. The agencies give notice of the National

Environmental Policy Act (NEPA) analysis and decision making process on the proposal so interested and affected members of the public may participate and contribute to the final decision. The Sawtooth National Forest, as the lead for both agencies, invites written comments and suggestions on the scope of the analysis and the issues to address.

The 1989 MDP currently guides the Forest Service and BLM in their administration of the special use permit for the ski area. A majority of the actions described in the 1989 MDP have been implemented. Given the age and status of the 1989 MDP, the Forest Service, BLM, and Sun Valley Company determined that an updated plan would be appropriate at this time. Sun Valley Company has updated their MDP for Bald Mountain Ski Area and presented it to the Forest Service and BLM in conjunction with their request for a new 40-year permit to continue operating on these public lands. The existing ski resort permit expires December 2007.

The draft MDP as submitted by Sun Valley Company is available electronically on the following Web sites: Sawtooth National Forest—*http://www.fs.fed.us/r4/sawtooth* and Sun Valley Company—*http://www.sunvalley.com.* An approved MDP will guide development on Bald Mountain Ski Area. Anticipated projects include new ski trail development both inside and outside of the current permit boundary, additional snowmaking installation, existing ski run modification, installation of new ski lifts, including gondola, removal of some existing ski lifts, and addition of a mountain restaurant. A Vegetation Management Plan (VMP) will be developed concurrently with the MDP, and will be shown as an appendix in the proposed MDP and analyzed as part of the proposed action. The VMP will assess current conditions of vegetative components on Bald Mountain, both with respect to timber and grass/forb species. The VMP will specify treatments necessary to enact, that will ensure long-term health of vegetation on Bald Mountain.

Purpose and Need For Action

The purpose and need for the proposed MDP are as follows: Update the 1989 MDP to reflect current conditions and needs at the ski resort. Most of the improvements described in the 1989 MDP have been implemented. In addition, new ski area technologies, updated Land Management Plans, and changes in the environment have emerged during this time which warrant consideration in an updated MDP.

Proposed Action

The proposed action to be analyzed in this EIS is to implement the MDP as submitted by the Sun Valley Company. The Agencies have a responsibility to determine consistency of the MDP with their respective Land Management Plans, to evaluate if any proposed facilities are in hazardous areas (*i.e.* avalanche path); evaluate if improvements are an appropriate use of Forest Service and BLM land; determine if private land is available to accomplish the proposed activities; and to make a public interest determination.

Possible Alternatives

Possible alternatives include: Alt. 1—No Action (continuing the present course of action). The existing MDP would not be updated. The ski area permit would be renewed in 2007 and the current MDP would be made part of it. Alt. 2—Proposed Action, the MDP, as submitted by Sun Valley Company, would be attached to a new ski area permit. Other alternatives may be developed that meet the purpose and need and respond to issues associated with the proposed action.

Responsible Official

The responsible officials are the Forest Supervisor for the Sawtooth National Forest and the District Manager for the Twin Falls District of the Idaho BLM.

Nature of Decision To Be Made

The decision to be made is whether or not to approve the proposed MDP as a condition of the special use permit, or to approve an alternative to the proposed action. After a MDP is approved, a 40-year ski area resort permit would be issued.

Scoping Process

Public notices will be placed in local newspapers. Public meetings will be held in conjunction with Sun Valley Company. Informal public participation is encouraged throughout this process. Formal opportunity for public review and comment will be provided upon publication of the Draft EIS.

Comments Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement for the update of the Bald Mountain Ski Resort MDP.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

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 statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 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 comment period for the draft environmental impact statement 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 raised by 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 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.

Dated: March 15, 2005.

Ruth Monahan,

Sawtooth Forest Supervisor, Forest Service.

Dated: March 17, 2005.

Howard Hedrick,

Twin Falls District Manager, BLM.

[FR Doc. 05–9254 Filed 5–9–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Sanders County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lolo and Kootenai National Forests' Sanders County Resource Advisory Committee will meet on May 13, 2005 at 1 p.m. in Trout Creek, Montana for a business meeting. The meeting is open to the public.

DATES: May 13, 2005.

ADDRESSES: The meeting will begin at Cabinet Station, 2693 Highway 200, Trout Creek, MT 59874.

FOR FURTHER INFORMATION CONTACT: Randy Hojem, Designated Forest Official (DFO), District Ranger, Plains Ranger District, (406) 826–3821.

SUPPLEMENTARY INFORMATION: Agenda topics include a field visit to view projects completed in the Bull River area using Title II funds. If the meeting time or location is changed, notice will be posted in the local newspapers, including the Clark Fork Valley Press, Sanders County Ledger, Daily Interlake, Missoulian, and River Journal.

Dated: April 27, 2005.

Randy Hojem,

Designated Federal Official, District Ranger, Plains Ranger District.

[FR Doc. 05–9242 Filed 5–9–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Georgia Transmission Corporation; Notice of Intent

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to hold scoping meeting and prepare an Environmental Assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), an agency delivering the U. S. Department of Agriculture's Rural Development Utilities Programs, proposes to prepare an Environmental Assessment related to possible financing assistance to Georgia Transmission Corporation for the construction of approximately 40 miles of 500 kilovolt transmission line. The proposed 500-kilovolt transmission line project would be located in McDuffie, Warren, Hancock, Glascock and Washington Counties, Georgia.

Meeting Information: RUS will conduct a Scoping Meeting in an open house format from 1 p.m. until 3 p.m. on Tuesday, May 24, 2005, at the Warthen Community Center, Warthen, Georgia 31094. Phone: (770) 270–7741. The Community Center is on Bethlehem Baptist Church Road, located on State Route 102 approximately .25 miles north of the intersection of State Route 15. A second Scoping Meeting will be held from 5 p.m. until 7 p.m. on Tuesday, May 24, 2005. The meeting will be held at Thomson High School, located at 1160 White Oak Road in Thomson, Georgia 30824. Phone: (706) 595–9393. The purpose of these two meetings are provide information and solicit comments.

FOR FURTHER INFORMATION CONTACT: Stephanie Strength, Engineering and Environmental Staff, Rural Utilities Service, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571. Telephone: (202) 720–0468. Mrs. Strength's e-mail address is *stephanie.strength@usda.gov.*

SUPPLEMENTARY INFORMATION: Georgia Transmission Corporation proposes to construct a 500 kilovolt transmission line between the Thomson Substation (located on Hampton-Davis Road, 4 miles east of Thomson, Georgia, and 2 miles northeast of Boneville, Georgia) to the Warthen Switching Station (located 8 miles northwest of Warthen, Georgia and 1.5 miles southwest of State Highway 15 on Mill Lindsey School Road). It is near the Scherer-Warthen 500 kV Transmission Line and adjacent to the Duke Energy North America's Sandersville Facility, a combustion turbine generation plant. Lattice steel towers ranging in height from 80- to 150-feet would support the conductors and would require a right-of-way of 180 feet. The approximate length of the transmission line is 40 miles. It is anticipated that this transmission line would be in service in the spring of 2010.

Alternatives considered by RUS and Georgia Transmission Corporation include: (a) No action, (b) alternative transmission improvements, and (c) alternative transmission line corridors. An Electric Alternative Evaluation and Macro Corridor Study Report, prepared by Georgia Transmission Corporation, will be presented at the public scoping meeting. The Report is available for public review at RUS at the address provided in this notice, at Georgia Transmission Corporation, 2100 East Exchange Place, Tucker, Georgia 30084 and at: Glascock County Public Library, 738 Railroad Avenue, Gibson, GA 30810, Phone: 706–598–9837. Harlem Library, 375 North Louisville Street, Harlem, GA 30814, Phone: 706–556–9795. Hancock County Library, 403 East Broad Street, Sparta, GA 31087, Phone: 706–444–5389. Rosa M Tarbutton Memorial Library, 314 South Harris Street, Sandersville, GA 31082, Phone: 478–552–6324. Thomson McDufffie County Library, 338 Main Street, Thomson, GA 30824, Phone: 706–595–1341. Warren County Library, 101 Warren Street, Warrenton, GA 30828, Phone: 706–465–2656.

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from RUS and Georgia Transmission Corporation will be available at the scoping meetings to discuss RUS' environmental review process, describe the project, the need for the project, and macro corridors under consideration, and discuss the scope of environmental issues to be considered, answer questions, and accept oral and written comments. Written comments will be accepted for 30 days after the public scoping meeting. Written comments should be sent to RUS at the address provided in this notice.

From information provided in the alternative evaluation and site selection study, input that may be provided by government agencies, private organizations, and the public, Georgia Transmission Corporation will prepare an environmental analysis to be submitted to RUS for review. RUS will use the environmental analysis to determine the significance of the impacts of the project and may adopt it as its environmental assessment of the project. RUS' environmental assessment of the project would be available for review and comment for 30 days.

Should RUS determine, based on the Environmental Assessment of the project, that the impacts of the construction and operation of the plant would not have a significant environmental impact, it will prepare a finding of no significant impact. Public notification of a finding of no significant impact would be published in the **Federal Register** and in newspapers with a circulation in the project area.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with environmental review requirements as prescribed by the Council on Environmental Quality (CEQ) and RUS' environmental policies and procedures.

Dated: May 4, 2005.

Glendon D. Deal,

Director, Engineering and Environmental Staff, Water and Environmental Programs, Rural Utilities Service.

[FR Doc. 05–9241 Filed 5–9–05; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 10, 2005.

FOR FURTHER INFORMATION CONTACT: Cindy Lai Robinson or Brian C. Smith, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3797 or (202) 482–1766, respectively.

Final Determination

We determine that chlorinated isocyanurates from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV'') as provided in section 735 of Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Final Determination Margins'' section of this notice.

SUMMARY: On December 16, 2004, the Department of Commerce (''Department'') published its preliminary determination and postponement of the final determination in this case. On February 24, 2005, the Department published an amended preliminary determination in this case. On April 11, 2005, the Department published its partial affirmative preliminary critical circumstances determination in this case.

This investigation covers two exporters of chlorinated isocyanurates that are Mandatory Respondents [1] and five Section A Respondents.[2] We invited interested parties to comment on our preliminary determination, amended preliminary determination, and preliminary critical circumstances determination. Based on our analysis of the comments we received, we have made changes to our calculations for the two Mandatory Respondents. As a result of those changes, the rate assigned to the Section A Respondents has also changed.

Case History

The Department published its preliminary determination in this investigation on December 16, 2004. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China*, 69 FR 75293 (December 16, 2004) (''*Preliminary Determination*''). On February 24, 2005, the Department published an amended preliminary determination. *See Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 9035 (February 24, 2005) (''*Amended Preliminary Determination*''). On April 11, 2005, the Department published its partial affirmative preliminary critical circumstances determination. *See Partial Affirmative Preliminary Determination of Critical Circumstances: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 18362 (April 11, 2005) (''*Preliminary Critical Circumstances Determination*'').

Since the publication of the *Preliminary Determination*, the following events have occurred. The Department conducted verification of the two Mandatory Respondents: Jiheng on January 17 through 21, 2005; Nanning on January 24 through 28, 2005; and a Section A Respondent: Sinochem Hebei on January 27 and 28, 2005. *See* ''Verification'' Section below for additional information.

On January 13, 2005, Clearon Corporation and Occidental Chemical Corporation (the ''Petitioners''), Jiheng, and Arch Chemicals, Inc. (''Arch''), an importer of subject merchandise, requested that the Department convene a hearing in this proceeding. On March 4, 2005, the Department informed all interested parties of the hearing date and location.

On February 24, 2005, the Department published the *Amended Preliminary Determination.*

On March 4, 2005, the petitioners filed a critical circumstances allegation.

On March 15, 2005, the Petitioners, BioLab Inc.,[3] and the two Mandatory Respondents submitted case briefs.

On March 17, BioLab requested a one-day extension to submit rebuttal briefs until March 22, 2005. The Department granted the request, and received the rebuttal briefs from parties on March 22, 2005. On March 24, 2005, the Department convened a public hearing in accordance with 19 CFR 351.310(d)(l). Representatives for the two Mandatory Respondents, the Petitioners, and BioLab were in attendance. On March 29, 2005, Jiheng submitted its revised rebuttal brief.

On April 11, 2005, the Department published the *Preliminary Critical Circumstances Determination.* On April 14, 2005, the Petitioners submitted a case brief on the Department's *Preliminary Critical Circumstances Determination.*

Mandatory Respondents

On December 10, 2004, Jiheng and Nanning submitted sales reconciliation documentation. Jiheng also submitted its response to a question addressed in the Department's November 12, 2004, letter concerning its reported sulfuric acid data. On December 17, 2004, the Department sent a supplemental questionnaire for sales and cost reconciliations to Jiheng and Nanning. On December 21, 2004, the Department sent another supplemental questionnaire to Jiheng addressing certain deficiencies in its November 23, 2004, submission. On December 22, 2004, Arch Chemicals, an interested party in this proceeding, submitted a copy of its July 30, 2004, rebuttal scope comments, ''Respondent's Reply to Petitioners' Scope Comments,'' which are applicable to the dual PRC and Spain antidumping proceedings: *Antidumping Duty Investigation of Chlorinated Isocyanurates from People's Republic of China and Spain, Case Nos. A–570–898 and A–469–814.*

On December 20, 2004, Jiheng and Nanning submitted ministerial error allegations.

On January 4, 2005, Jiheng submitted its response to the Department's December 21, 2004, supplemental questionnaire. On January 5 and 12, 2005, Jiheng and Nanning submitted their responses to the Department's December 17, 2004, sales and cost reconciliations questionnaire, respectively.

On January 10, 2005, Jiheng submitted a revised sales listing and factors of

[1] Hebei Jiheng Chemical Co., Ltd. (''Jiheng'') and Nanning Chemical Industry Co., Ltd. (''Nanning'').

[2] Liaocheng Huaao Chemical Industry Co., Ltd. (''Huaao''); Shanghai Tian Yuan International Trading Co., Ltd., (''Tian Yuan''); Changzhou Clean Chemical Co., Ltd. (''Clean Chemical''); Sinochem Hebei Import & Export Corporation (''Sinochem Hebei''); and Sinochem Shanghai Import & Export Corporation (''Sinochem Shanghai'').

[3] On January 27, 2005, BioLab, Inc. (BioLab), a U.S. producer of chlorinated isocyanurates, submitted a letter of appearance as an interested party.

production database to correct its date of payment and consumption for coal and water, respectively. On January 10, 2005, Nanning also submitted a revised factors of production listing to replace Attachment 1 of its November 17, 2004, submission.

On January 10 and 13, 2005, the Department issued verification outlines to Jiheng and Nanning, respectively. On January 14, 2005, the Petitioners submitted pre-verification comments regarding Jiheng. On January 18, 2005, the Petitioners submitted a letter requesting the Department's verification team to examine a company, ''Dry Chlorine Corp,'' which they claimed was possibly related to Jiheng. On January 19, 2005, Jiheng submitted rebuttal comments on the Petitioners' January 13, 2005, pre-verification comments. On January 21, 2005, Jiheng submitted a revision to its rebuttal comments.

On January 24, 2005, the Department issued a clerical error memorandum. *See Memorandum to the File, dated January 24, 2005, from the team to James C. Doyle, Office Director, Regarding Antidumping Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China (''China''): Analysis of Allegations of Ministerial Errors* (''*Clerical Error Memo*'').

On January 21, 2005, Jiheng and Nanning requested a 17-day extension until February 11, 2005, for Nanning and other interested parties to submit surrogate value information for consideration in the final determination. The Department granted the request on January 24, 2005.

On January 27, 2005, Jiheng filed a second ministerial error allegation. On January 31, 2005, the petitioners submitted rebuttal comments to Jiheng's January 27, 2005, allegation. On February 4, 2005, Jiheng submitted a letter requesting that the Department strike from the record the petitioners' January 31, 2005, comments. The Department amended its *Preliminary Determination* on February 24, 2005.

On February 15, 2005, the Petitioners, BioLab, and the two Mandatory Respondents submitted surrogate value data. On February 25, 2005, the petitioners filed additional data.

On February 16, 2005, the Department received a request from U.S. Customs and Border Protection (''CBP'') to update the HTS numbers in the AD/CVD Module associated with this proceeding. *See Memorandum to James Doyle, Office 9, dated February 16, 2005, from Tom Futtner, Liaison w/ Customs, Customs Unit, Regarding Request for HTS Number Update(s) to AD/CVD Module Chlorinated Isos (A–570–898).*

On March 2, 2005, the Department released the verification report for Jiheng. On March 7, 2005, the Department released the verification report for Nanning.

On March 4, 2005, the Petitioners filed a timely allegation of critical circumstances (''critical circumstances petition''). On March 8 and 14, 2005, the Department requested that Jiheng and Nanning report their shipment data of subject merchandise to the United States on a monthly basis for 2002, 2003, 2004, and 2005. On March 13, 14, and 17, 2005, Nanning and Jiheng provided the requested information. On April 4, 2005, the Department issued its preliminary determination on critical circumstances. *See Critical Circumstances Preliminary Determination.*

Section A Respondents

On December 20, 2004, the Department sent the verification outlines to the two selected Section A Respondents, Sinochem Hebei and Tian Yuan. On January 3, 2005, Sinochem Hebei submitted a minor correction to its quantity and value. On January 13, 2005, Tian Yuan informed the Department that it would not participate in verification. On February 24, 2005, the Department released the verification report for Sinochem Hebei.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum, dated May 2, 2005, which is hereby adopted by this notice (''*Decision Memorandum*''). A list of the issues which parties raised and to which we respond in the *Decision Memorandum* is attached to this notice as an Appendix. The *Decision Memorandum* is a public document and is on file in the Central Records Unit (''CRU''), Main Commerce Building, Room B–099, and is accessible on the Web at *http://ia.ita.doc.gov/.* The paper copy and electronic version of the memorandum are identical in content.

Scope Comments

In the *Preliminary Determination*, we found that Arch's patented chlorinated isocyanurate tablet is included within the scope of this antidumping duty investigation. *See Preliminary Determination.* We received no further comments from any interested party regarding our preliminary finding. Therefore, for this final determination, we continue to find that Arch's patented chlorinated isocyanurate tablet is included within the scope of this antidumping duty investigation.

Scope of Investigation

The products covered by this investigation are chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) Trichloroisocyanuric acid (Cl_3 $(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3$ $(2H_2O)$, and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isocyanurates are available in powder, granular, and tableted forms. This investigation covers all chlorinated isocyanurates.

Chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, and 2933.69.6050 of the Harmonized Tariff Schedule of the United States (''HTSUS'').[4] The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that includes chlorinated isocyanurates and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive. Arch's patented chlorinated isocyanurates tablet is also included in the scope of this investigation. *See Scope Comments* section, above. *See also Partial Affirmative Preliminary Determination of Critical Circumstances: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 18362 (April

[4] In the scope section of the Department's initiation and in its preliminary determination notices, chlorinated isocyanurates were classified under subheading 2933.69.6050 of the HTSUS. (*See Initiation of Antidumping Duty Investigations: Chlorinated Isocyanurates From the People's Republic of China and Spain*, 69 FR 32,488 (June 10, 2004), and *Preliminary Determination.* Effective January 1, 2005, chlorinated isocyanurates are also currently classifiable under subheadings 2933.69.6015 and 2933.69.6021 of the HTSUS. The new subheading 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous & dihydrate forms) and trichloroisocyanuric acid, and subheading 2933.69.6021 covers all other chlorinated isos used as pesticides (bactericides). The subheading 2933.69.6050 covers all other chlorinated isos not used as pesticides. *See Memorandum to James Doyle, Office 9, dated February 16, 2005, from Tom Futtner, Liaison w/ Customs, Customs Unit, regarding Request for HTS Number Update(s) to AD/CVD Module Chlorinated Isos (A–570–898).*

11, 2005) (''*Critical Circumstances Preliminary Determination*'').

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the Mandatory Respondents and Sinochem Hebei (*i.e.,* one of the Section A Respondents) for use in our final determination. *See* the Department's verification reports on the record of this investigation in the CRU with respect to Jiheng, Nanning, and Sinochem Hebei. For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondents.

Period of Investigation

The period of investigation (''POI'') is October 1, 2003, through March 31, 2004. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition (May 14, 2004). *See* 19 CFR 351.204(b)(1).

Surrogate Country

In the *Preliminary Determination,* we stated that we had selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) India is at a level of economic development comparable to that of the PRC; (2) Indian manufacturers produce comparable merchandise, specifically are significant producers of calcium hypochlorite; [5] (3) India provides the best opportunity to use appropriate, publicly available data to value the factors of production. *See Preliminary Determination,* 69 FR at 75297; and *see Memorandum to James Doyle, Program Manager, dated July 10, 2004, from Ron Lorentzen, Acting Director, Office of Policy, Re: Antidumping Duty Investigation on Chlorinated Isocyanurates from the People's Republic of China* (''*Surrogate Country Memo*''), which is on file in CRU. We received no comments from interested parties concerning our selection of India as the surrogate country. Therefore, we have continued to use India as the surrogate country in the final determination and, accordingly, have calculated normal value using Indian prices to value the respondents' factors of production, when available and appropriate. We have obtained and relied upon publicly available information wherever possible. For a detailed description of the surrogate values that have changed as a result of comments the Department has received, see the May 2, 2005, *Final Surrogate Value Memorandum.*

Separate Rates

In the *Preliminary Determination* and the *Amended Preliminary Determination* the Department found that all five companies which provided responses to Section A of the antidumping questionnaire were eligible for a rate separate from the PRC-wide rate. For the final determination, we have determined that Tian Yuan is no longer qualified for separate-rate status. For a complete listing of all the companies that received a separate rate, see ''Final Determination Margins'' section below.

With respect to Tian Yuan, as discussed below, the Department applied adverse facts available, because it refused to allow the Department to conduct verification of its submitted information. Accordingly, Tian Yuan has not overcome the presumption that it is part of the PRC-wide entity and its entries will be subject to the PRC-wide rate. *See Final Separate Rates Memorandum. See also Critical Circumstances Preliminary Determination.*

The margin we calculated in the *Amended Preliminary Determination* for the companies receiving a separate rate was 111.03 percent. Because the rates of the selected Mandatory Respondents have changed since the *Preliminary Determination* and the *Amended Preliminary Determination,* we have recalculated the rate for Section A Respondents that are eligible for a separate rate. The rate is 137.69 percent. *See Memorandum to the File from the Team, Calculation of Section A Rates,* dated May 2, 2005.

Critical Circumstances

For this final determination, we have made no changes to our *Preliminary Critical Circumstances Determination* based on the comments received from the Petitioners on this matter. As such, the Department continues to find that critical circumstances exist for the PRC-wide entity, which includes Tian Yuan. Additionally, for this final determination, we continue to find that critical circumstances do not exist with regard to imports of chorinated isocyanurates from the PRC for Jiheng, Nanning, and for the following Section A Respondents: Huaao, Clean Chemical, Sinochem Hebei and Sinochem Shanghai. For further details regarding the Department's critical circumstances analysis from the *Preliminary Critical Circumstances Determination,* see *Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, dated April 4, 2005, from James C. Doyle, Office Director, AD/CVD Operations, Office 9, Import Administration, Regarding the Antidumping Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China -Partial Affirmative Preliminary Determination of Critical Circumstances.*

On April 14, 2005, the Petitioners submitted a case brief on the Department's *Preliminary Critical Circumstances Determination.* The Petitioners contest the Department's *Preliminary Critical Circumstances Determination* on the following grounds: (1) March 2004 should be included in the comparison period instead of the base period because the respondents and other U.S. importers had knowledge that an antidumping petition was likely to be filed well before mid-March; (2) the Department should consider seasonality in its critical circumstances analysis because the consumption of the subject merchandise shows a pattern of seasonality; (3) certain off-season months (*i.e.,* July to September) should be excluded from both the base period and the comparison period because of no-shipments or low-shipments in those months; (4) the base period and comparison period should consist of a four-month period rather a seven-month period; and (5) the Department should determine massive shipments for the Section A Respondents by using the same formula used for deriving the massive shipments for the PRC-wide entity.

We disagree with the Petitioners' argument that seasonality exists in this instant case. In this instance, imports of chlorinated isocyanurates are not necessarily dominated by seasonality. Our analysis of the shipment data for Jiheng, Nanning, and PRC as a whole show no clear seasonal patterns for the three year period between 2002 and 2004. In certain circumstances, the peak month of shipment in one year coincided with the trough month of shipment in another year. Therefore, we continued not to consider seasonal trend as a factor in the final determination. We also did not

[5] For purposes of the final determination, we have determined that calcium hypochlorite and stable bleaching powder are both comparable to the subject merchandise. The record contains financial reports of Indian manufacturers which are significant producers of comparable merchandise. *See Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China, October 1, 2003, through March 31, 2004, from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated May 2, 2005.*

eliminate any ''off-peak'' months from our analysis, as suggested by the Petitioners.

After considering the Petitioners' arguments concerning the appropriate comparison period, our analysis shows that we obtain the same conclusion regarding whether there are massive imports for Jiheng, Nanning, the Section A Respondents, and the China-wide entity, regardless of whether we use March 2004 as the knowledge month, as suggested by the Petitioners, or use May 2004 as the knowledge month, in which this proceeding was filed.

Finally, we disagree with the Petitioners that massive shipments for the Section A Respondents should be determined using the same formula as used for deriving the massive shipments for the PRC-wide entity. As discussed below, the PRC-wide entity refers to those exporters of subject merchandise from the PRC that did not respond to our antidumping questionnaire and therefore have received an adverse facts available margin and an adverse inference with respect to critical circumstances. By contrast, all Section A Respondents, except Tian Yuan (*see* Facts Available Section below), have cooperated with the Department and therefore the use of adverse inferences is inappropriate. Therefore, for the final determination, we have continued to use the same methodology as stated in the *Preliminary Critical Circumstances Determination.*

The PRC-Wide Rate

Because we begin with the presumption that all companies within a non market-economy (''NME'') country are subject to government control and because only the companies listed under the ''Final Determination Margins'' section below have overcome that presumption, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China,* 65 FR 25706 (May 3, 2000). *See also PRC Shrimp.* The PRC-wide rate applies to all entries of subject merchandise except for entries from the respondents which are listed in the ''Final Determination Margins'' section below (except as noted). The information used to calculate this PRC-wide rate is based on a calculated margin derived from information obtained in the course of the investigation and placed on the record of this proceeding. In this case, we have applied a rate of 285.63 percent, which is equal to the actual, calculated rate for one of the mandatory respondents, Nanning.

Facts Available

For the final determination, the Department is applying adverse facts available to Tian Yuan because Tian Yuan decided to terminate its participation in this investigation and declined verification of its Section A responses. *See* Tian Yuan's letter dated January 13, 2005.

Section 776(a)(2) of the Act provides that, if an interested party or any other person—(A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. Furthermore, Section 776(b) of the Act provides that, if a party has failed to act to the best of its ability to comply with the Department's request for information, the Department may apply an adverse inference.

In this case, Tian Yuan unilaterally decided to terminate its participation in this investigation and declined verification of its Section A responses shortly before the Department's scheduled verification. Tian Yuan's failure to participate in the Department's verification disallowed the Department to examine the accuracy and completeness of its Section A responses and, therefore, has significantly impeded this proceeding. Thus, we are using facts available, in accordance with section 776(a) of the Act. Furthermore, Tian Yuan has failed to act to the best of its ability by refusing the Department's scheduled verification. Therefore, in accordance with section 776(b) of the Act, we also find that the use of adverse facts available is warranted. For purposes of this final determination, we find that Tian Yuan does not qualify for a separate rate and will be subject to the PRC-wide rate, which is based on adverse facts available.

Changes Since the Preliminary Determination

Based on our findings at verification, additional information placed on the record of this investigation, and analysis of comments received, we have made adjustments to the calculation methodology for the final dumping margins in this proceeding. For discussion of the company-specific changes made since the preliminary determination to the final margin programs, see *Final Analysis Memorandum for Jiheng* and *Final Analysis Memorandum for Nanning.*

Margins for Cooperative Exporters Not Selected

For those exporters who responded to Section A of the Department's antidumping questionnaire, established their claim for a separate rate, and had sales of the merchandise under investigation, but were not selected as Mandatory Respondents in this investigation, the Department has calculated a weighted-average margin based on the rates calculated for those exporters that were selected to respond in this investigation, excluding any rates that are zero, *de minimis* or based entirely on adverse facts available. Companies receiving this rate are identified by name in the ''Suspension of Liquidation'' section of this notice. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China,* 64 FR 24101 (May 11, 2001).

Surrogate Values

The Department made changes to the surrogate values used to calculate the normal value from the *Preliminary Determination.* For a complete discussion of the surrogate values, see *Issues and Decisions Memorandum* at Comments 1, 2, 3, 4, 5, 6, 8, 14, 15, 16, 17, and 18.

Final Determination Margins

We determine that the following percentage weighted-average margins exist for the POI:

Manufacturer/exporter	Weighted-average margin (percent)
Chlorinated Isocyanurates from the PRC Mandatory Respondents	
Hebei Jiheng Chemical Co., Ltd.	75.78
Nanning Chemical Industry Co., Ltd.	285.63
PRC-Wide Rate	285.63
Chlorinated Isocyanurates from the PRC Section A Respondents	
Changzhou Clean Chemical Co., Ltd.	137.69
Liaocheng Huaao Chemical Industry Co., Ltd.	137.69

Manufacturer/exporter	Weighted-average margin (percent)
Sinochem Hebei Import & Export Corporation	137.69
Sinochem Shanghai Import & Export Corporation	137.69

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the CBP to continue to suspend liquidation of all entries of subject merchandise from Jiheng, Nanning, the four remaining Section A Respondents (*i.e.*, Huaao, Clean Chemical, Sinochem Hebei and Sinochem Shanghai), that are entered, or withdrawn from warehouse, for consumption on or after the December 16, 2004, the date of publication of the *Preliminary Determination.* However, with respect to Tian Yuan, and all other PRC exporters, the Department will continue to direct CBP to suspend liquidation of all entries of chlorinated isocyanurates from the PRC that are entered, or withdrawn from warehouse, on or after 90 days before the December 16, 2004, the date of publication of the *Preliminary Determination*. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 2, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix

I. General Comments

Comment 1: Surrogate Value for Cyanuric Acid.

Comment 2: Production of Comparable Merchandise for Surrogate Financial Ratios.

Comment 3: Comparability in Level of Integration for Surrogate Financial Ratios.

Comment 4: Methodology for Valuing Caustic Soda and Chlorine Gas.

Comment 5: Surrogate Value for Electricity.

Comment 6: Intermediary Input By-products: Hydrogen Gas, Chlorine Gas, Sulfuric Acid, and Ammonia Gas.

Comment 7: Reclassification and Adjustments to Certain Financial Data.

Comment 8: Timeliness of the Petitioners' Submission on Grasim's Annual Report.

II. Company-Specific Comments

Jiheng

Comment 9: Jiheng's Allocation Methodology for Caustic Soda and Chlorine Gas.

Comment 10: Jiheng's Consumption of Certain Customer-Provided Factors of Production.

Comment 11: Revision to Jiheng's Reported Data for Certain Inputs.

Comment 12: The Petitioners' January 31, 2005, Comment on the Treatment of Jiheng's By-Products.

Comment 13: The Petitioners' January 31, 2005, Comment on Jiheng's Packing Labor.

Nanning

Comment 14: Surrogate Value for Sodium Sulfite.

Comment 15: Adjustment to Surrogate Values Used for Calcium Chloride and Sulfuric Acid.

Comment 16: Valuation of Hydrogen Gas.

Comment 17: Subtracting By-Product Offsets in the Normal Value Calculation.

Comment 18: Treatment of Chlorine Tail Gas.

Comment 19: Nanning's Indirect Labor Calculation.

Comment 20: Nanning's Shipment Date.

[FR Doc. E5–2235 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–814]

Chlorinated Isocyanurates From Spain: Notice of Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has determined that chlorinated isocyanurates from Spain are being sold, or are likely to be sold, in the United States at less than fair value (''LTFV''), as provided in section 735 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Final Determination of Investigation'' section of this notice.

DATES: *Effective Date:* May 10, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas Martin and Mark Manning, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3936 or (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On December 20, 2004, the Department published the preliminary determination of sales at LTFV in the antidumping investigation of chlorinated isocyanurates from Spain. *See Chlorinated Isocyanurates From Spain: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 69 FR 75902 (December 20, 2004) (''*Preliminary Determination*''). Since the *Preliminary Determination,* the following events have occurred.

On January 12, 2005, the petitioners [1] submitted a request for a public hearing. We conducted verification of the sales and cost questionnaire responses of Aragonesas Delsa S.A. (''Delsa''), the sole respondent in this investigation, from January 31, 2005, through February 11, 2005. On February 17, 2005, Delsa submitted revised sales data resulting

[1] The petitioners in this investigation are Clearon Corporation and Occidental Chemical Corporation (collectively, the ''petitioners'').

from corrections made at verification. We gave interested parties an opportunity to comment on our *Preliminary Determination* and our findings at verification. On March 15, 2005, the petitioners and respondent submitted case briefs, and on March 22, 2005, these parties submitted rebuttal briefs. The Department held a public hearing on March 29, 2005.

Period of Investigation

The period of investigation (''POI'') is April 1, 2003, through March 31, 2004. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The products covered by this investigation are chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) Trichloroisocyanuric acid ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3\ 2H_2O$), and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isocyanurates are available in powder, granular, and tableted forms. This investigation covers all chlorinated isocyanurates.

Chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, and 2933.69.6050 of the Harmonized Tariff Schedule of the United States (''HTSUS'').[2] The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isocyanurates and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

On July 1, 2004, Arch Chemicals, Inc. (''Arch''), an importer, argued that its patented, formulated, chlorinated isocyanurates tablet is not covered by the scope of this investigation. In the *Preliminary Determination,* we found that Arch's patented chlorinated isocyanurates tablet is included within the scope of this antidumping duty investigation.

See Preliminary Determination, and Memorandum from Holly A. Kuga, Senior Office Director, to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, ''Scope of the Antidumping Duty Investigations of Chlorinated Isocyanurates from the People's Republic of China and Spain,'' dated December 10, 2004. We received no further comments from any interested party regarding our preliminary decision on this issue. Therefore, for this final determination, we find that Arch's patented chlorinated isocyanurates tablet is included within the scope of this antidumping duty investigation.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Memorandum from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the Final Determination in the Antidumping Investigation of Chlorinated Isocyanurates from Spain,'' (''*Issues and Decision Memorandum*'') dated concurrently with this notice, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Department of Commerce building. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/summary/list.html.* The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Partial Adverse Facts Available

A. Use of Facts Available

As further discussed below, pursuant to sections 776(a)(2)(B) and (C), and 776(b) of the Act, the Department determines that the application of partial adverse facts available (''AFA'') is warranted for Delsa's home market (''HM'') inland freight and U.S. market movement expenses. Section 776(a)(2) of the Act, provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that the Department must inform the interested party of the nature of any deficiency in its response and, to the extent practicable, allow the interested party to remedy or explain such deficiency. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

We find that pursuant to sections 776(a)(2)(B) and (C) of the Act, we should apply facts available to Delsa's HM inland freight and U.S. market movement expenses (consisting of foreign inland freight, foreign brokerage and handling, international freight, and U.S. brokerage and handling) because (1) Delsa failed to accurately and timely report these expenses; (2) Delsa took action that further impeded the Department's ability to conduct the proceeding; and (3) Delsa provided information that could not be verified.

With respect to HM inland freight, Delsa stated in its initial and first supplemental section B questionnaire responses that it reported its HM inland freight using an allocation methodology. *See* August 23, 2004, Section B submission at 11 and September 29, 2004, first supplemental Section B submission at 7. In our second

[2] In the scope section of the Department's initiation and in its *Preliminary Determination,* chlorinated isocyanurates were classified under subheading 2933.69.6050 of the HTSUS. *See Initiation of Antidumping Duty Investigations: Chlorinated Isocyanurates From the People's Republic of China and Spain,* 69 FR 32488 (June 10, 2004). Effective January 1, 2005, chlorinated isocyanurates are also currently classifiable under new subheadings 2933.69.6015 and 2933.69.6021 of the HTSUS. The new subheading 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid, while subheading 2933.69.6021 covers all other chlorinated isocyanurates used as pesticides (bactericides). Subheading 2933.69.6050 covers all other chlorinated isocyanurates not used as pesticides. *See* Memorandum to James Doyle, Office 9, dated February 16, 2005, from Tom Futtner, Liaison w/Customs, Customs Unit, regarding Request for HTS Number Update(s) to AD/CVD Module Chlorinated Isos (A–570–898) (added to the record of the instant investigation in Memorandum from Thomas Martin to the File, dated April 25, 2005).

supplemental questionnaire, we instructed Delsa to provide a full explanation of the allocation methodology and explain why it represents a reasonable allocation. Delsa provided a one sentence answer in its second supplemental response: ''We have revised our home market sales file with the *actual amount of freight for each transaction.''* See November 22, 2004, second supplemental Section B submission at 3. (Emphasis added). Furthermore, Delsa reiterated in its third supplemental questionnaire response that it reported actual HM inland freight expenses. See December 2, 2004, third supplemental questionnaire submission at 4. Given that Delsa stated that it reported the actual amount of freight for each transaction, the Department concluded that Delsa no longer used an allocation methodology.

However, at verification, Delsa stated that it had incorrectly reported to the Department that it was submitting actual transaction-specific freight cost data for its HM sales, and instead submitted a worksheet that provided a limited overview of its allocation methodology. At verification, the Department tested the results of this allocation methodology against actual costs in selected sales and found the discrepancies between the actual and allocated freight to be so great as to indicate that the allocation methodology does not result in per-unit expenses that reasonably approximate the actual expenses. At no point in this investigation, prior to verification, did Delsa notify the Department that it had any difficulties complying with the Department's requests for information. Delsa did not seek guidance on the applicable reporting requirements as contemplated by section 782(c)(1) of the Act. Instead, Delsa only reported at the start of verification that it had reported its HM inland freight expenses using an allocation methodology, after reporting in its last two supplemental questionnaire responses that it was providing actual HM inland freight expenses for each sale. Based on the above, we find that Delsa failed to provide accurate and timely information in the form and manner requested by the Department, within the meaning of section 776(a)(2)(B) of the Act.

See Issues and Decision Memorandum at Comment 3.

In addition, Delsa's failure to provide accurate and timely information concerning its HM freight expenses prevented the Department from requesting supplemental information regarding these expenses. Without this information, we were unable to satisfy ourselves that the information reported was complete and accurate. Since the Department does not accept new information at verification, and this allocation methodology was new information, we were precluded from verifying the specifics of how Delsa allocated its freight costs. Delsa thus took specific action to prevent the Department from determining the reliability of central elements of its responses, thereby impeding the proceeding. This action warrants the application of facts available pursuant to section 776(a)(2)(C) of the Act.

In regard to Delsa's U.S. movement expenses, Delsa reported to the Department in its questionnaire responses that it reported the actual costs that it was charged by its freight forwarder. The Department made supplemental requests for information regarding these movement expenses, and Delsa made corrections and provided explanations. *See, e.g.*, September 29, 2004, supplemental section C submission at Exhibits C–7a and C–7b. However, Delsa reported at the beginning of the Department's verification that it made multiple errors affecting three reported movement expenses (foreign inland freight, foreign brokerage and handling, and international freight), with an undetermined, varying impact on each sale. Specifically, the errors were (1) failure to take account of containers that were only partially filled; (2) failure to take account of the decrease in freight charges on larger volume transactions; (3) failure to report the costs from another freight forwarding company that was used during the POI; (4) failure to account for changes that took place in the freight fee schedules; (5) failure to report the correct foreign inland freight for sales that originated from one of its factories; and (6) failure to account for weight differences in allocating costs to containers that held a mix of products that vary by weight. These errors affect a large number of U.S. sales and have an overlapping effect, so that the Department is unable to separately analyze the errors on an individual basis. Moreover, these errors have a large impact on the reported per-unit expenses for each variable. *See Issues and Decision Memorandum* at Comment 4. Furthermore, Delsa reported its U.S. brokerage and handling expenses for the first time at verification, even though Delsa denied having the ability to report this expense in its initial and first supplemental questionnaire responses. Delsa did not seek guidance concerning this expense on the applicable reporting requirements, as contemplated by section 782(c)(1) of the Act.

Based on the above, for its U.S. movement expenses (consisting of foreign inland freight, foreign brokerage and handling, international freight, and U.S. brokerage and handling), we find that Delsa failed to provide requested information before the established deadlines and in the form and manner requested by the Department, within the meaning of section 776(a)(2)(B) of the Act.

We further find that Delsa has significantly impeded the proceeding by providing changes to all of its U.S. movement expenses at the start of verification that significantly affect a large quantity of U.S. sales and have a large impact on the reported per-unit expenses. Calculation of U.S. movement expenses is necessary to the Department's calculation of net U.S. prices, which is in turn necessary to calculate accurate dumping margins. The information is in the respondent's possession and cannot otherwise be obtained by the Department. Therefore, we find that Delsa has significantly impeded the proceeding within the meaning of section 776(a)(2)(C) of the Act.

Furthermore, with respect to both HM inland freight and U.S. market movement expenses, Delsa has not met the requirements of sections 782(d) and (e) of the Act. Section 782(d) of the Act is not applicable because Delsa did not provide enough information to the Department to indicate that its reporting methodology for these HM and U.S. movement expenses might be deficient until the start of verification. It was not until verification that the Department was aware of the use of an allocation methodology for HM inland freight and the extent of the errors (*i.e.*, in terms of quantity and volume) in Delsa's reported U.S. movement expenses. By this time, it was too late to notify Delsa of any deficiencies, obtain the allocation methodologies and possibly new data, and examine such methodologies and data for deficiencies.

Similarly, section 782(e) of the Act has also not been satisfied because Delsa failed to submit before the deadlines established by the Department reasonably accurate HM inland freight and U.S. movement expenses. In its response to the Department's second supplemental questionnaire, when the Department requested detailed information regarding Delsa's HM inland freight expense and U.S. movement expense reporting methodologies, Delsa reported that it provided actual HM expenses and U.S. market movement expenses based upon its freight schedules. At that time, Delsa did not acknowledge that its HM inland

freight costs were, in fact, reported on an allocated basis. For U.S. movement expenses, Delsa reported significantly inaccurate U.S. movement expenses, due to its failure to go beyond the freight schedules, and take into account divergences from the scheduled fees. These statements by Delsa prevented the Department from asking additional questions about the methodology that Delsa actually did use. Thus, Delsa has failed to satisfy the requirements of subsections (1) and (2) of section 782(e).

B. Adverse Inferences

Once the Department determines that the use of facts available is warranted, the Department must then determine whether an adverse inference is warranted pursuant to section 776(b) of the Act, which permits the Department to apply an adverse inference if it makes the additional finding that an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information.

In determining whether a respondent has failed to cooperate to the best of its ability, the Department need not make a determination regarding the willfulness of the respondent's conduct. *Nippon Steel Corp.* v. *United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003). Instead, the courts have made clear that the Department must articulate its reasons for concluding that a party failed to cooperate to the best of its ability, and explain why the missing information is significant to the review. In determining whether a party failed to cooperate to the best of its ability, the Department considers whether a party could comply with the request for information, and whether a party paid sufficient attention to its statutory duties. *Pacific Giant, Inc.* v. *United States*, 223 F. Supp. 2d 1336, 1342 (CIT 2002); *see also Tung Mung Dev. Co.* v. *United States*, 2001 Ct. Intl. Trade LEXIS 94 at 89 (July 3, 2001). The Department also considers whether there is at issue a ''pattern of behavior.'' *Borden, Inc.* v. *United States*, 22 C.I.T. 1153 (CIT 1998)

As discussed below, we determine that, within the meaning of section 776(b) of the Act, Delsa failed to cooperate by not acting to the best of its ability to comply with the Department's request for information by not providing it with timely and accurate HM inland freight and U.S. movement expenses, and that the application of partial AFA is therefore warranted. On more than one occasion, Delsa failed to provide information when requested to do so by the Department. Specifically, Delsa misrepresented the nature of its HM inland freight data in its last two supplemental questionnaire responses by reporting to the Department that for its HM sales, it reported actual, transaction-specific inland freight costs. This precluded the Department from making supplemental requests for information regarding the allocation methodology that it did use. Delsa's misrepresentation prevented the Department from issuing supplemental questions that might otherwise have resulted in changes to the methodology, to make the methodology reasonable, such that the Department could have accepted it. In its questionnaire responses, Delsa did not provide evidence to support its allocation methodology, as it is required to do pursuant to 19 CFR 351.401(g)(2). Delsa failed to fully demonstrate that it could not provide its HM freight on an actual, transaction-specific basis. Moreover, Delsa failed to demonstrate that its allocation methodology did not yield distortive or inaccurate results. Without accurately reported expenses and costs, the Department is unable to calculate accurate net HM prices, which prevents the Department from calculating accurate dumping margins. We find that Delsa did not act to the best of its ability in reporting HM inland freight expenses, and therefore an adverse inference is warranted. As partial AFA, we are applying the lowest verified inland freight cost to all HM sales made by Delsa during the POI, except for those sales examined at verification and sales of a particular CONNUM for which Delsa provided actual, invoiced freight expenses during verification (and the Department successfully tested for accuracy). A complete explanation of the selection and application of partial AFA can be found in the *Issues and Decision Memorandum* at Comment 3.

Delsa also failed to accurately report its U.S. movement expenses (consisting of foreign inland freight, foreign brokerage and handling, and international freight), despite having three opportunities to do so in response to the Department's initial and supplemental questionnaires. Delsa reported corrections to multiple errors with respect to these variables at the Department's verification. Since each of these errors affect more than one movement variable, the overall impact of these errors on the reported variables is actually a net change resulting in increases and decreases of Delsa's reported U.S. movement expenses. Because (1) There were six errors affecting three variables, (2) the separate effect of each individual error cannot be determined with information on the record, as Delsa only provided the Department with the net effect of all of the errors, (3) the errors affect a large quantity of U.S. sales, and (4) the impact of these errors on the reported per-unit expense is also large, the corrections for these errors cannot be considered as minor corrections to the U.S. sales database. In addition, U.S. brokerage and handling was an expense that Delsa reported that it did not have until the Department's verification, even though the Department asked supplemental questions on this topic. The Court of International Trade has found that the ''respondent bears the burden of creating a complete and adequate record upon which the Department can make its determination.'' *See NSK Ltd.* v. *United States*, 919 F. Supp. 442, 449 (CIT 1996). *See also Tianjin Mach. Imp. & Exp. Corp.* v. *United States*, 353 F. Supp. 2d 1294, 1305 (CIT 2004) (''Although the standard does not demand perfection, it censures inattentiveness and carelessness.''). Therefore, the Department determines that Delsa failed to act to the best of its ability, and thus determines that partial adverse facts is warranted in this case. As partial AFA, we have selected the highest non-aberrational reported freight cost for all four U.S. freight variables. We have applied these per-unit expenses to all U.S. sales made by Delsa during the POI, except for those sales that were examined at verification. A complete explanation of the selection and application of partial AFA can be found in the *Issues and Decision Memorandum* at Comment 4.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Delsa for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Changes Since the Preliminary Determination

Based on our findings at verification, and analysis of comments received, we have made certain adjustments to the margin calculations used in the *Preliminary Determination.* These adjustments are discussed in detail in the *Issues and Decision Memorandum* and are listed below:

1. We corrected a clerical error with respect to our recalculation of HM credit expense.

2. We corrected a clerical error regarding the customer code used to allocate certain freight expenses incurred by Delsa for defective

merchandise returned from the United States. In addition, although not a clerical error, we changed the allocation methodology to ensure a more appropriate allocation of these expenses. Lastly, we added U.S. brokerage and handling expenses to this calculation.

3. We applied partial AFA to Delsa's HM inland freight for sales that are not based upon actual, transaction-specific costs, and which have not been specifically verified.

4. We applied partial AFA to Delsa's foreign inland freight, foreign brokerage and handling, and international freight for all U.S. sales that have not been specifically verified.

5. We applied AFA to Delsa's U.S. brokerage and handling expenses that were reported for the first time during verification.

6. We revised the interest rate used in calculating U.S. credit expenses to the correct POI-average Federal Reserve rate.

7. We eliminated the second rebate variable from Delsa's HM price adjustments, pursuant to a minor correction that Delsa submitted at verification.

8. We recalculated Delsa's packaging costs to equal the packaging and packing costs reported for the *Preliminary Determination* less the packing expenses identified at verification. Accordingly, we revised the reported packing expenses to equal the packing expenses identified at verification. Since Delsa packs its products in an identical manner regardless of the market to which they are sold, we used the same values for packing in the home and U.S. markets.

9. We recalculated the adjustments to certain raw material costs based on the comparison of Delsa's reported transfer prices and market prices obtained at verification.

10. We adjusted the startup period for purposes of determining the amount, if any, of the startup adjustment.

11. We recalculated Delsa's financial expense ratio to include net foreign exchange losses in the numerator.

Final Determination of Investigation

We determine that the following weighted-average dumping margins exist for the period April 1, 2003, through March 31, 2004:

Manufacturer/exporter	Weighted-Average Margin (percent)
Aragonesas Delsa S.A	24.83
All Others	24.83

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all entries of chlorinated isocyanurates from Spain that are entered, or withdrawn from warehouse, for consumption on or after December 20, 2004, the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct CBP to continue to require a cash deposit or the posting of a bond for each entry equal to the weighted-average dumping margins in the chart above. These instructions suspending liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(I) of the Act.

Dated: May 2, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix—Issues and Decision Memorandum

Part I: Corrections to the Preliminary Calculations:

Comment 1: Corrections to the Preliminary Calculations.

Part II: Home Market (''HM'') Sales Issues:

Comment 2: Whether Delsa's Allocation Methodology for HM Inland Freight Results in Unreliable Allocations.

Comment 3: Whether the Department Should Apply Partial Adverse Facts Available (''AFA'') to Delsa's HM Inland Freight.

Part III: United States Sales Issues:

Comment 4: Whether the Department Should Apply Partial AFA to Delsa's Foreign Inland Freight, Foreign Brokerage and Handling, International Freight Expenses, and U.S. Brokerage and Handling Expenses.

Comment 5: Whether the Department Should Apply the Calculated U.S. Average Short-Term Borrowing Rate to All U.S. Sales.

Part IV: Cost of Production (''COP'') Issues:

Comment 6: Whether the Department Double Counted Delsa's Reported Packaging and Packing Costs in the Preliminary Determination.

Comment 7: Whether the Packaging and Packing Service Provider is an Affiliated Party and, as Such, Whether the Department Should Adjust the Price of the Services Provided by a Affiliated Party.

Comment 8: Whether Certain Raw Material Inputs Should be Adjusted in Accordance with the Department's Major Input Rule.

Comment 9: Whether the Department Should Allow Delsa's Claimed Startup Adjustment.

Comment 10: Whether the Department Should Adjust Delsa's Financial Expense Ratio for Foreign Exchange Gains and Losses.

Comment 11: Whether the Department Should Make Certain Adjustments to Delsa's General and Administrative Expense Ratio.

[FR Doc. E5–2236 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A 588–707]

Granular Polytetrafluoroethylene Resin from Japan: Notice of Intent to Rescind Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 22, 2004, the Department of Commerce published a notice of initiation of an administrative review of the antidumping duty order on granular polytetrafluoroetheylene resin from Japan for the period August 1, 2003, through July 31, 2004. The Department intends to rescind this review after determining that the party requesting the review did not have entries during the period of review upon which to assess antidumping duties.

EFFECTIVE DATE: May 10, 2005.

FOR FURTHER INFORMATION CONTACT: Dunyako Ahmadu at (202) 482–0198 or Richard Rimlinger at (202) 482–4477, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1988, the Department of Commerce (the Department) published the antidumping duty order for granular polytetrafluroetheylene (PTFE) resin from Japan. See *Antidumping Duty Order; Granular Polytetrafluoroethylene Resin from Japan*, 53 FR 32267 (August 28, 1988). On August 3, 2004, we published a notice of opportunity to request an administrative review of this order for the period August 1, 2003, through July 31, 2004. See *Notice of Opportunity to Request Administrative Review of Antidumping Duty Order, Finding or Suspended Investigation*, 69 FR 46496 (August 3, 2004). On August 30, 2004, Asahi Glass Fluoropolymers Ltd., a Japanese producer and exporter of the subject merchandise, and AGC Chemicals America, an affiliated U.S. importer of subject merchandise (collectively AGC), made a timely request that the Department conduct an administrative review of AGC. On September 22, 2004, in accordance with section 751(a) of the Tariff Act of 1930 as amended (the Act), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. See *Notice of Initiation of Antidumping Duty and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 56745 (September 22, 2004). On October 8, 2004, the Department issued its antidumping duty questionnaire to AGC.

On November 2, 2004, AGC submitted a letter to the Department indicating that it did not have any shipments or entries of subject merchandise during the period of review but had one U.S. sale of PTFE resin during the period of review. As a result, on November 29, 2004, the Department issued a memorandum recommending rescission of the 2003–2004 administrative review and invited interested parties to comment. See *Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary* dated November 29, 2004, (*November 29 Memorandum*). On December 10, 2004, AGC submitted comments in disagreement with the recommendation in the *November 29 Memorandum*. AGC argued that the Department does not have an established practice of conditioning an administrative review on the existence of entries during the period of review and that the Department's interpretation of 19 CFR 351.213(e) in this instance is inconsistent with the plain meaning of the regulation. AGC also argued that because no review of AGC's sales has occurred since the imposition of the antidumping duty order on August 28, 1988, the 2003–2004 administrative review would determine a more accurate deposit rate and, therefore, the Department should not rescind the administrative review.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), we will rescind an administrative review in whole or only with respect to a particular exporter or producer if we conclude that during the period of review there were no entries, exports, or sales of the subject merchandise, as the case may be. Contrary to AGC's position that rescission of the 2003–2004 administrative review would not be in accordance with law and that the Department does not have an established practice of rescinding an administrative review based solely on the absence of entries, the Department's practice, supported by substantial precedent, requires that there be entries during the period of review upon which to assess antidumping duties, irrespective of the export–price or constructed export–price designation of U.S. sales. See, *e.g.*, *Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 68 FR 63067 (November 7, 2003), and *Stainless Steel Plate in Coils From Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 69 FR 20859 (April 19, 2004). Given that AGC had no entries of subject merchandise during the period of review and that AGC has no entry under suspension of liquidation that corresponds to the sale which occurred during the period of review, we would be unable to assess any antidumping duties resulting from this administrative review. See *November 29 Memorandum*. Accordingly, we intend to rescind the 2003–2004 administrative review.

Public Comment

Any interested party may request a hearing within 20 days of publication of this notice. Any hearing, if requested, will be held 34 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs not later than 20 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in such briefs, must be filed not later than 7 days from the case brief after the date of publication of this notice. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. We will issue our final decision concerning the conduct of the review no later than 120 days from the date of publication of this notice.

Further, absent the completion of the 2003–2004 administrative review, the cash–deposit rate will remain at 51.45 percent and the all other rate will continue to be 91.74 percent (see *Final Determination of Sales at Less Than Fair Value*, 53 FR 25191 (July 5, 1988)).

This notice is published in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: May 3, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–2237 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–502)

Certain Iron Construction Castings From The People's Republic of China; Five-year ("Sunset") Review of Antidumping Duty Order; Final Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Summary: On October 1, 2004 the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on certain iron construction castings ("iron castings") from the People's Republic of China ("the PRC"). On the basis of the notice of intent to participate, and adequate substantive response filed on behalf of the domestic interested parties and no response from respondent interested parties, the Department

conducted an expedited sunset review. As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: May 10, 2005.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2004, the Department initiated a sunset review of the antidumping duty order on iron castings from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[1] The Department received a Notice of Intent to Participate on behalf of Deeter Foundry, Inc., East Jordan Iron Works, Inc., LeBaron Foundry, Inc., Leed Foundry, Inc., Municipal Castings, Inc., Neenah Foundry Company, Tyler Pipe Company, and U.S. Foundry & Manufacturing Co. (collectively, ''domestic interested parties''), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as U.S. producers of the subject merchandise. We received a substantive response from the domestic interested parties within the deadline specified in the Department's regulations under section 351.218(d)(3)(i). However, we did not receive responses from any respondent interested parties as required in section 351.218(d)(3)(i) of the Department's regulations. As a result, the Department conducted an expedited sunset review of this order pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations.

Scope of the Order

The merchandise covered by the antidumping duty order consists of certain iron construction castings from the PRC, limited to manhole covers, rings, and frames, catch basin grates and frames, clean–out covers and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable as heavy castings under Harmonized Tariff Schedule (HTS) item number 7325.10.0010; and to valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water and gas meters, classifiable as light castings under HTS item number 7325.10.0050. The HTS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.

Analysis of Comments Received

All issues raised in this case are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated May 2, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Department Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*, under the heading ''May 2005''. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on iron castings from the PRC would likely lead to continuation or recurrence of dumping at the following weighted–average percentage margin:

Manufacturers/ Exporters/Producers	Weighted–Average Margin (Percent)
PRC wide-rate	25.52

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 2, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–2290 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–DS–S

[1] *See Initiation of Five-Year (Sunset) Reviews*, 69 FR 58890 (October 1, 2004).

DEPARTMENT OF COMMERCE

International Trade Administration

(A–122–503)

Certain Iron Construction Castings from Canada; Five-year (''Sunset'') Review of Antidumping Duty Order; Final Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Summary: On October 1, 2004, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on certain iron construction castings (''iron castings'') from Canada. On the basis of the notice of intent to participate, and an adequate substantive response filed on behalf of the domestic interested parties and an inadequate response from respondent interested parties, the Department conducted an expedited sunset review. As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: May 10, 2005.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2004, the Department initiated a sunset review of the antidumping duty order on iron castings from Canada pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-year (''Sunset'') Reviews*, 69 FR 58890 (October 1, 2004). The Department received a Notice of Intent to Participate on behalf of Deeter Foundry, Inc., East Jordan Iron Works, Inc., LeBaron Foundry, Inc., Leed Foundry, Inc., Municipal Castings, Inc., Neenah Foundry Company, Tyler Pipe Company, and U.S. Foundry &

Manufacturing Co. (collectively, ''domestic interested parties''), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. Domestic interested parties claimed interested party status under section 771(9)(C) of the Act as U.S. producers of the subject merchandise. The Department notes that Tyler Pipe is a U.S. producer of light castings only and is not an interested party in this proceeding.

The Department received a complete response from the domestic interested parties within the deadline specified in the Department's regulations under section 351.218(d)(3)(i). However, the Department received no responses from respondent interested parties as required in section 351.218(d)(3)(i) of the Department's regulations. As a result, the Department conducted an expedited sunset review pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations.

Scope of the Order

The merchandise subject to the antidumping duty order consists of certain iron construction castings from Canada, limited to manhole covers, rings, and frames, catch basin grates and frames, clean–out covers and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable as ''heavy'' castings under Harmonized Tariff Schedule (''HTS'') item number 7325.10.0010. These articles must be of cast iron, not alloyed, and not malleable.

On September 23, 1998, the Department issued final results of a changed circumstances review, in which the Department revoked the order with respect to ''light'' castings. As a result, only one HTS item number applies to this order. That number, HTS item number 7325.10.000, is provided for convenience and customs purposes only. The written description remains dispositive.

Analysis of Comments Received

All issues raised in this case are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated May 2, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memo, which is on file in room B–099 of the main Department Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn,* under the heading ''May 2005.'' The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on iron castings from Canada would likely lead to continuation or recurrence of dumping at the following percentage weighted–average margins:

Manufacturers/Exporters/Producers	Weighted–Average Margin (Percent)
Bibby Ste. Croix Foundries, Inc.	8.60
LaPerle Foundry, Ltd	4.40
Mueller Canada, Inc.	9.80
All Others	7.50

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 2, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–2291 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–503]

Certain Iron Construction Castings From Brazil; Final Results of Five-Year (''Sunset'') Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On October 1, 2004 the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on certain iron castings (''iron castings'') from Brazil. On the basis of the notice of intent to participate, and an adequate substantive response filed on behalf of the domestic interested parties and no response from respondent interested parties, the Department conducted an expedited sunset review. As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Final Results of Review.''

DATES: *Effective Date:* May 10, 2005.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2004, the Department initiated a sunset review of the antidumping duty order on iron castings from Brazil pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[1] The Department received a Notice of Intent to Participate on behalf of Deeter Foundry, Inc., East Jordan Iron Works, Inc., LeBaron Foundry, Inc., Leed Foundry, Inc., Municipal Castings, Inc., Neenah Foundry Company, Tyler Pipe Company, and U.S. Foundry & Manufacturing Co. (collectively, ''the domestic interested parties''), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as U.S. producers of the subject merchandise. We received a complete response from the domestic interested parties within the deadline specified in the Department's regulations under section 351.218(d)(3)(i). However, we did not receive responses from any respondent interested parties as required in section 351.218(d)(3)(i) of the Departments regulations. As a result, the Department conducted an expedited sunset review of this order pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations.

Scope of the Order

The merchandise covered by the antidumping duty order consists of certain iron construction castings from

[1] *See Initiation of Five-Year (Sunset) Reviews,* 69 FR 58890 (October 1, 2004).

Brazil, limited to manhole covers, rings, and frames, catch basin grates and frames, clean-out covers and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable as heavy castings under Harmonized Tariff Schedule (HTS) item number 7325.10.0010; and to valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water and gas meters, classifiable as light castings under HTS item number 7325.10.0050. The HTS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.

Analysis of Comments Received

All issues raised in this case are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated May 2, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Department Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn,* under the heading ''May 2005.'' The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on iron castings from Brazil would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-average margin (percent)
Fundicao Aldebara, Ltda. Aldebara	58.74
Sociedade de Metalurgia E Processos, Ltda. SOMEP	16.61
Companhia Siderurgica da Guanabara COSIGUA (formerly Usina Siderurgica Paraende, S.A. (USIPA)	5.95
All Others	26.16

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 2, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–2293 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–588–837

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Initiation of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has obtained information with respect to Tokyo Kikai Seisakusho, Ltd. (TKS), a producer/exporter of large newspaper printing presses, sufficient to warrant the self–initiation of a changed circumstances review. Interested parties are invited to submit comments, as indicated below.

EFFECTIVE DATE: May 10, 2005.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Kate Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4136 and (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1996, the Department published in the **Federal Register** an amended final determination and antidumping duty order on large newspaper printing presses and components thereof, whether assembled or unassembled, from Japan (LNPPs) (61 FR 46621). One of the producer/exporters covered by the order was TKS. Its rate from the less–than-fair–value investigation was 56.28 percent. The Department conducted administrative reviews of TKS for the following periods: September 1, 1997 - August 31, 1998, September 1, 1998 - August 31, 1999, and September 1, 1999 - August 31, 2000. The administrative review for the 2000–2001 review period was rescinded. A zero margin was found for TKS in the 1997–1998, 1998–1999, and 1999–2000 review periods. Effective January 16, 2002, the antidumping duty order was revoked with respect to TKS (*Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Final Results of Antidumping Duty Administrative Review and Revocation in Part*, 67 FR 2190, (January 16, 2002)) based on the three consecutive reviews resulting in zero dumping margins (see 19 CFR 351.222(b)). On February 25, 2002, the Department revoked the antidumping duty order under a five–year sunset review pursuant to section 751(c)(3)(A) of the Tariff Act of 1930, as amended (the Act) (*Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan (A–588–837) and Germany (A–428–821): Notice of Final Results of Five–Year Sunset Reviews and Revocation of Antidumping Duty Orders*, 67 FR 8522 (February 25, 2002)).

Scope of the Changed Circumstances Review

The products covered by this changed circumstances review are large newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to press systems, the scope of the review includes the five press system components. They are: (1) A printing unit, which is any component that prints in monocolor, spot color and/or process (full) color; (2) a reel tension paster (RTP), which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit; (3) a folder, which is a module or combination of modules capable of

cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format; (4) conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and (5) a computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non–subject elements before or after importation, is included in the scope of this review. Also included in the scope are elements of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part.

For purposes of the review, the following definitions apply irrespective of any different definition that may be found in customs rulings, U.S. Customs law or the *Harmonized Tariff Schedule of the United States* (HTSUS): (1) the term ''unassembled'' means fully or partially unassembled or disassembled; and (2) the term ''incomplete'' means lacking one or more elements with which the LNPP is intended to be equipped in order to fulfill a contract for a LNPP system, addition or component.

This scope does not cover spare or replacement parts. Spare or replacement parts imported pursuant to a LNPP contract, which are not integral to the original start–up and operation of the LNPP, and are separately identified and valued in a LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of this review. Used presses are also not subject to this scope. Used presses are those that have been previously sold in an arm's–length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Also excluded from the scope, in accordance with the Department's determination in a previous changed circumstances review of the antidumping duty order which resulted in the partial revocation of the order with respect to certain merchandise, are elements and components of LNPP systems, and additions thereto, which feature a 22–inch cut–off, 50–inch web width and a rated speed no greater than 75,000 copies per hour. *See Large Newspaper Printing Presses Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order, In Part*, 64 FR 72315 (Dec. 27, 1999). In addition to the specifications set out in this paragraph, all of which must be met in order for the product to be excluded from the scope of the review, the product must also meet all of the specifications detailed in the five numbered sections following this paragraph. If one or more of these criteria is not fulfilled, the product is not excluded from the scope of the review.

1. *Printing Unit*: A printing unit which is a color keyless blanket–to-blanket tower unit with a fixed gain infeed and fixed gain outfeed, with a rated speed no greater than 75,000 copies per hour, which includes the following features:
   - Each tower consisting of four levels, one or more of which must be populated.
   - Plate cylinders which contain slot lock–ups and blanket cylinders which contain reel rod lock–ups both of which are of solid carbon steel with nickel plating and with bearers at both ends which are configured in–line with bearers of other cylinders.
   - Keyless inking system which consists of a passive feed ink delivery system, an eight roller ink train, and a non–anilox and non–porous metering roller.
   - The dampener system which consists of a two nozzle per page spraybar and two roller dampener with one chrome drum and one form roller.
   - The equipment contained in the color keyless ink delivery system is designed to achieve a constant, uniform feed of ink film across the cylinder without ink keys. This system requires use of keyless ink which accepts greater water content.
2. *Folder*: A module which is a double 3:2 rotary folder with 160 pages collect capability and double (over and under) delivery, with a cut–off length of 22 inches. The upper section consists of three–high double formers (total of 6) with six sets of nipping rollers.
3. *RTP*: A component which is of the two–arm design with core drives and core brakes, designed for 50 inch diameter rolls; and arranged in the press line in the back–to-back configuration (left and right hand load pairs).
4. *Conveyance and Access Apparatus*: Conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheets across through the production process, and a drive system which is of conventional shafted design.
5. *Computerized Control System*: A computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

Further, this review covers all current and future printing technologies capable of printing newspapers, including, but not limited to, lithographic (offset or direct), flexographic, and letterpress systems. The products covered by this review are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the review is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department is self–initiating a changed circumstances review based upon information contained in a recent federal court decision, *Goss International Corp. v. Tokyo Kikai Seisakusho, Ltd.*, 321 F.Supp.2d 1039 (N.D. Iowa 2004) (*Goss Int'l*). See Elkem Metals Co. v. United States, 193 F. Supp. 2d 1314, 1321 (CIT 2002). In the *Goss Int'l* proceeding, evidence was

presented demonstrating that TKS provided false information regarding its sales to the Dallas Morning News (DMN), the subject of the Department's 1997–1998 review. Specifically,

> The jury further heard evidence at trial that TKS agreed to a fraudulent price increase and secret $2.2 million rebate to keep the DMN from purchasing the two towers {the sale under the 97–98 administrative review} from Goss in 1996. To make it appear to Goss that the 1996 sale was not dumped, TKS and the DMN agreed to increase the price on paper to $7.4 million. In exchange, TKS and the DMN agreed that TKS would secretly rebate $2.2 million to the DMN through a combination of $1 million in cash and a promise of $1.2 million in free digital ink pumps or credit to be delivered in the future.
>
> TKS and its counsel engaged in a concerted effort to conceal the secret rebates * * *. {TKS's counsel} told TKS that 'there should be no apparent linkage between {the digital ink pumps'} give–away and the towers' price,' and urged TKS (USA) to falsify its business records. * * * There was also evidence presented at trial that TKS and its counsel attempted to destroy documents to conceal the secret rebates. *See Goss Int'l* 321 F. Supp. 2d at 1045.

The final results of the 1997–1998 administrative review were a factor in the Department's decisions to revoke TKS from the antidumping duty order, as well as to sunset the order. (*See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Reviews*, 65 FR 7492 (February 15, 2000). We will place on the record of this review the Court decision, *Goss Int'l*, as well as a number of public documents we obtained from the court record of *Goss Int'l*.

Interested parties may submit comments on the above–referenced information and the actions the Department should take not later than 30 days after publication of this notice. Any responses to those comments must be submitted not later than seven days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303 (2004), and must be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303(f) (2004).

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3)(i) (2004), which will set forth the factual and legal conclusions upon which its preliminary results are based, and a description of any action proposed based on those results. The Department will afford the interested parties the opportunity to comment prior to issuing its final results of review, in accordance with 19 CFR 351.216(e) (2004), which will be published in the **Federal Register**.

This notice is in accordance with sections 751(b)(1) of the Act, and 19 CFR 351.216 and 351.221(c)(3)(i).

Dated: May 4, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–2287 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–427–818

Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 10, 2005.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Myrna Lobo at (202) 482–0197 or (202) 482–2371, respectively; AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2005, the Department published the preliminary results of the administrative review of the antidumping duty order on low enriched uranium from France for the period February 1, 2003 through January 31, 2004. *See Low Enriched Uranium from France: Preliminary Results of Antidumping Duty Administrative Review* (70 FR 10957). The current deadline for the final results of this review is July 7, 2005.

Extension of Time Limit for Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) requires the Department of Commerce (the Department) to issue the final results in an administrative review within 120 days after the date on which the preliminary results were published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to 180 days from the date of publication of the preliminary results. The Department finds that it is not practicable to complete the review within the original time frame due to the complex nature of the case and because the Department is seeking clarification on certain issues (supplemental questionnaires were issued on March 8, 2005 and March 18, 2005, after the preliminary results were issued). In order to provide the Department sufficient time to review the submissions, conduct verification, and thoroughly analyze all information on the record, completion of this review is not practicable within the original time limit. Consequently, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for the completion of the final results of the review until no later than September 6, 2005, which is the next business day after 180 days from the publication of the preliminary results. This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: May 2, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–2295 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–810]

Notice of Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods, Other Than Drill Pipe, from Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 10, 2005.

FOR FURTHER INFORMATION CONTACT: Fred Baker at (202) 482–2924 or Robert James at (202) 482–0649; AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th

Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1995 the Department published the antidumping duty order on oil country tubular goods (OCTG) from Argentina. *See Antidumping Duty Order: Oil Country Tubular Goods from Argentina*, 60 FR 41055 (August 11, 1995). On August 3, 2004 the Department published a notice of opportunity to request a review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 46496 (August 3, 2004). On August 31, 2004, in accordance with 19 CFR 351.213(b)(1), the Department received a timely and properly filed request from United States Steel Corporation, a petitioner in the original investigation, for a review of the imports by producer Siderca S.A.I.C.

On September 22, 2004, the Department published a notice of initiation of this administrative review covering the period August 1, 2003 through July 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 56745 (September 22, 2004). The preliminary results of this review are currently due no later than May 3, 2005.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order for which a review is requested, and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Tariff Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days respectively.

The Department finds that it is not practicable to complete the preliminary results in the administrative review of OCTG from Argentina within the originally anticipated time limit (*i.e.*, by May 3, 2005) because significant questions have arisen regarding whether or not Siderca had any entries of subject merchandise for consumption during the period of review. As a result, the Department needs additional time in order to obtain and analyze relevant documents from U.S. Customs and Border Protection. Therefore, the Department is extending the time limit for completion of the preliminary results by 70 days until no later than July 12, 2005, in accordance with section 751(a)(3)(A) of the Tariff Act. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published in accordance with section 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: May 3, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–2241 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–201–817

Certain Oil Country Tubular Goods from Mexico; Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from United States Steel Corporation, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain oil country tubular goods (OCTG) from Mexico. The period of review (POR) is August 1, 2003, through July 31, 2004.

We preliminarily find that Hylsa, S.A. de C.V (Hylsa) made sales of the subject merchandise at less than normal value (NV). In addition, we are preliminarily rescinding this review with respect to Tubos de Acero de Mexico, S.A. (Tamsa) because Tamsa reported, and we confirmed, that it made no shipments of subject merchandise to the United States during the POR. If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between constructed value (CV) and the NV for Hylsa.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: 1) a statement of the issues, 2) a brief summary of the argument, and 3) a table of authorities.

EFFECTIVE DATE: May 10, 2005.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–0193.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1995, the Department published the antidumping duty order on OCTG from Mexico. *See Antidumping Duty Order: Oil Country Tubular Goods From Mexico*, 60 FR 41056 (August 11, 1995) (AD Order). On August 3, 2004, the Department published the opportunity to request administrative review of, *inter alia*, OCTG from Mexico for the period August 1, 2003, through July 31, 2004. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 46496 (August 3, 2004).

In accordance with 19 CFR 351.213(b)(2), on August 31, 2004, United States Steel Corporation requested that we conduct an administrative review of the sales of subject merchandise of Tamsa and Hylsa. On September 22, 2004, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period August 1, 2003, through July 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 183 (September 22, 2004).

On October 6, 2004, the Department issued its antidumping duty questionnaire to Hylsa and Tamsa. On October 25, 2004, Tamsa submitted a no–shipment certification letter to the Department explaining that it had no sales of subject merchandise during the POR and requested a rescission of the administrative review with respect to Tamsa. *See Partial Rescission of Administrative Review* below for a discussion of this issue.

Hylsa submitted its response to section A of the Department's questionnaire on November 9, 2004, and its response to section C on November 23, 2004. In its section A response, Hylsa informed the Department that it had no viable home market or third country sales to use as normal value and was therefore reporting constructed value data. The Department issued a supplemental sections A and C questionnaire to Hylsa on December 29, 2004. Hylsa submitted its response to the Department's sections A and C

questionnaire on January 19, 2005. The Department issued a second supplemental sections A and C questionnaire on February 18, 2005 and on February 25, 2005 Hylsa submitted its response. The Department issued a third supplemental questionnaire on April 13, 2005 and on April 14, 2005 Hylsa submitted its response.

Because Hylsa did not have home market or third country sales of subject merchandise during the POR, Hylsa submitted a section D response on December 6, 2004. We issued a supplemental questionnaire regarding Hylsa's response to section D on March 9, 2005 and on April 4, 2005 Hylsa submitted its response.

Period of Review

The POR is August 1, 2003, through July 31, 2004.

Scope of the Order

The merchandise covered by this order are oil country tubular goods (OCTG), hollow steel products of circular cross-section, including oil well casing and tubing of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non–API specifications, whether finished or unfinished (including green tubes and limited–service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The OCTG subject to this order are currently classified in the HTSUS under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. The Department has determined that couplings, and coupling stock, are not within the scope of the antidumping order on OCTG from Mexico. *See* Letter to Interested Parties; Final Affirmative Scope Decision, August 27, 1998. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this order is dispositive.

Partial Rescission of Administrative Review

In response to our October 6, 2004 original questionnaire, Tamsa submitted an October 25, 2004 letter claiming they made no exports of the subject merchandise during the POR. We examined CBP data to confirm that Tamsa was not listed as a manufacturer or exporter of the subject merchandise on entries during the POR. We requested and received from CPB entry documents that showed Tamsa was the manufacturer of the entered merchandise. After reviewing the information, we determined that the entries in question were exported from third countries without Tamsa's knowledge and properly identified Mexico as the country of origin.

In addition, there is no information on the record to indicate that Tamsa had U.S. sales or exports of subject merchandise during the POR. As a result, we find that Tamsa made no entries, exports, or sales of the subject merchandise during the POR that are subject to the administrative review. Therefore, in accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding our review with respect to Tamsa.

Product Comparisons

Because Hylsa had no sales of identical or similar merchandise in the home market or any third country comparison market during the POR, we compared U.S. sales to CV in accordance with section 773(a)(4) of the Act.

Fair Value Comparisons

To determine whether Hylsa made sales of OCTG to the United States at less than fair value, we compared EP to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. Because Hylsa had no sales of subject merchandise either in the home market or to third countries during the POR, in accordance with section 773(a)(4) of the Act, we compared the EP of U.S. transactions falling within the period of review to CV.

Export Price

Section 772(a) of the Act defines export price (EP) as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c). In contrast, section 772(b) of the Act defines constructed export price (CEP) as the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by, or for the account of, the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d).

For sales to the United States, we have used EP in accordance with section 772(a) of the Act because the subject merchandise was sold directly to an unaffiliated purchaser prior to importation.

We calculated EP based on the prices charged to the first unaffiliated customer in the United States. We used the date of invoice as the date of sale. We based EP on the packed delivered duty paid prices to the first unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act, including: foreign inland freight, foreign brokerage and handling, U.S. inland freight and U.S. brokerage and handling.

Calculation of Constructed Value

Hylsa reported that it had no viable home or third country market during the POR. Therefore, in accordance with section 773(a)(4) of the Act, we based NV for Hylsa on CV. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the costs of materials, labor, overhead, selling, general and administrative (SG&A), profit, interest expenses, and U.S. packing costs. Section 773(e)(2)(A) states that SG&A and profit are to be based on the actual amounts incurred in connection with sales of a foreign like product. In the event such data is not available, section 773(e)(2)(B) of the Act sets forth three alternatives for computing profit and SG&A without establishing a hierarchy or preference among the alternative methods. The alternative methods are: (1) Calculate SG&A and profit incurred by the producer based on the sale of merchandise of the same general type as the exports in question; (2) average SG&A and profit of other producers of the foreign like product for sales in the home market; or (3) any other reasonable method, capped by the

amount normally realized on sales in the foreign country of the general category of the products. In addition, the Statement of Administrative Action (''SAA'') states that, if the Department does not have the data to determine amounts for profit under alternatives one and two, or a profit cap under alternative three, it still may apply alternative three (without the cap) on the basis of the ''facts available.'' SAA at 841.

In this case, because Hylsa did not have a viable home market or third country market for this product, we based Hylsa's profit and indirect selling expenses on the following methodology. In accordance with section 773(e)(2)(B)(iii) of the Act, we calculated indirect selling expenses incurred and profit realized by the producer based on the sale of merchandise of the same general types as the exports in question. Specifically, we based our profit calculations and indirect selling expenses on the income statement of Hylsa's tubular products division, a general pipe division that produces OCTG and like products. We calculated a CV profit using Hylsa's tubular division financial statements for 2003 (*i.e.*, tubular division profit 2003 divided by tubular division 2003 cost of goods sold). We deducted packing expenses allocated to Hylsa's tubular products division from the COGS denominator when we calculated CV profit.

For the preliminary results we recalculated Hylsa's SG&A expense by deducting packing expenses from the cost of goods sold denominator. We used the financial statements of Alfa, S.A. de C.V., Hylsa's parent company, to calculate financial expenses. *See* Analysis Memorandum from Stephen Bailey to the File and Accounting Cost Memorandum from Margaret Pusey to the File, both dated May 3, 2005, for further discussion.

There were no allegations of below–cost sales for Hylsa during this POR. Consequently, we did not initiate a cost of production (COP) analysis for Hylsa.

Price–to-CV Comparisons

For price–to-CV comparisons, we made circumstance–of-sale adjustments by deducting from CV the weighted–average home market indirect selling expenses and adding U.S. direct selling expenses (i.e., imputed credit, warranty, and other direct selling expenses) in accordance with section 773(a)(8) of the Act and section 19 CFR 351.401(c). For computing credit expenses, it is the Department's normal practice to use an interest rate applicable to loans in the same currency as that in which the sales are denominated (*see, e.g.*, Analysis for the preliminary determination in the investigation of stainless steel plate in coils from Korea--Pohang Iron & Steel Company, 63 FR 59535 (November 4, 1998)). Because Hylsa had no short–term borrowings in U.S. dollars, the credit expense for Hylsa's U.S. sales was calculated using the average U.S. prime rate during the POR. *See* Hylsa's Section C response at exhibit 7.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily find the weighted–average dumping margin for the period August 1, 2003, through July 31, 2004, to be as follows:

Manufacturer / Exporter	Margin (percent)
Hylsa, S.A. de C.V.	1.36

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Pursuant to section 351.309 of the Department's regulations, interested parties may submit written comments in response to these preliminary results. Unless extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties submitting arguments in this proceeding are requested to submit with the argument: (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Case and rebuttal briefs and comments must be served on interested parties in accordance with section 351.303(f) of the Department's regulations.

Also, an interested party may request a hearing within 30 days of the date of publication of this notice. *See* section 351.310(c) of the Department's regulations. Unless otherwise specified, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, or the first business day thereafter. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any briefs or comments at a hearing, within 120 days of publication of these preliminary results.Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to section 351.212(b) of the Department's regulations, the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company–specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, any previous reviews, or the LTFV investigation, the cash deposit rate will be 23.79 percent, the ''all others'' rate established in the LTFV investigation. *See AD Order*, 60 FR at 41056. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 3, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–2288 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–001)

Potassium Permanganate from The People's Republic of China; Five-year (''Sunset'') Review of Antidumping Duty Order; Final Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 1, 2004, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on potassium permanganate from the People's Republic of China (''PRC''), pursuant to section 751(c) of the Tariff Act of 1930, as amended, (''the Act''). On the basis of the notice of intent to participate, and an adequate substantive response filed on behalf of the domestic interested parties and an inadequate response from respondent interested parties, the Department conducted an expedited sunset review. As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: May 10, 2005.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2004, the Department initiated a sunset review of the antidumping duty order of potassium permanganate from the PRC. See Initiation of Five-year Sunset Review, 69 FR 58890 (October 1, 2004). The Department received a Notice of Intent to Participate from a domestic interested party, Carus Chemical Company (''Carus''), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. Carus claimed interested party status as a domestic producer of the subject merchandise as defined in section 771(9)(C) of the Act. On May 3, 2004, the Department received a complete substantive response from Carus within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. The Department determined that the respondent interested party response was inadequate. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C) of the Department's regulations, the Department conducted an expedited sunset review of this antidumping duty order.

Scope of the Order

Imports covered by this order are shipments of potassium permanganate, an inorganic chemical produced in free–flowing, technical, and pharmaceutical grades. Potassium permanganate is currently classifiable under item 2841.61.00 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in this case are addressed in the ''Issues and Decision Memorandum'' (''Decision Memorandum'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated May 2, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Department Building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*, under the heading ''May 2005''. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on potassium permanganate from the PRC would likely lead to continuation or recurrence of dumping at the following percentage weighted–average margin:

Manufacturers/ Exporters/Producers	Weighted–Average Margin (Percent)
PRC–wide rate	128.94

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 2, 2005

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–2292 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–805]

Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination Not to Revoke in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests by S.C. Silcotub S.A. (Silcotub), a producer/exporter of subject merchandise and United States Steel Corporation (the petitioner), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain small diameter carbon and alloy seamless standard, line, and pressure pipe (seamless pipe) from Romania. The period of review (POR) is August 1, 2003, through July 31, 2004.

Silcotub informed the Department that it would not be participating in the review. Accordingly, we preliminarily determine that the application of adverse facts available (AFA) is warranted with respect to Silcotub. In addition, because Silcotub did not satisfy the requirement of selling subject merchandise at not less than normal value for a period of three consecutive years, we also preliminarily determine not to revoke the order in part.

EFFECTIVE DATE: May 10, 2005.

FOR FURTHER INFORMATION CONTACT: Janis Kalnins at (202) 482–1392 or John Holman at (202) 482–3683, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2000, the Department published an antidumping duty order on seamless pipe from Romania. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania*, 65 FR 48963 (August 10, 2000). On August 3, 2004, the Department published a notice of opportunity to request an administrative review of this order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 46496. In accordance with 19 CFR 351.213(b)(2), on August 31, 2004, Silcotub requested that the Department conduct an administrative review. In addition, in accordance with 19 CFR 351.222(e), Silcotub requested that the Department revoke the order with regard to Silcotub, pursuant to 19 CFR 351.222(b)(2). Silcotub subsequently withdrew its request for review on December 20, 2004. On August 31, 2004, the petitioner requested a review of Silcotub. On September 22, 2004, the Department published a notice of initiation of administrative review of the antidumping duty order on seamless pipe from Romania, covering the period August 1, 2003, through July 31, 2004. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 56745.

On October 19, 2004, the Department issued its questionnaire to Silcotub[1]. Responses to sections A through C of the questionnaire were received in December 2004.

On February 11, 2005, we published the final results in the most recently completed review, in which we disregarded below–cost sales by Silcotub. See *Notice of Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania*, 70 FR 7237 (February 11, 2005) (*Final Results*) and *Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania*, 70 FR 14648 (March 23, 2005) (*Amended Final*). Therefore, on February 14, 2005, in accordance with section 773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended (the Act), we requested that Silcotub complete section D of our October 19, 2004, questionnaire. On March 4, 2005, Silcotub informed the Department that it was withdrawing its participation in the administrative review and it withdrew its business–proprietary information from the record of the review.

Scope of the Order

The products covered by the order are seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and the API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of the order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of the order are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall–thickness, manufacturing process (hot finished or cold–drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to the order are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

Specifications, Characteristics, and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gases in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various ASME code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM

A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes is use in pressure piping systems by refineries, petrochemical plants, and chemical

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under review.

plants. Other applications are in power generation plants (electrical–fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or ''hollow profiles'' of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM

A–335, ASTM A–589, ASTM A–795, and API 5L specifications.

The scope of the order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the specific exclusions discussed below, and whether or not also certified to a non–covered specification. Standard, line, and pressure applications and the above–listed specifications are defining characteristics of the scope of the order. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, with the exception of the specific exclusions discussed below, such products are covered by the scope of the order.

Specifically excluded from the scope of the order is boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished OCTG are excluded from the scope of the order, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

With regard to the excluded products listed above, the Department will not instruct Customs and Border Protection (CBP) to require end–use certification until such time as the petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being used in a covered application. If such information is provided, we will require end–use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in covered applications as described above. For example, if, based on evidence provided by petitioner, we find a reasonable basis to believe or suspect that seamless pipe produced to the A–161 specification is being used in a standard, line or pressure application, we will require end–use certifications for imports of that specification. Normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and CBP purposes, our written description of the merchandise subject to the scope of this order is dispositive.

Use of Facts Available

Pursuant to sections 776(a)(1) and (2) of the Act, if necessary information is not available on the record or if an interested party or any other person (A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use, subject to section 782(d) of the Act, the facts otherwise available in reaching the applicable determination. In this case, Silcotub's decision not to participate in the review constitutes a withholding of information requested by the Department, pursuant to section 776(a)(2)(A) of the Act (*i.e.*, its business–proprietary sales and cost–of-production information), necessary for the Department to conduct an accurate antidumping analysis. Without Silcotub's business–proprietary sale–specific information and, in a review such as this where the Department has reasonable grounds to believe or suspect that sales of the foreign like product were made at prices at less than the cost of production (see *Final Results*), the Department is unable to determine the reliability of sales prices in the home market and whether they form an appropriate basis for determining normal value. As a result of Silcotub's March 4, 2005, withdrawal of its business–proprietary sales information and its failure to report its actual cost of production for the foreign like product and the constructed–value information for subject merchandise, the Department is unable to calculate an accurate dumping margin.

By withdrawing from the review and failing to provide the information requested, Silcotub has also impeded the review process because the Department has insufficient information upon which it can conduct its review. See section 776(a)(2)(C) of the Act. Therefore, the Department must resort to facts otherwise available in reaching the applicable determination. Absent a sufficient response on the record from the respondent, sections 782(d) and (e) do not apply.

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information (see also the Statement of Administrative Action (SAA), accompanying the Uruguay Round Agreements Act (URAA), H. Doc. No. 103–316 at 870). By refusing to provide its cost–of-production information and withdrawing its business–proprietary sales information, Silcotub has failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, the Department has determined that an adverse inference is warranted with respect to Silcotub.

In selecting an AFA rate, the Department's practice has been to assign respondents which fail to cooperate with the Department the highest margin determined for any party in the less–than-fair–value (LTFV) investigation or in any administrative review. See *Sigma Corp.* v. *United States*, 117 F.3d 1401,1411 (Fed. Cir. 1997). As such, we have preliminarily assigned Silcotub an AFA rate of 15.15 percent which is the

LTFV weighted–average margin calculated for Silcotub during the original investigation. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania*, 65 FR 48963 (August 10, 2000).

Section 776(c) of the Act provides that, when the Department relies on the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA clarifies that the final determination concerning the subject merchandise is ''secondary information'' and states that ''corroborate'' means to determine that the information used has probative value. See SAA at 870. To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information to be used.

As discussed in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. Unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive calculated dumping margins; the only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as AFA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. We also find that this rate, calculated from a prior segment of the proceeding, is relevant. The data upon which the Department relied in calculating the 15.15 rate in the LTFV investigation was that of Silcotub and Sota Communication Company. During the period of investigation, Silcotub produced the product which Sota Communication Company sold to the United States. Therefore, we examined for the LTFV investigation Silcotub's factor–of-production information in our calculation of the 15.15 percent rate. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania*, 65 FR 5594 (February 4, 2000).

Furthermore, there is no information on the record that calls into question the validity of this rate. Therefore, we find that this rate is corroborated to the extent practicable. Also, we find that this rate is sufficiently high as to reasonably ensure that Silcotub does not obtain a more favorable result by failing to cooperate. Accordingly, we determine that the rate of 15.15 percent, the highest weighted–average margin determined for any firm during any segment of this proceeding, is in accordance with the requirements of section 776(c) of the Act.

No Revocation in Part

In accordance with 19 CFR 351.222(e)(1), on August 31, 2004, Silcotub submitted a request that the Department revoke the order in part on seamless pipe from Romania with respect to its sales. We preliminarily determine that the request from Silcotub does not meet all of the criteria under 19 CFR 351.222(e)(1). In the immediately preceding review, Silcotub did not receive a zero or *de minimis* margin. See *Amended Final*. Therefore, Silcotub did not meet the requirement of selling the subject merchandise at not less than normal value for a period of three consecutive years. See 19 CFR 351.222(b)(1)(i)(A). Thus, Silcotub is not eligible for consideration for revocation, and we preliminarily determine not to revoke the order with respect to Silcotub's sales of seamless pipe to the United States.

Preliminary Results of Review

As a result of our review, covering the period August 1, 2003, through July 31, 2004, we preliminarily determine the dumping margin for Silcotub to be as follows:

Manufacturer/Exporter	Margin (percent)
S.C. Silcotub S.A.	15.15

Any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held approximately 37 days after the publication of this notice. Issues raised in hearings will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Parties are also requested to submit such arguments, and public versions thereof, with an electronic version on a diskette.

Upon publication of the final results of this review, the Department will instruct CBP to assess antidumping duties on all appropriate entries. Because we are applying AFA to all exports of subject merchandise produced or exported by Silcotub, we will instruct CBP to assess the final percentage margin against the entered customs values on all applicable entries during the period of review.

Further, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of seamless pipe from Romania entered, or withdrawn, from warehouse, for consumption on or after the publication date of the final results, as provided for by section 751(a)(2)(C) of the Act: (1) The cash–deposit rate for Silcotub will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered by this review, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered by this review, a prior review, or the original LTFV investigation but the manufacturer is, the cash- deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash–deposit rate will be 13.06 percent, the all–others rate established in the prior administrative review. See *Final Results* at 70 FR 7239. These cash–deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 3, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–2242 Filed 5–9–05; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A–351–826

Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from V&M do Brasil, S.A., the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on small diameter seamless carbon and alloy steel standard, line and pressure pipe from Brazil (A–351–826). This administrative review covers imports of subject merchandise from V&M do Brasil, S.A. (VMB). The period of review (POR) is August 1, 2003, through July 31, 2004.

We preliminarily determine that sales of subject merchandise by VMB have been made at less than normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries based on the difference between the constructed export price (CEP) and the NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: 1) a statement of the issues, 2) a brief summary of the argument, and 3) a table of authorities.

EFFECTIVE DATE: May 10, 2005.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Patrick Edwards, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–0193 or (202) 482–8029, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1995, the Department published the antidumping duty order on small diameter seamless carbon and alloy steel standard, line and pressure pipe (seamless line and pressure pipe) from Brazil. *See Notice of Antidumping Duty Order: Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil*, 60 FR 39707 (August 3, 1995). On August 1, 2004, the Department published the opportunity to request administrative review of, *inter alia*, seamless line and pressure pipe from Brazil for the period August 1, 2003, through July 31, 2004. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 46496 (August 3, 2004).

In accordance with 19 CFR 351.213(b)(1), on August 31, 2004, both VMB and United States Steel Corporation (US Steel), the petitioner, requested that we conduct an administrative review of VMB's sales of the subject merchandise. On September 22, 2004, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period August 1, 2003, through July 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 56745 (September 22, 2004).

On October 2, 2004, the Department issued its antidumping duty questionnaire to VMB. VMB submitted its response to Section A of the questionnaire (Section A Response) on November 5, 2004, and the responses to Sections B and C (Sections B and C Response) on November 19, 2004. The Department issued a supplemental questionnaire for all three responses on January 13, 2005 and received VMB's response on February 7, 2005. VMB submitted its response to Section D of the questionnaire on December 6, 2004, along with supplemental information on December 9, 2004. On March 18, 2005, the Department issued a supplemental questionnaire regarding VMB's Section D response. On March 23, 2005, the Department issued a second supplemental questionnaire to VMB pertaining to VMB's February 7, 2004, supplemental response for Sections A, B, and C. The Department issued a third supplemental questionnaire to VMB regarding the company's reported home market interest revenue on March 31, 2005. VMB submitted its responses to these three supplemental questionnaires on April 11, 2005.

Period of Review

The period of review is August 1, 2003, through July 31, 2004.

Scope of the Order

The products covered by the order are seamless pipes produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this order, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross–section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot–finished or cold–drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non–standard wall thickness are commonly referred to as tubes.

The seamless pipes subject to this antidumping duty order are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS). The following information further defines the scope of this order, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas, and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM standard A–106 may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (''ASME'') code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME

codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipelines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent ASTM A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple–certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple–certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical–fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non–covered specification. Standard, line and pressure applications and the above–listed specifications are defining characteristics of the scope of this order. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–335, ASTM A–106, ASTM A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this order.

Specifically excluded from this order are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–335, ASTM A–106, ASTM A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished oil country tubular goods (''OCTG'') are excluded from the scope of this order, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this order are redraw hollows for cold–drawing when used in the production of cold–drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Fair Value Comparisons

To determine whether VMB made sales of seamless standard, line and pressure pipe to the United States at less than fair value, we compared the CEP to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to monthly weighted–average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by VMB covered by the descriptions in the ''Scope of the Order'' section of this notice to be foreign like products for the purpose of determining appropriate product comparisons to VMB's U.S. sales of the subject merchandise.

We have relied on the following six criteria to match U.S. sales of the subject merchandise to sales in Brazil of the foreign like product: product specification, manufacturing process (cold–finished or hot–rolled), outside diameter, schedule, surface finish and end finish.

Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's October 2, 2004, questionnaire.

Constructed Export Price

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by, or for the account of, the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d).

In the instant review, VMB sold subject merchandise through an affiliated company, Vallourec & Mannesmann Tubes Corporation (VM Corp.) of Houston, Texas. VMB reported all of its U.S. sales of subject merchandise as CEP transactions. After reviewing the evidence on the record of this review, we have preliminarily determined that VMB's transactions are classified properly as CEP sales because these sales occurred in the United States and were made through its U.S. affiliate to an unaffiliated buyer. Such a determination is consistent with section 772(b) of the Act and the U.S. Court of Appeals for the Federal Circuit's decision in *AK Steel Corp. et al. v. United States*, 226 F.3d 1361, 1374 (Fed. Cir. 2000) (*AK Steel*). In *AK Steel*, the Court of Appeals examined the definitions of EP and CEP, noting ''the plain meaning of the language enacted by Congress in 1994, focuses on where the sale takes place and whether the foreign producer or exporter and the U.S. importer are affiliated, making these two factors dispositive of the choice between the two classifications.'' *AK Steel* at 1369. The court declared, ''... the critical differences between EP and CEP sales are whether the sale or transaction takes place inside or outside the United States and whether it is made by an affiliate,'' and noted the phrase ''outside the United States'' had been added to the 1994 statutory definition of EP. *AK Steel* at 1368–70. Thus, the classification of a sale as either EP or CEP depends upon where the contract for sale was concluded (*i.e.*, in or outside the United States) and whether the foreign producer or exporter is affiliated with the U.S. importer.

For these CEP sales transactions, we calculated price in conformity with section 772(b) of the Act. We based CEP on the packed, delivered duty–paid prices to an unaffiliated purchaser in the United States. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling and U.S. customs duties. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including imputed credit expenses and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Normal Value

A. Home Market Viability

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared VMB's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because VMB's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined the home market was viable. See Section A Response, at Exhibit 1.

B. Cost of Production Analysis

In the most recently completed segment, the Department determined that VMB made sales in the home market at prices below its cost of production (COP) and, therefore, excluded such sales from its calculation of NV. *See Preliminary Results of Antidumping Duty Administrative Review: Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil*, 69 FR 54125 (September 7, 2004). The Department's affirmative findings of sales–below-cost in the preliminary results of the prior period review did not change in the final results. Therefore, the Department has reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that VMB made sales in the home market at prices below the COP for this POR. As a result, in accordance with section 773(b)(1) of the Act, we examined whether VMB's sales in the home market were made at prices below the COP.

In accordance with section 773(b)(3) of the Act, we calculated the weighted–average COP for each model based on the sum of VMB's material and fabrication costs for the foreign like product, plus amounts for selling expenses, general and administrative expenses (G&A), interest expenses and packing costs. The Department relied on the COP data reported by VMB, except as noted below:

1. We revised the total cost of manufacturing (TOTCOM) to reflect the higher market price of charcoal, provided by a home market affiliate, rather than the transfer price or COP in accordance with section 773(f)(3) of the Act.
2. We revised VMB's reported TOTCOM by recalculating the correction factor (i.e., INDCOR) by allocating certain costs related to subject merchandise over the cost of goods sold (COGS) of subject merchandise and allocating costs related to both subject and non–subject over the COGS of all products.
3. We revised the G&A expense ratio to exclude dividends received and the reversal of a provision for depreciation relating to prior periods.

For further details regarding these adjustments, see the Department's ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results V&M do Brasil, S.A.'' (COP Memorandum), dated May 3, 2005.

We compared the weighted–average COP figures to the home market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below COP. On a product–specific basis, we compared the COP to home market prices net of any applicable billing adjustments, indirect taxes (ICMS, IPI, COFINS and PIS), and any applicable movement charges.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made in substantial quantities within an extended period of time, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of VMB's home market sales of a given model were at prices below the COP, we did not disregard any below–cost sales of that model because we determined that the below–cost sales were not made within an extended period of time in ''substantial quantities.'' Where 20 percent or more of VMB's home market sales of a given model were at prices less than COP, we disregarded the below–cost sales because: (1) they were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted–average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost test for VMB revealed that for home market sales of certain models, less than 20 percent of the sales of those models were at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for certain models, more than 20 percent of the home market sales of those models were sold at prices below COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below–cost sales from our analysis and used the remaining above–cost sales as the basis for determining NV.

C. Price–to-Price Comparisons

We matched all U.S. sales to NV. We calculated NV based on prices to unaffiliated customers. We adjusted gross unit price for billing adjustments, interest revenue, indirect taxes, and the per–unit value of any post–transaction complimentary invoices (or credit notes) that were issued to adjust for any errors in the originating invoice. We made deductions, where appropriate, for foreign inland freight, insurance and warehousing, pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, as well as for differences in circumstances of sale (COS), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses, warranty expenses, and commissions. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent

practicable, we determine NV based on sales in the home market at the same level of trade (LOT) as the export transaction. The NV LOT is that of the starting–price sales in the comparison market. For CEP, it is the level of the constructed sale from the exporter to the importer. We consider only the selling activities reflected in the U.S. price after the deduction of expenses incurred in the United States and CEP profit under section 772(d) of the Act. *See Micron Technology Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. We analyze whether different selling activities are performed, and whether any price differences (other than those for which other allowances are made under the Act) are shown to be wholly or partly due to a difference in LOT between the CEP and NV. Under section 773(a)(7)(A) of the Act, we make an upward or downward adjustment to NV for LOT if the difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined. Finally, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP, but the data available do not provide an appropriate basis to determine a LOT adjustment, we reduce NV by the amount of indirect selling expenses incurred in the foreign comparison market on sales of the foreign like product, but by no more than the amount of the indirect selling expenses incurred for CEP sales. *See* section 773(a)(7)(B) of the Act (the CEP offset provision).

In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997). If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain–on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000). In the present review, VMB claimed that there was no LOT in the home market comparable to the LOT of the CEP sales, and requested a CEP offset. *See* Section A Response at A–25.

VMB claimed two LOTs in the home market based on distinct channels of distribution to two categories of customers: distributors and end–users. We examined the reported selling functions and found that VMB's home market selling functions for all customers include sales forecasting, planning, order processing, general selling functions performed by VMB sales personnel, sales and marketing support, technical assistance and provision for warranties. VMB also claimed packing as a selling function performed for all customers. *See* Section A Response at Exhibit 11. However, we make a separate COS adjustment for packing and do not consider this to be a selling function relevant to LOT.

VMB further reported several selling functions unique to each channel of distribution: sales and marketing support, personnel training, sales promotion and research are functions involved only in sales to distributors. In addition, we recognize warehousing as a necessary step in VMB's sales process to distributors evidenced by VMB's home market sales listing, which shows that warehousing was predominantly provided on sales to distributors. In contrast, advertising in trade magazines, procurement services and after–sales services are provided solely to end–users. VMB also reported the selling function of inventory maintenance with regard to sales to one end–user customer, for which a small percentage of VMB sales are transferred to unaffiliated warehouses from which this customer regularly extracts merchandise on a just–in-time (JIT) basis, resulting in an inventory maintenance expense for VMB. *See* Section A Response at A–20. *See also* Section B Response at B–51. VMB also claimed the payment of commissions on sales to some end–users as a selling function. However, we make a separate COS adjustment for commissions and do not consider this as a selling function in our LOT analysis. In addition, the record demonstrates that VMB acts as a service center in some of its sales transactions with end–users (*i.e.*, after–sales services). Such was the case noted by the Department in the prior review of seamless line and pressure pipe from Brazil. *See* Section A Response at Exhibits 9 and 11; *see also Notice of Final Results of Antidumping Duty Administrative Review: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil*, 70 FR 7243 (February 11, 2005), and attached Decision Memorandum at comment 2. Based upon the above analysis, we preliminarily conclude that the selling functions for the reported home market channels of distribution are sufficiently dissimilar to consider them as two LOTs.

Because VMB reported that all of its U.S. sales are CEP sales made through one channel of distribution to its U.S. affiliate, we preliminarily agree with VMB's claim that there is only one LOT in the U.S. market. We examined the claimed selling functions for VMB's CEP sales, (*i.e.*, the selling functions performed for the sale to VM Corp.) which include sales forecasting, order processing, delivery of the merchandise, and warranties. *See* Section A Response at Exhibit 11; *see also* VMB's Supplemental A–C Questionnaire Response dated February 7, 2005, at page 35. VM Corp. handles the remaining selling functions of strategic planning, sales negotiations and promotion, and customer service involved in the CEP sales to the unaffiliated customer in the United States.

Pursuant to 19 CFR 351.412(f) of the Department's regulations, we may determine that sales in the home and export markets were not made at the same LOT, and that it is not possible to determine whether the difference affects price comparability. We compared VMB's selling functions in the home market with the selling functions for U.S. sales to its affiliate, VM Corp., and carefully considered the evidence on the record. We preliminarily find that VMB's selling functions for sales to the United States, namely, sales forecasting, order processing, delivery and warranties, are less numerous than VMB's selling functions for either level of trade of its home market sales.

Furthermore, in the home market, the chain of distribution is further from the factory. For example, many sales are made to distributors and may go through unaffiliated warehouses; in contrast, the CEP LOT is determined by the selling function performed at the point of sale to the affiliated importer and, thus, the CEP LOT is at a less advanced stage of distribution.

We therefore examined whether a LOT adjustment or CEP offset may be appropriate. We preliminarily find that VMB's home market sales to distributors are at a more advanced stage of marketing than its CEP sales and, further, that there is no LOT in the home market comparable to the CEP LOT. Additionally, we do not have record information that would allow us to examine pricing patterns based on VMB's sales of non–subject merchandise, and there are no other respondents or other record information

on which such an analysis could be based.

Accordingly, because the data available do not provide an appropriate basis for making a LOT adjustment, but the LOT in the home market is at a more advanced stage of distribution than the LOT of the CEP transactions, we preliminarily determine that a CEP offset adjustment is appropriate, in accordance with section 773(a)(7)(B) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted–average dumping margin for the period August 1, 2003, through July 31, 2004, to be as follows:

Manufacturer / Exporter	Margin (percent)
V&M do Brasil, S.A.	18.68

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument: (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. An interested party may request a hearing within 30 days of publication. *See* section 351.310(c) of the Department's regulations. Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date. The Department will issue the final results of these preliminary results, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to section 351.212(b) of the Department's regulations, the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company–specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, any previous reviews, or the LTFV investigation, the cash deposit rate will be 124.94 percent, the ''all others'' rate established in the LTFV investigation. *See Antidumping Duty Order and Amended Final Determination: Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil*, 60 FR 39707 (August 3, 1995). These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 3, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–2297 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–821–801)

Solid Urea from the Russian Federation; Final Results of the Expedited Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 1, 2004, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty (''AD'') order on solid urea from the Russian Federation pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). See Initiation of Five-year (Sunset) Reviews, 69 FR 58890 (October 1, 2004). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested parties and inadequate responses filed on behalf of respondent interested parties, the Department conducted an expedited sunset review. As a result of this review, the Department finds that revocation of the AD order would likely lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: May 10, 2005.

FOR FURTHER INFORMATION CONTACT: Kelly Parkhill, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3791.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2004, the Department initiated a sunset review of the AD order on solid urea from the Russian Federation pursuant to section 751(c) of the Act. *See Initiation of Five-year (Sunset) Reviews*, 69 FR 58890 (October 1, 2004). The Department received a Notice of Intent to Participate from the following domestic interested parties: the Ad Hoc Committee of Domestic Nitrogen Producers, (consisting of CF Industries, Inc. and PCS Nitrogen Fertilizer, LP), and Agrium U.S., Inc.

(collectively ''the domestic interested parties'') within the deadline specified in section 351.218(d)(1)(i) of the Department's Regulations (''Sunset Regulations''). The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act, as domestic manufacturers of urea or a coalition whose members are engaged in the production of urea in the United States. The Department received a complete substantive response collectively from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department received inadequate substantive responses from the respondent parties.[1] As a result, pursuant to section 751(c)(5)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of this order.

Scope of the Order

Merchandise covered by this order is solid urea, a high–nitrogen content fertilizer which is produced by reacting ammonia with carbon dioxide. The product is currently classifiable under the Harmonized Tariff Schedules of the United States Annotated (''HTS'') item 3102.10.00.00. During previous reviews such merchandise was classified under item number 480.3000 of the Tariff Schedules of the United States. The HTS item number is provided for convenience and customs purposes. The written description remains dispositive as the scope of the product coverage.

Analysis of Comments Received

All issues raised in this review are addressed in the Decision Memorandum accompanying this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the margins likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*, under the heading ''May 2005.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on solid urea from the Russian Federation would be likely to lead to continuation or recurrence of dumping at the rate listed below:

Producers/Exporters	Margin (percent)
Phillip Brothers, Ltd./ Phillip Brothers, Inc. ..	53.23
All Others	68.26

Notification regarding Administrative Protective Order:

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are publishing this notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 2, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–2289 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–DS–S

[1] On December 10, 2004, both respondent and domestic interested parties filed comments on the Department's adequacy determination in this sunset review. The Department's consideration of these comments are addressed in the Issues and Decision Memorandum (''Decision Memorandum'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated May 2, 2005, which is hereby adopted by this notice.

DEPARTMENT OF COMMERCE

International Trade Administration

(C–351–504)

Certain Iron Construction Castings from Brazil; Five-year (''Sunset'') Review of Countervailing Duty Order; Final Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Summary: On October 1, 2004, the Department of Commerce (''the Department'') initiated a sunset review of the countervailing duty order on certain iron construction castings (''iron castings'') from Brazil. On the basis of the notice of intent to participate, and no substantive response filed on behalf of the domestic interested parties and no response from respondent interested parties, the Department conduced an expedited sunset review. As a result of this review, the Department finds that revocation of the countervailing duty order would likely lead to continuation or recurrence of countervailable subsidies at the levels listed below in the section entitled ''Final Results of Review''.

EFFECTIVE DATE: May 10, 2005.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2004, the Department initiated a sunset review of the countervailing duty order on iron castings from Brazil pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[1] The Department received a Notice of Intent to Participate on behalf of Deeter Foundry, Inc., East Jordan Iron Works, Inc., LeBaron Foundry, Inc., Leed Foundry, Inc., Municipal Castings, Inc., Neenah Foundry Company, Tyler Pipe Company, and U.S. Foundry & Manufacturing Co. (collectively, ''domestic interested parties''), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. Domestic interested parties claimed interested party status under section 771(9)(C) of the Act as U.S. producers of the subject merchandise.

We received a complete response from the domestic interested parties within the deadline specified in the Department's regulations under section 351.218(d)(3)(i). However, we did not receive responses from any respondent interested parties as required in section 351.218(d)(3)(i) of the Departments regulations. As a result of receiving no responses from respondent interested parties, the Department conducted an expedited sunset review pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations.

Scope of the Order

The merchandise covered by the countervailing duty order consists of certain heavy iron construction castings from Brazil, limited to manhole covers, rings, and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary

[1] *See Initiation of Five-Year (''Sunset'') Reviews*, 69 FR 58890 (October 1, 2004.)

systems, classifiable as heavy castings under Harmonized Tariff Schedule (''HTS'') item number 7325.10.0010. The HTS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.

Analysis of Comments Received

All issues raised in this case are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated May 2, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memo, which is on file in room B–099 of the main Department Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov, under the heading ''May 2005.'' The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the countervailing duty order on iron castings from Brazil would likely lead to continuation or recurrence of countervailable subsidies at the following percentage weighted–average percentage margins:

Manufacturers/Exporters/Producers	Weighted–Average Margin (Percent)
Country–wide rate	1.06

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 2, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–2294 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

C–122–815

Pure Magnesium and Alloy Magnesium from Canada: Preliminary Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada for the period January 1, 2003, through December 31, 2003. We preliminarily find that certain producers/exporters have received countervailable subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct U.S. Customs and Border Protection to assess countervailing duties as detailed in the ''Preliminary Results of Reviews'' section of this notice. Interested parties are invited to comment on these preliminary results (*see* the ''Public Comment'' section of this notice).

EFFECTIVE DATE: May 10, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–1174.

SUPPLEMENTARY INFORMATION:

Case History

On August 31, 1992, the Department of Commerce (''the Department'') published in the **Federal Register** the countervailing duty orders on pure magnesium and alloy magnesium from Canada (*see Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 39392 (''*Magnesium Investigation*'')). On August 3, 2004, the Department published a notice of ''Opportunity to Request Administrative Review'' of these countervailing duty orders (*see Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 46496). We received timely requests for review from Norsk Hydro Canada, Inc. (''NHCI'') and from the petitioner, U.S. Magnesium, LLC for reviews of NHCI and Magnola Metallurgy, Inc. (''Magnola''). On September 1, 2004, we received a request for review from Magnola. On September 7, 2004, we asked Magnola to explain the circumstances which led to its late filing. On September 10, 2004, Magnola responded to the Department's request and explained its circumstances. On September 16, 2004, the Department rejected Magnola's September 1, 2004, request for review, but the review with respect to Magnola continued based on the request of the petitioner. On September 22, 2004, we initiated these reviews covering shipments of subject merchandise from NHCI and Magnola (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 56745).

On October 6, 2004, we issued countervailing duty questionnaires to NHCI, Magnola, the Government of Québec (''GOQ''), and the Government of Canada (''GOC''). We received questionnaire responses from GOQ on November 8, 2004, from GOC and Magnola on November 12, 2004, and from NHCI on December 22, 2004.

Scope of the Orders

The products covered by these orders are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes.

The pure and alloy magnesium subject to the orders is currently classifiable under items 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written descriptions of the merchandise subject to the orders are dispositive.

Secondary and granular magnesium are not included in the scope of these orders. Our reasons for excluding granular magnesium are summarized in *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada*, 57 FR 6094 (February 20, 1992).

Period of Review

The period of review (''POR'') for which we are measuring subsidies is January 1, 2003, through December 31, 2003.

Subsidies Valuation Information

Discount rate: As noted below, the Department preliminarily finds that NHCI and Magnola benefitted from countervailable subsidies during the POR. In accordance with 19 CFR 351.524(d)(3), it is the Department's preference to use a company's long–term, fixed–rate cost of borrowing in the same year a grant was approved as the discount rate. However, where a company does not have any debt that can be used as an appropriate basis for a discount rate, the Department's next preference is to use the average cost of long–term fixed–rate loans in the country in question. In the investigation and previous reviews, the Department determined that NHCI received and benefitted from countervailable subsidies from the Article 7 grant from the Québec Industrial Development Corporation (''Article 7 grant''). *See Magnesium Investigation*. In line with the Department's practice, we used NHCI's cost of long–term, fixed–rate debt in the year in which the Article 7 grant was approved as the discount rate for purposes of calculating the benefit pertaining to the POR.

In the *Final Results of Pure Magnesium from Canada: Notice of Final Results of Countervailing Duty New Shipper Review* (''*New Shipper Review*''), 68 FR 22359 (April 28, 2003), we found that Magnola benefitted from grants under the Emploi–Québec Manpower Training Measure Program (''MTM Program''). Magnola did not have any long–term fixed–rate debt during the years the grants were approved. Therefore, consistent with our treatment of these grants in previous administrative reviews, we continue to use long–term commercial bond rates for purposes of calculating the benefit attributable to the POR.

Allocation period: In the investigations and previous administrative reviews of these cases, the Department used as the allocation period for non–recurring subsidies the average useful life (''AUL'') of renewable physical assets in the magnesium industry as recorded in the Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (''the IRS tables''), *i.e.*, 14 years. Pursuant to section 351.524(d)(2) of the Department's regulations, we use the AUL in the IRS tables as the allocation period unless a party can show that the IRS tables do not reasonably reflect either the company–specific or country–wide AUL for the industry. During this review, none of the parties contested using the AUL reported for the magnesium industry in the IRS tables. Therefore, we continue to allocate non–recurring benefits over 14 years.

For non–recurring subsidies, we applied the ''0.5 percent expense test'' described in section 351.524(b)(2) of the Department's regulations. In this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total or export, as appropriate) in that year. If the amount of the subsidies is less than 0.5 percent of sales, the benefits are expensed in their entirety, in the year of receipt, rather than allocated over the AUL period.

Analysis of Programs

I. Programs Preliminarily Determined to Confer Countervailable Subsidies

A. Article 7 Grant from the Québec Industrial Development Corporation (''SDI'')

SDI (*Société de Développement Industriel du Québec*) administers development programs on behalf of the GOQ. SDI provides assistance under Article 7 of the SDI Act in the form of loans, loan guarantees, grants, assumptions of costs associated with loans, and equity investments. This assistance is provided for projects that are capable of having a major impact upon the economy of Québec. Article 7 assistance greater than 2.5 million dollars must be approved by the Council of Ministers and assistance over 5 million dollars becomes a separate budget item under Article 7. Assistance provided in such amounts must be of ''special economic importance and value to the province.'' (*See Magnesium Investigation*, 57 FR at 30948.)

In 1988, NHCI was awarded a grant under Article 7 to cover a large percentage of the cost of certain environmental protection equipment. In the *Magnesium Investigation*, the Department determined the Article 7 grant confers a countervailable subsidy within the meaning of section 771(5) of the Tariff Act of 1930, as amended (''the Act''). The grant is a direct transfer of funds from the GOQ bestowing a benefit in the amount of the grant. We previously determined that NHCI received a disproportionately large share of assistance under this program, and, on this basis, we determined that the Article 7 grant was limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of section 771(5A)(D)(iv) of the Act. In these reviews, neither the GOQ nor NHCI has provided new information which would warrant reconsideration of this determination.

In the *Magnesium Investigation*, the Department determined that the Article 7 assistance received by NHCI constituted a non–recurring grant because it represented a one–time provision of funds. In the current reviews, no new information has been placed on the record that would cause us to depart from this treatment. To calculate the benefit, we performed the expense test, as explained in the ''Allocation period'' section above, and found that the benefits approved were more than 0.5 percent of NHCI's total sales. Therefore, we allocated the benefits over time. We used the grant methodology as described in section 351.524(d) of the Department's regulations to calculate the amount of benefit allocable to the POR. We then divided the benefit attributable to the POR by NHCI's total sales of Canadian–manufactured products in the POR. On this basis, we preliminarily determine the countervailable subsidy from the Article 7 grant to be 1.21 percent *ad valorem* for NHCI.

B. Emploi–Québec Manpower Training Program

The MTM Program is a labor–focused program designed to improve and develop the labor market in the region of Québec. It is implemented by the Emploi–Québec (''E–Q''), a labor unit within Québec's Ministry of Employment and Solidarity (*Ministére de L'Emploi et de la Solidarité sociale*), and funded by the GOQ. The Program provides grants to companies in Québec that have training programs approved by the E–Q. Up to 50 percent of a company's training expenses, normally over a period of 24 months, are reimbursed under the MTM program if the training programs satisfy the E–Q's five policy objectives of job preparation, job integration, job management, job stabilization, and job creation.

Once the five objectives are met, companies with small–scale projects are eligible to receive reimbursement of 50 percent of their labor training expenses, up to a maximum reimbursement of $100,000. Major economic projects are required to: (1) create either 50 jobs or 100 jobs in 24 months, depending on whether the company is a new company or a company that has been in operation; (2) have the approval of the Ministry's *Commission des partenaires du marche du travail*; and (3) agree to close monitoring by the E–Q. The $100,000 reimbursement limit does not apply to major economic projects. (*See New Shipper Review* and accompanying

Issues and Decision Memorandum at ''Analysis of Programs.'')

In 1998 and 2000, the E–Q approved grants to reimburse 50 percent of Magnola's training expenses. Magnola received the MTM grants in 1999, 2000 and 2001. In the *New Shipper Review*, the Department found that the MTM program assistance received by Magnola, constituted countervailable benefits within the meaning of section 771(5) of the Act. The assistance is a direct transfer of funds from the GOQ bestowing a benefit in the amount of the grants. We also found Magnola received a disproportionately large share of assistance under the MTM program and, on this basis, we found the grants to be limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of section 771(5A)(D)(iv) of the Act. In accordance with 19 CFR 351.524(c)(1) and (2), we treated the grants as non–recurring.

In the current reviews, no new information has been provided that would warrant reconsideration of these determinations. To calculate the benefit, we performed the expense test, as explained in the ''Allocation period'' section above, and found that the benefits approved were more than 0.5 percent of Magnola's total sales. Therefore, we allocated the benefits over time. We used the grant methodology as described in section 351.524(d) of the Department's regulations to calculate the amount of benefit allocable to the POR. We then divided the benefit attributable to the POR by Magnola's total sales in the POR. On this basis, we preliminarily find the net subsidy rate from the MTM program to be 5.40 percent *ad valorem* for Magnola.

II. Programs Preliminarily Determined To Be Not Used

We examined the following programs and preliminarily determine that neither NHCI nor Magnola applied for or received benefits under these programs during the POR:

- St. Lawrence River Environment Technology Development Program
- Program for Export Market Development
- The Export Development Corporation
- Canada–Québec Subsidiary Agreement on the Economic Development of the Regions of Québec
- Opportunities to Stimulate Technology Programs
- Development Assistance Program
- Industrial Feasibility Study Assistance Program
- Export Promotion Assistance Program
- Creation of Scientific Jobs in Industries
- Business Investment Assistance Program
- Business Financing Program
- Research and Innovation Activities Program
- Export Assistance Program
- Energy Technologies Development Program
- Transportation Research and Development Assistance Program

III. Program Previously Determined To Be Terminated

- Exemption from Payment of Water Bills

Adjustment of Countervailing Duty Cash Deposit Rate

In its December 3, 2004, submission, NHCI contends that the Department should set the countervailing duty cash deposit rate to zero for pure and alloy magnesium produced by NHCI in Canada and entered on or after January 1, 2005. NHCI asserts that, as of that date, the only subsidy at issue for NHCI will have been fully amortized, and there will be no legal basis or need for collecting cash deposits from NHCI. On December 9, 2004, the GOQ made a submission supporting NHCI's arguments. On December 14, 2004, the petitioner argued that the Department should deny NHCI's request and complete the administrative review before setting future cash deposit rates.

On December 14, 2004, the Department responded to NHCI's request by stating that we do not have the authority to modify deposit rates outside of the administrative review process. Therefore, we are not changing the deposit rate for NHCI effective January 1, 2005.

Preliminary Results of Reviews

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to these administrative reviews. For the period January 1, 2003, through December 31, 2003, we preliminarily find the net subsidy rates for producers/exporters under review to be those specified in the chart shown below. If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct U.S. Customs and Border Protection (''CBP'') to assess countervailing duties at these net subsidy rates. We will disclose our calculations to the interested parties in accordance with section 351.224(b) of the Department's regulations.

NET SUBSIDY RATE: PURE MAGNESIUM

Manufacturer/Exporter	Percent
Norsk Hydro Canada, Inc.	1.21 percent
Magnola Metallurgy, Inc.	5.40 percent

NET SUBSIDY RATE: ALLOY MAGNESIUM

Manufacturer/Exporter	Percent
Norsk Hydro Canada, Inc.	1.21 percent
Magnola Metallurgy, Inc.	5.40 percent

Cash Deposit Instructions

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties at the rate specified on the f.o.b. value of all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

We will instruct CBP to continue to collect cash deposits for non–reviewed companies (except Timminco Limited, which was excluded from the orders during the investigations) at the most recent company–specific or country–wide rate applicable to the company. Accordingly, the cash deposit rate that will be applied to non–reviewed companies covered by these orders is that established in P*ure and Alloy Magnesium From Canada; Final Results of the Second (1993) Countervailing Duty Administrative Reviews*, 62 FR 48607 (September 16, 1997) or the company–specific rate published in the most recent final results of an administrative review in which a company participated. These rates shall apply to all non–reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of

publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. The Department will publish a notice of the final results of these administrative reviews within 120 days from the publication of these preliminary results.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 3, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–2296 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 10, 2005.

FOR FURTHER INFORMATION CONTACT: Katja Kravetsky at (202) 482–0108, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Tariff Act of 1930, as amended (the Act), requires that the Department of Commerce (the Department) make preliminary and final determinations during an administrative proceeding within specified time limits. *See, e.g.*, section 751(a) of the Act, 19 U.S.C. § 1675(a). The Act does not address the treatment of deadlines falling on a weekend, federal holiday, or day on which the Department is otherwise closed, *e.g.*, due to a weather emergency.

With respect to certain deadlines involving filings made with the Department, the agency's regulations clarify that where ''the applicable time limit expires on a non–business day, the Secretary will accept documents that are filed on the next business day.'' *See* 19 CFR 351.303(b); *see, also, Dofasco, Inc. v. United States*, 390 F.3d 1370, 1372 (Fed. Cir. 2004). With respect to deadlines for reaching administrative determinations, the Department's longstanding practice has been to apply a similar ''next business day'' rule, which recognizes the administrative reality that there are no employees present to make administrative determinations that fall due when the Department is closed. While this practice has never been challenged, the Department has concluded that it is appropriate to publicize this practice to interested parties.

Clarification of Statutory Deadlines

The Department hereby clarifies that where a statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed, the Department will continue its longstanding practice of reaching our determination on the next business day. We find that this clarification is consistent with federal practice. *See* Fed. R. Civ. P. 6(a); Fed R. App. P. 26(a); *see, also, Dofasco Inc.*, 390 F.3d at 1372.

Dated: April 29, 2005.

Joseph A. Spetrini,

Acting Assistant Sectretary for Import Administration.

[FR Doc. E5–2234 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 10, 2005.

SUMMARY: The Department of Commerce (the Department) hereby publishes a list of scope rulings completed between April 1, 2003, and December 31, 2004. In conjunction with this list, the Department is also publishing a list of requests for scope rulings and anticircumvention determinations pending as of December 31, 2004. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Bridgette Roy or Irina Itkin, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0160 or (202) 482–0656.

SUPPLEMENTARY INFORMATION:

Background

The Department's regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings. *See* 19 CFR 351.225(o). Our most recent ''Notice of Scope Rulings'' was published on June 19, 2003. *See* 68 FR 36770. The instant notice covers all scope rulings and anticircumvention determinations completed by Import Administration between April 1, 2003, and December 31, 2004, inclusive. It also lists any scope or anticircumvention inquiries pending as of December 31, 2004. As described below, subsequent lists will follow after the close of each calendar quarter.

Scope Rulings Completed Between April 1, 2003, and December 31, 2004

India

A–533–824, C–533–825: Polyethylene Terephthalate Film Sheet and Strip from India

Requestor: International Packaging Films, Inc.; tracing and drafting film is outside the scope of the order; August 25, 2003.

A–533–502: Certain Welded Carbon Steel Standard Pipes and Tubes from India

Requestor: Aruvil International, Inc.; welded carbon steel pipes that are galvanized and have a polyester powder coating are within the scope of the antidumping duty order; March 4, 2004.

Mexico

A–201–805: Circular Welded Non–Alloy Steel Pipe from Mexico

Requestor: Galvak S.A. de CV; mechanical tubing is outside of the order, some Galvak tubing marked as ASTM A–787 is not mechanical tubing; scope ruling November 19, 1998; re-determination affirmed by NAFTA panel June 7, 2004.

A–201–831: Prestressed Concrete Steel Wire Strand from Mexico

Requestors: American Spring Wire Corp., Insteel Wire Products Company, Sumiden Wire Products Corp., and Cablesa , S.A. de C.V.; 0.05 oz./sq. ft. zinc coated PC strand is within the scope of the order; June 16, 2004.

People's Republic of China

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Garden Ridge; nine candles six with a cheetah print (Styles 194735–A, 194736–A, 194768–A, 194735–C) and three with a zebra print (194735–D, 194736–D, 194768–D) are within the scope of the order; April 22, 2003.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Fleming International, Ltd.; three of Fleming's candles (B3922, B3966, and B3988) are not included in the scope of the order based on their vegetable wax content. However, one of

Fleming's candles (EP878) is within the scope of the order because it is composed of more than 98 percent paraffin wax; May 14, 2003.

A–570–827: Certain Cased Pencils from the People's Republic of China

Requestor: Barthco Trade Consultants; twist crayons are outside the scope of the order; May 22, 2003.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: For Your Ease Only; two gel candles are within the scope of the order; June 11, 2003.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: San Francisco Candle Company; three types of candles it imports (Style Numbers 71526, 71426, 17734, 17736, 213619, and 213449) are within the scope of the order; June 12, 2003.

A–570–803: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China

Requestor: Olympia Industrial Inc.; cast picks, with or without a handle, are within the scope of the order; September 22, 2003.

A–570–502: Iron Construction Castings from the People's Republic of China

Requestor: Westview Sales, Ltd.; imports of manhole frames and solid covers from the People's Republic of China are within the scope of the order; October 17, 2003.

A–570–502: Iron Construction Castings from the People's Republic of China

Requestor: Frank J. Martin Company; imports of cast iron full–flanged rings and certain cast iron gas lids from the People's Republic of China are outside the scope of the order; October 17, 2003.

A–570–506: Porcelain–on-Steel Cooking Ware from the People's Republic of China

Requestor: Target Corporation; certain enamel–clad beverage holders and dispensers are outside the scope of the order; October 29, 2003.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Avon Products, Inc.; five candles (PP239209, PP239091, PP238336–PUMPKIN, PP238336–GHOST, PP239217) are not included within the scope of the order based on the fact that these candles contain less than 50 percent paraffin wax; November 17, 2003.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Avon Products, Inc.; one candle (PP231051) is not included within the scope of the order based on the fact that this candle contains less than 50 percent paraffin wax; November 17, 2003.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Meijer, Inc.; five candles (''floating eyeball,'' ''eyeball,'' ''skull,'' ''BAT NOG,'' and ''jack o'lantern'' candles) are included within the scope of the order and one candle set (''Halloween floating'' candles) is not included within the scope of the order, because it is associated with a recognized holiday; December 22, 2003. (A diversified scope proceeding was opened with respect to two other candle sets (''MJ10300 Thin Candles'' and ''MJ 70140 Twinkle Thin Candle'')).

A–570–882: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China

Requestors: Cometals Division of Commercial Metals Company,Wester Mineralien SA (Pty) Ltd., and Polmineral Sp.zo.o.; crude brown aluminum oxide, in which particles with a diameter greater than 3/8 inch constitute at least 50 percent of the total weight of the entire batch, that is purchased from the People's Republic of China and then refined in a country other than the People's Republic of China is outside the scope of the order; February 3, 2004.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Hallmark Cards, Inc.; four candles (''dark green leaf with red berries,'' ''red maple leaf,'' ''blue 6–point star,'' and ''white dome'') are included within the scope; May 17, 2004.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Spectrum Brands; five candles (''Cutter Citronella'' candle, ''Cutter Holiday Basket'' candle, ''Cutter Triple Wick Citronella'' candle, ''Cutter Outdoorsman Citronella'' candle, and ''Cutter Weather–Proof Citronella'' candle) contain citronella oil and therefore are not included within the scope; May 20, 2004.

A–570–831: Fresh Garlic from the People's Republic of China

Requestor: Coppersmith Inc. and Amexim Inc.; certain garlic cloves in brine are within the scope of the order; June 25, 2004

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China

Requestor: Lifetime Hong Kong Ltd. and Lifetime Plastic Products Ltd.; table styles 4600 and 4606 are within the scope of the order; September 7, 2004.

A–570–827: Cased Pencils from the People's Republic of China

Requestor: Target Corporation; ''Hello Kitty Fashion Totes'' are outside the scope of the order; September 29, 2004.

A–570–827: Cased Pencils from the People's Republic of China

Requestor: Target Corporation; the ''Hello Kitty Memory Maker'' is outside the scope of the order; September 29, 2004.

A–570–827: Cased Pencils from the People's Republic of China

Requestor: Target Corporation; the ''Crayola the Wave'' is outside the scope of the order; September 29, 2004.

A–570–875: Non–Malleable Cast Iron Pipe Fittings from the People's Republic of China

Requestor: Thomas and Betts Corporation; certain electrical conduit fittings are within the scope of the order; November 5, 2004.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Old Hickory Candle company; five ''angel'' candles are included within the scope of the order; November 18, 2004.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Neatzit Israel International, Ltd.; a box of 44 ''Chanukah candles'' is included within the scope of the order; November 18, 2004.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Paperproducts Design, Inc.; ''Wine Cork'' and ''Champagne Cork'' candles are outside the scope of the order; November 22, 2004.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Globalshop, Inc.; ''Snowman'' candles are outside the scope of the order; November 24, 2004.

A–570–803: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China

Requestor: Olympia Industrial Inc.; the MUTT , which is a forged scraper, with or without a handle, is within the scope of the antidumping duty order; December 9, 2004.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Atico International USA, Inc.; ''Wax Icon,'' ''Santa Ornament,'' ''Candy Corn,'' and ''Christmas Pillar'' candles are all within the scope of the order; December 16, 2004.

A–570–848: Freshwater Crawfish Tailmeat from the People's Republic of China

Requestor: Coastal Foods, LLC; crawfish etouffee is outside the scope of the order; December 17, 2004.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Pacific Enterprise, LLC; three ''Chubby Palm Candles'' (item numbers 02717, 02724, and 02700) are outside the scope of the order; December 17, 2004.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Direct Scent, Inc.; two candles (item numbers 01G020 and 01G0073) are outside the scope of the order while one candle (item number 01G060) is within the scope of the order; December 17, 2004.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Wal–Mart Stores, Inc.; two candles sets (SC02–319 and SC02–320) and two candles (Styles SC02–325 and SC02–328) are included within the scope of the order; December 17, 2004.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Avon Products, Inc.; one candle (PPN 250246) is included within the scope of the order; December 21, 2004.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Dollar Tree Stores, Inc.; three candles (SKU 162394) are included within the scope of the order; December 22, 2004.

Republic of Korea

C–580–851: Dynamic Random Access Memory Semiconductors from the Republic of Korea

Requestor: ATI Technologies, Inc. (''ATI''); Mobility Radeon 9600 and Mobility Radeon 9700 visual processing units manufactured by ATI are outside the scope of the countervailing duty order; January 14, 2004.

C–580–851: Dynamic Random Access Memory Semiconductors from the Republic of Korea

Requestor: Self–initiated by the Department of Commerce; the Department concluded that products classified under subheadings 8517.30.5000, 8517.50.1000, 8517.50.5000, 8517.50.9000, 8517.90.3400, 8517.90.3600, 8517.90.3800, and 8517.90.4400 of the Harmonized Tariff Schedule of the United States are within the scope of the countervailing duty order; May 3, 2004.

Anti–circumvention Determinations Completed Between April 1, 2003, and December 31, 2004:

Italy

A–475–818 & C–475–819: Certain Pasta from Italy

Requestor: Self–initiated by the Department of Commerce; certain pasta produced in Italy by Pastificio Fratelli Pagani S.p.A. (Pagani) and exported to the United States in packages of greater than five pounds, subsequently repackaged in the United States into packages of five pounds or less, constitutes circumvention of the antidumping and countervailing duty orders; September 19, 2003.

Japan

A–588–824: Corrosion–Resistant Carbon Steel (''CRS'') Flat Products from Japan

Requestor: USS–POSCO Industries; imports of boron–added CRS products, falling within the physical dimensions outlined in the scope of the order, are not circumventing the order; June 5, 2003.

Scope Inquiries Terminated Between April 1, 2003, and December 31, 2004:

The People's Republic of China

A–570–827: Certain Cased Pencils from the People's Republic of China

Requestor: Designs by Skaffles Inc.; whether a stationary set is within the scope of the order; request withdrawn June 2, 2003.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Meijer, Inc. (''Meijer''); Diversified scope proceedings on Meijer's ''MJ10300 Thin Candles'' and ''MJ 70140 Twinkle Thin Candle'' were opened on May 24, 2004; terminated July 1, 2004.

A–570–803: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China

Requestor: Olympia Industrial Inc.; the requestor failed to request a scope ruling on a particular product; terminated July 29, 2004.

Scope Inquiries Pending as of December 31, 2004:

Brazil

A–351–832; C–351–833: Carbon and Certain Alloy Steel Wire Rod from Brazil

Requestors: Companhia Siderugica Belgo Mineira Participacao Industria e Comercio S.A. and B.M.P. Siderugica S.A.; whether grade 1080 tire cord quality wire rod and tire bead quality wire rod (1080 TCBQWR) is within the scope of the order; requested March 29, 2004.

India

A–533–808; A–533–810: Certain Stainless Steel Wire Rod from India

Requestor: Mukand; whether stainless steel bar that is manufactured in the United Arab Emirates from stainless steel wire rod imported from India is within the scope of the orders on stainless steel wire rod or stainless steel bar from India; requested May 14, 2003.

Japan

A–588–833: Certain Tin Mill Products from Japan

Requestor: Metal One America Inc.; whether certain tin mill products produced in Colombia from Japanese substrate are within the scope of the order; requested April 21, 2004.

People's Republic of China

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: New Spectrum; whether floating candles, assorted figurine candles, ''ball of gold rope'' candle, Christmas ornament candles, various candle sets, scented candles, and citronella ≥garden torch'' candles are within the scope of the order; requested March 29, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Home Interiors & Gifts, Inc.; whether a ''rose blossom'' candle, ''sunflower'' floating candles, ''Americana heart'' floating candles, ''baked apple'' tea lights, and vanilla tea lights are within the scope of the order; requested June 4, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Sears; whether three ''wrapped present'' candles with a mirrored tray are within the scope of the order; requested October 15, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: J.C. Penney Purchasing Corp.; whether a ''wicker lamp shade'' candle is within the scope of the order; requested January 22, 2003.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Target Corporation; whether snowball candles and sets are within the scope of the order; requested February 5, 2003.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Crazy Mountain Imports; whether various candles with Christmas ornaments are within the scope of the order; requested February 19, 2003.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Illuminations Stores, Inc.; two candles (item numbers 1050–0593 and 1050–0594) and two candle sets (item numbers 1050–0591 and 1050–0592) are included within the scope of the order; March 7, 2003.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Access Business Group; whether various ''bowl'' and jar candles are within the scope of the order; requested March 25, 2003.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Reckitt Benckiser Inc.; whether ''air wick glowing candles'' in various colors and scents, and containing more than 50 percent palm oil wax, were within the scope of the order; requested April 4, 2003.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Maredy Candy Company; whether ''heart,'' ''star,'' and ''snowflake'' candles are within the scope of the order; requested April 22, 2003.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Target Corporation; whether ''leaf'' and ''cranberry ball'' candles and a set of ''stone'' candles are within the scope of the order; requested June 12, 2003.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Home & Garden Party; whether two ''leaf'' candles are within the scope of the order; requested September 30, 2003.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Rokeach Foods; whether a ''Yahrzeit'' (or ''day of memory'') candle is within the scope of the order; requested April 22, 2004.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Pier 1 Imports, Inc.; whether 13 models of candles are outside the scope of the order; requested May 24, 2004.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Pei Eichel, Inc.; whether three styles of ''Archipelago Bombay Sleeve'' candles (PO ι 9904234, 9904235, and 9904236) are within the scope of the order; requested May 28, 2004, and June 3, 2004.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Specialty Merchandise Corp.; whether the ''Xmas Joy'' candle is within the scope of the order; requested June 23, 2004.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Coppersmith Inc.; whether ''Xmas JOY'' candles are within the scope of the order; requested July 15, 2004.

A–570–882: Brown Aluminum Oxide from the People's Republic of China

Requestor: Cometals Division of Commercial Metals Company; whether black aluminum oxide is excluded from the scope of the antidumping duty order; requested July 22, 2004.

A–570–881: Certain Malleable Iron Pipe Fittings from the People's Republic of China

Requestor: Nitek Electronics, Inc. and Sango International L.P.; whether meter swivels and meter nuts are within the scope of the order; requested July 28, 2004.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Abrim Enterprises, Inc.; whether ''Easter Egg/Flower Basket,'' ''Square–M Angel,'' ''Garlic–L,'' ''Easter Egg–E,'' ''Strobile–M,'' ''Halloween Skull–A,'' ''Tulip Bud–L,'' ''Birthday Cake-S,'' ''Censer,'' and ''X–Mas Tree–A,'' ''Snowman (Wife),'' and ''Snowman (Husband)'' candles are within the scope of the order; requested August 2, 2004.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Noteworthy, a division of Papermates, Inc.; whether ''Floater Flower Candle'' and ''Rose Pillar Candle'' are within the scope of the order; requested August 13, 2004.

A–570–827: Cased Pencils from the People's Republic of China

Requestor: Target Corporation; whether the RoseArt Clip N' Color is within the scope of the order; requested August 16, 2004.

A–570–881: Certain Malleable Iron Pipe Fittings from the People's Republic of China

Requestor: A.Y. McDonald Mfg. Co.; whether meter swivels and meter nuts are within the scope of the order; requested September 3, 2004.

A–570–827: Cased Pencils from the People's Republic of China

Requestor: Fiskars Brands, Inc.; whether certain compasses are within the scope of the order; requested September 10, 2004.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Kathryn Beich, Inc.; whether ''Jewel,'' ''Red Rose,'' and ''Polka Dot'' candles are within the scope of the order; requested September 23, 2004.

A–570–803: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China

Requestor: Olympia Group Inc.; whether cast tampers are within the scope of the order; requested September 24, 2004.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Holly Lobby Stores, Inc.; whether ''Fall Floating Leaf Candles,'' ''Pumpkin Floating Candles,'' and ''Floating Rose Candles'' are within the scope of the order; requested September 29, 2004.

A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China

Requestor: Dimensions Trading, Inc.; whether polyethylene sample bags are within the scope of the order; requested October 13, 2004.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Industrial Raw Materials Corp.; whether wickless wax plugs are within the scope of the order; requested October 26, 2004.

A–570–803: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China

Requestor: Olympia Group Inc.; whether pry bars, with a bar length under 18 inches, are within the scope of the order; requested November 4, 2004.

A–570–502: Iron Construction Castings from the People's Republic of China

Requestor: A.Y. McDonald Mfg. Co.; whether certain cast iron articles (meter box frames, covers, extension rings; meter box bases, upper bodies, lids), if imported separately are within the scope of the order; requested November 16, 2004.

A–570–506: Porcelain–On-Steel Cooking Ware from the People's Republic of China

Requestor: Taybek International; whether the Pro Popper professional popcorn popper is within the scope of the order; requested November 19, 2004.

A–570–891: Hand Trucks and Certain Parts Thereof from the People's Republic of China

Requestor: Vertex International, Inc.; whether certain components of its Garden Cart, if imported separately, are within the scope of the order; requested December 29, 2004.

A–570–827: Cased Pencils from the People's Republic of China

Requestor: Rich Frog Industries, Inc.; whether certain decorated wooden gift pencils are within the scope of the order; requested December 30, 2004.

Republic of Korea

C–580–851: Dynamic Random Access Memory Semiconductors from Korea

Requestor: Cisco Systems, Inc.; whether removable memory modules placed on motherboards that are imported for repair or refurbishment are within the scope of the CVD order; requested December 29, 2004.

Russian Federation

A–821–802: Antidumping Suspension Agreement on Uranium

Requestor: USEC, Inc. and its subsidiary, United States Enrichment Corporation; whether enriched uranium located in Kazakhstan at the time of the dissolution of the Soviet Union is within the scope of the order; requested August 6, 1999.

Vietnam

A–552–801: Certain Frozen Fish Filets from the Socialist Republic of Vietnam

Requestor: Piazza Seafood World LLC; whether certain basa and tra fillets from Cambodia which are a product of Vietnam are excluded from the antidumping duty order; requested May 12, 2004.

Multiple Countries

A–475–820: Stainless Steel Wire Rod from Italy, C–475–821: Stainless Steel Wire Rod from Italy, A–588–843: Stainless Steel Wire Rod from Japan, A–469–805: Stainless Steel Wire Rod from Spain, A–469–807: Stainless Steel Wire Rod from Spain, A–583–828: Stainless Steel Wire Rod from Taiwan, A–533–810: Certain Stainless Steel Wire Rod from India, A–588–833: Stainless Steel Wire Rod from India, A–351–825: Stainless Steel Wire Rod from Brazil, A–533- 808: Stainless Steel Wire Rod from India, C–469–004: Stainless Steel Wire Rod from Spain

Requestor: Ishar Bright Steel Ltd.; whether stainless steel bar that is manufactured in the United Arab Emirates from stainless steel wire rod imported from multiple subject countries is within the scope of the orders; requested December 22, 1998.

Anti–circumvention Inquiries Pending as of December 31, 2004: People's Republic of China

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: National Candle Association; whether imports of palm and vegetable–based wax candles from the People's Republic of China can be considered later–developed merchandise which is now circumventing the antidumping duty order; requested October 8, 2004.

≤A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: National Candle Association; whether imports of palm and vegetable–based wax candles from the People's Republic of China can be considered a minor alteration to the subject merchandise, and thus whether imports of these products are circumventing the antidumping duty order; requested October 12, 2004.

Vietnam

A–552–801: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam

Requestor: Catfish Farmers of America and certain individual U.S. catfish processors; whether imports of frozen fish fillets from Cambodia made from live fish sourced from Vietnam, and falling within the scope of the order, are circumventing the antidumping duty order; requested August 20, 2004.

Interested parties are invited to comment on the completeness of this list of pending scope inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Import Administration, International Trade Administration, 14th Street and Constitution Avenue NW, Room 1870, Washington, DC 20230.

This notice is published in accordance with 19 CFR 351.225(o) of the Department's regulations.

Dated: May 4, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–2286 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Application To Shuck Surf Clams/Ocean Quahogs at Sea.

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 11, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Brian R. Hooker, Department of Commerce, Sustainable Fisheries Division, One Blackburn Drive, Gloucester, MA 01930 or (978) 281–9220.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) Northeast Region manages the Atlantic surf clam and ocean quahog fisheries of the Exclusive Economic Zone (EEZ) of the Northeastern United States through the Atlantic Surf Clam and Ocean Quahog Fishery Management Plan (FMP). The Mid-Atlantic Fishery Management Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act). The regulations implementing the FMP are specified under 50 CFR part 648.70.

The recordkeeping and reporting requirements at § 648.70 and § 648.74 form the basis for this collection of information. NMFS Northeast Region requests information from Atlantic surf clam and ocean quahog individual transferable quota (ITQ) allocation holders in order to process and track requests from the allocation holders to transfer quota allocation to another entity. NMFS Northeast Region also requests information from Atlantic surf clam and ocean quahog permit holders in order to track and properly account for Atlantic surf clam and ocean quahog harvest that is shucked at sea. Because there is not a standard conversion factor for estimating unshucked product from shucked product, NMFS requires vessels that choose to shuck product at sea to carry on board the vessel a NMFS approved observer to certify the amount of Atlantic surf clam and ocean quahog harvested. This information, upon receipt, results in an increasingly more efficient and accurate database for management and monitoring of fisheries of the Northeastern U.S. EEZ.

II. Method of Collection

Paper applications are used to process requests.

III. Data

OMB Number: 0648–0240.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 600.
Estimated Time Per Response: 5 minutes for the application to transfer quota, and 30 minutes for the application to shuck surf clams and ocean quahogs at sea.
Estimated Total Annual Burden Hours: 51.
Estimated Total Annual Cost to Public: $230,400.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 5, 2005

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–9329 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050505A]

Pacific Fishery Management Council; Model Evaluation Workgroup Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) MEW will hold a work session, which is open to the public.

DATES: The work session will be held Tuesday, May 31, 2005, from 9 a.m. to 4 p.m.

ADDRESSES: The work session will be held at the Northwest Indian Fisheries Commission Conference Room, 6730 Martin Way East, Olympia, Washington 98516. Telephone: 360–438–1180.

Council address: Pacific Fishery Management Council, 7700 NE. Ambassador Place, Suite 200, Portland, Oregon, 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council, 503–820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to further develop documentation for the Chinook and Coho FRAM.

Although nonemergency issues not contained in the meeting agendas may come before the MEW for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: May 5, 2005.

Emily Menashes,

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

[FR Doc. E5–2265 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041305A]

Marine Mammals; File No. 1074–1779–00

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Marc Dantzker, Principal Investigator, Producer, Sound Recording, Cornell Lab of Ornithology, Macaulay Library, Cornell University, 159 Sapsucker Woods Road, Ithaca, NY 14850–1999, has been issued a permit to take marine mammals during photographic activities for commercial and educational purposes.

ADDRESSES: The permit and related documents are available for review

upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Jennifer Jefferies, (301)713–2289.

SUPPLEMENTARY INFORMATION: On February 10, 2005, notice was published in the **Federal Register** (70 FR 7082) that a request for a commercial/educational photography permit to take by harassment various cetacean and pinniped species had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Assistant Regional Administrator for Protected Resources, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Assistant Regional Administrator for Protected Resources, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7235; fax (907)586–7012;

Assistant Regional Administrator for Protected Resources, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4020; fax (562)980–4027;

Assistant Regional Administrator for Protected Resources, Pacific Islands Regional Office, NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941;

Assistant Regional Administrator for Protected Resources, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9328; fax (987)281–9394; and

Assistant Regional Administrator for Protected Resources, Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, phone (727)824–5312; fax (727)824–5309.

Dated: May 4, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–9330 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040505A]

Small Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey Across the Arctic Ocean

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

ACTION: Notice of receipt of application and proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from the University of Alaska Fairbanks (UAF) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting a marine seismic survey across the Arctic Ocean from northern Alaska to Svalbard. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to UAF to incidentally take, by harassment, small numbers of several species of cetaceans and pinnipeds from August 5 to September 30, 2005, during the seismic survey.

DATES: Comments and information must be received no later than June 9, 2005.

ADDRESSES: Comments on the application should be addressed to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. The mailbox address for providing email comments is *PR1.040505A@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here and is also available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, ext 166.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close

of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On March 30, 2005, NMFS received an application from UAF for the taking, by harassment, of several species of marine mammals incidental to conducting, with research funding from the National Science Foundation (NSF) and the Norwegian Petroleum Directorate (NPD), a marine seismic survey across the Arctic Ocean from northern Alaska to Svalbard during the period 5 August to 30 September 2005. The purpose of the proposed seismic study is to collect seismic reflection and refraction data that reveal the structure and stratigraphy of the upper crust of the Arctic Ocean. These data will assist in the determination of the history of ridges and plateaus that subdivide the Amerasian basin in the Arctic Ocean. Past studies have mapped the bottom of the Arctic Ocean, but data are needed to describe the boundaries and connections between the ridges and plateaus in the Amerasian basin and to study the stratigraphy of the smaller basins. This information will assist in preparing for future scientific drilling that is crucial to reconstructing the tectonic, magmatic, and paleoclimatic history of the Amerasian basin.

Description of the Activity

The geophysical survey will involve the United States Coast Guard (USCG) cutter *Healy*. The *Healy* will rendezvous with the Swedish icebreaker *Oden* near Alpha Ridge. The *Oden* will be working on a separate project, conducting an oceanographic section across the Arctic Ocean basin and will coordinate its timing to meet the *Healy*. The Oden will cut a path through the ice as necessary, leading the *Healy* for the remainder of the trans-ocean track past the North Pole and then on towards Svalbard. The two icebreakers working in tandem will optimize seismic data collection and safety through the heaviest multi-year ice.

The source vessel, the USCG icebreaker *Healy*, will use a portable Multi-Channel Seismic (MCS) system from the University of Bergen to conduct the seismic survey. The Healy will tow two different airgun configurations. The primary energy source will be two Generator guns (G. guns), each with a discharge volume of 250 in^3 for a total volume of 500 in^3. The secondary energy source will be a single Bolt airgun of 1200 in^3 that will be used for deeper penetration over three ridges (the Alpha, Mendeleev, and Gakkel ridges).

The *Healy* will also tow a hydrophone streamer 100–150 m (328–492 ft) behind the ship, depending on ice conditions. The hydrophone streamer will be up to 300 m (984 ft) long. As the airguns are towed along the survey lines, the receiving system will receive the returning acoustic signals. In addition to the airguns, a multi-beam sonar and sub-bottom profiler will be used during the seismic profiling and continuously when underway.

The program will consist of a total of approximately 4060 km (2192 nautical miles (nm)) of surveys, not including transits when the airguns are not operating, plus scientific coring at nine locations. The seismic survey will commence >40 km (22 nm) north of Barrow, Alaska, and the seismic activities will be completed northwest of Svalbard, in Norwegian territorial waters. Water depths within the study area are 20 4000 m (66–13123 ft). Little more than 1 percent of the survey (approximately 48 km (26 nm)) will occur in water depths <100 m (328 ft), 5 percent of the survey (approximately 192 km (104 nm)) will be conducted in water 100 1000 m (328–3280 ft) deep, and most (94 percent) of the survey (approximately 3820 km (2063 nm)) will occur in water ≤1000 m (3280 ft). Additional seismic operations will be associated with airgun testing, start up, and repeat coverage of any areas where initial data quality is sub-standard.

Along with the airgun operations, additional acoustical systems will be operated during much of, or the entire, cruise. The ocean floor will be mapped with a multi-beam sonar, and a sub-bottom profiler will be used. These two systems are commonly operated simultaneously with an airgun system. An acoustic Doppler current profiler will also be used through the course of the project. A 12–kHz pinger will be used during the sea-bottom coring operations to monitor the depth of the corer relative to the ocean floor. A detailed description of the acoustic sources proposed for use during this survey can be found in the UAF application, which is available at: *http://www.nmfs.noaa.gov/prot_res/PR1/Small_Take/smalltake_info.htm#applications*.

The coring operations constitute a separate project, which will be conducted in conjunction with the seismic study from the Healy. Seismic operations will be suspended while the USCG Healy is on site for coring at each of nine locations. Depending on water depth and the number of cores to be collected, the Healy may be at each site for between 8 and 36 hours.

Vessel Specifications

The *Healy* has a length of 128 m (420 ft), a beam of 25 m (82 ft), and a full load draft of 8.9 m (29.2 ft). The *Healy* is a USCG icebreaker, capable of traveling at 5.6 km/h (3 knots) through 1.4 m (4.6 ft) of ice. A ''Central Power Plant'', four Sultzer 12Z AU40S diesel generators, provides electric power for propulsion and ship's services through a 60 Hz, 3–phase common bus distribution system. Propulsion power is provided by two electric AC Synchronous, 11.2 MW drive motors, fed from the common bus through a Cycloconverter system, that turn two fixed-pitch, four-bladed propellers. The operation speed during seismic acquisition is expected to be approximately 6.5 km/h (3.5 knots). When not towing seismic survey gear or breaking ice, the *Healy* cruises at 22 km/h (12 knots) and has a maximum speed of 31.5 km/h (17 knots). She has a normal operating range of about 29,650 km (16,000 nm) at 23.2 km/hr (12.5 knots).

The *Healy* will also serve as the platform from which vessel-based marine mammal observers will watch for marine mammals before and during airgun operations. The characteristics of the *Healy* that make it suitable for visual monitoring are described in the monitoring section.

Airgun Description and Safety Radii

The University of Bergen's portable MCS system will be installed on the *Healy* for this cruise. The *Healy* will tow either two Sodera 250–in^3 G. guns (for a total discharge volume of 500 in^3) or a single 1200–in^3 Bolt airgun, along with a streamer containing hydrophones, along predetermined lines. Seismic pulses will be emitted at intervals of 20 seconds (s) and recorded at a 2 millisecond (ms) sampling rate. The 20 s spacing corresponds to a shot interval of approximately 36 m (118 ft) at the typical cruise speed.

The two-G. gun-cluster configuration will be towed below a depressor bird at a depth between 7 and 20 m (23 and 66 ft), as close to the *Healy*'s stern as possible to minimize ice interference (preferred depth is 8 to 10 m (26 to 29 ft)). The two airguns will be towed 1 m (3.3 ft) apart, separated by a spreader bar. The G. guns have a zero to peak (peak) source output of 236 dB re 1 microPascal-m (6.5 bar-m) and a peak-to-peak (pk-pk) level of 241 dB (11.7 bar-m). The dominant frequency components of these airguns are in the range of 0–150 Hz. For a one-gun source, the nominal source level represents the actual level that would be found about 1 m (3.3 ft) from the airgun.

Actual levels experienced by any marine organism more than 1 m (3.3 ft) from the airguns will be significantly lower.

The single Bolt airgun will be towed below a depressor bird at a depth of 10 m (29 ft). This airgun has peak source output of 234 dB re 1 microPascal-m (5 bar-m) and a pk-pk level of 241 dB (11.7 bar-m). The dominant frequency components of these airguns are in the range of 8–40 Hz. Indicated source outputs are for sources at 5 m (16 ft) and for a filter bandwidth of approximately 0–250 Hz.

Received sound levels were modeled by L-DEO for single 1200 in^3 Bolt airgun and for the one and two 250 in*3* G. guns in relation to distance and direction from the gun. This publically available model does not allow for bottom interactions, and, thus, is most directly applicable to deep water. For deep water, where most of the present project is to occur, the L-DEO model has been shown to be precautionary, i.e., it tends to overestimate radii for 190, 180, etc., dB re 1 μPa rms (Tolstoy *et al.* 2004a,b). Based on the models, table 1 shows the distances from the planned sources where sound levels of 190, 180, and 160 dB re 1 microPa root-mean squared (rms) are predicted to be received. The rms pressure is an average over the pulse duration. This is the measure commonly used in studies of marine mammal reactions to airgun sounds, and in NMFS guidelines concerning levels above which ''taking'' might occur. The rms level of a seismic pulse is typically about 10 dB less than its peak level (Greene 1997; McCauley *et al.* 1998, 2000a).

TABLE 1. ESTIMATED DISTANCES TO WHICH SOUND LEVELS ≥190, 180, AND 160 DB RE 1 MICROPA (RMS) MIGHT BE RECEIVED FROM THE 250 IN^3 G. GUN(S) AND 1200 IN3 BOLT AIRGUN THAT WILL BE USED DURING THE SEISMIC SURVEY ACROSS THE ARCTIC OCEAN DURING 2005. THE SOUND RADII USED DURING THE SURVEY WILL DEPEND ON WATER DEPTH (SEE TEXT). DISTANCES ARE BASED ON MODEL RESULTS PROVIDED BY THE LAMONT-DOHERTY EARTH OBSERVATORY OF COLUMBIA UNIVERSITY.

Seismic Source Volume	Water depth	Estimated Distances at Received Levels (m)		
		190 dB (safety criterion for pinnipeds)	180 dB (safety criterion for cetaceans)	160 dB (assumed onset of behavioral harassment)
250 in^{3}G. gun	>1000 m	17	52	500
	100-1000 m	26	78	750
	<100 m	213	385	1364
500 in^{3}2 G. guns	>1000 m	100	325	3300
	100-1000 m	150	500	5000
	<100 m	1500	2400	9700
1200 in^{3}2 Bolt aigun	>1000 m	25	50	560
	100-1000 m	38	75	840
	<100 m	313	370	1527

For the two-G. gun source, the highest sound level measurable at any location in the water would be slightly less than the nominal source level because the actual source is a distributed source rather than a point source. However, the two guns would be only 1 m (3.3 ft) apart, so the non-point-source effect would be slight. For the single Bolt airgun, the source level represents the actual level that would be found about 1 m from the energy source. Actual levels experienced by any organism more than 1 m from either of the sources will be significantly lower.

The rms received levels that are used by NMFS as impact criteria for marine mammals are not directly comparable to the peak or peak-to-peak values normally used to characterize source levels of airguns. The measurement units used to describe airgun sources, i.e., peak or pk-pk decibels, are always higher than the rms decibels referred to in much of the biological literature. A measured received level of 160 decibels rms in the far field would typically correspond to a peak measurement of about 170 to 172 dB, and to a peak-to-peak measurement of about 176 to 178 decibels, as measured for the same pulse received at the same location (Greene 1997; McCauley et al. 1998, 2000a). The precise difference between rms and peak or pk-pk values for a given pulse depends on the frequency content and duration of the pulse, among other factors. However, the rms level is always lower than the peak or pk-pk level for an airgun-type source.

The depth at which the sound source is towed has a major impact on the maximum near-field output, and on the shape of its frequency spectrum. In this case, the source is expected to be towed at relatively deep depths of 7 to 20 m (23 to 66 ft).

Empirical data concerning the 190-, 180-, and 160–dB (rms) isopleths in deep and shallow water have been acquired for various airgun configurations based on measurements during the acoustic verification study conducted by L-DEO in the northern Gulf of Mexico from 27 May to 3 June 2003 (Tolstoy *et al.*, 2004a, b). Those data demonstrated that L-DEO's model tends to overestimate the isopleth distances applied in deep water. During that study, empirical data were not obtained for either the 1200–in3 Bolt airgun or the G. guns that will be used during this survey. Although the results were limited, the calibration-study results showed that radii around the airguns where the received level would be 180 dB re 1 microPa (rms), the safety zone radius NMFS uses for cetaceans, (NMFS 2000), vary with water depth. Similar depth-related variation is likely in the 190 dB distances used for pinnipeds. Although sea turtle sightings are highly unlikely, the 180–dB distance will also be used as the safety radius for sea turtles, as required by NMFS in another recent seismic project (Smultea *et al.*, 2005). The safety zones are used to trigger mitigation measures, which are described below.

The L-DEO model does not allow for bottom interactions, and thus is most directly applicable to deep water and to relatively short ranges. In intermediate-depth water a precautionary 1.5x factor will be applied to the values predicted by L-DEO's model. In shallow water, larger precautionary factors derived from the empirical shallow-water measurements will be applied. The proposed study area will occur mainly

in water 1000 to 4000 m (3280 to 13123 ft) deep, with only approximately 1 percent of the survey lines in shallow (<100 m (328 ft)) water and 5 percent of the survey lines in intermediate water depths (100 1000 m (328–3280 ft)).

The empirical data indicate that, for *deep water* (>1000 m (3280 ft)), the L-DEO model tends to overestimate the received sound levels at a given distance (Tolstoy *et al.*, 2004a,b). However, to be precautionary pending acquisition of additional empirical data, UAF has proposed using safety radii during airgun operations in deep water that correspond to the values predicted by L-DEO's model for deep water (Table 1). In deep water, the estimated 190 and 180 dB radii for two 250–in3 G. guns are 100 and 325 m (328 and 1067 ft), respectively. Those for one 1200–in^3 Bolt airgun are 25 and 50 m (82 and 164 ft), respectively.

Empirical measurements were not conducted for intermediate depths (100 1000 m (328–3280 ft)). On the expectation that results would be somewhere between those from shallow and deep water, UAF has applied a 1.5x correction factor to the estimates provided by the model for deep water situations. This is the same factor that has been applied to the model estimates during L-DEO operations in intermediate-depth water from 2003 through early 2005. The estimated 190– and 180–dB radii in intermediate-depth water are 150 m (490 ft) and 500 m (1640 ft), respectively, for the two G. gun system and 38 and 75 m (125 and 246 ft), respectively, for the single Bolt airgun (Table 1).

Empirical measurements were not made for the sources that will be employed during the proposed survey operating in shallow water (<100 m (328 ft)). The empirical data on operations of two 105 in3 GI guns in shallow water showed that modeled values underestimated actual levels in shallow water at corresponding distances of 0.5 to 1.5 km (0.3 to 0.5 nm) by a factor of approximately 3x (Tolstoy *et al.*, 2004b). Sound level measurements for the 2 GI guns were not available for distances <0.5 km (0.3 nm) from the source. The radii estimated here for two G. guns operating in shallow water are derived from L-DEO's deep water estimates, with the same adjustments for depth-related differences in sound propagation used for 2 GI guns in earlier applications (and approximately the same factors as used for L-DEO's 10–airgun array). Similarly, the factors for the single airguns are the same as those for a single GI gun in earlier applications. Thus, the estimated 190- and 180–dB radii in shallow water are 1500 and 2400 m (4921 and 7874 ft), respectively, for the two G. guns (Table 1). The corresponding radii for the single G. gun in shallow water are estimated to be 213 and 385 m (699 and 1263 ft), respectively. The sound radii for the single Bolt airgun in shallow water are estimated to be 313 m (1027 ft) for 190 dB and 370 m (1214 ft) for 180 dB.

Characteristics of Airgun Pulses

Discussion of the characteristics of airgun pulses has been provided in the application and in previous **Federal Register** notices (see 69 FR 31792 (June 7, 2004) or 69 FR 34996 (June 23, 2004)). Reviewers are referred to those documents for additional information.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the *Healy*'s track from north of Barrow, through the Arctic ocean to northwest of Svalbard and the associated marine mammals can be found in the UAF application and a number of documents referenced in the UAF application. A total of 17 cetacean species and 10 pinniped species may occur in the proposed study area. The marine mammals that occur in the proposed survey area belong to four taxonomic groups: odontocetes (toothed cetaceans, such as dolphins and sperm whales), mysticetes (baleen whales), pinnipeds (seals, sea lions, and walrus), and fissipeds (polar bear).

Odontocete whales include the sperm whale, northern bottlenose whale, beluga whale, narwhal, Atlantic white-beaked dolphin, Atlantic white-sided dolphin, killer whale, long-finned pilot whale, and harbor porpoise.

Mysticete whales include the North Atlantic right whale, bowhead whale, gray whale, humpback whale, minke whale, sei whale, fin whale, and blue whale.

Pinnipeds include the walrus, bearded seal, harbor seal, spotted seal, ringed seal, hooded seal, and harp seal.

The marine mammal species most likely to be encountered include four cetacean species (beluga whale, narwhal, gray whale, bowhead whale), five pinniped species (walrus, bearded seal, ringed seal, hooded seal, harp seal), and the polar bear. However, most of these will occur in low numbers and are most likely to be encountered within 100 km (54 n.mi) of shore. The most abundant marine mammal likely to be encountered throughout the cruise is the ringed seal. The most widely distributed marine mammals are expected to be the beluga, ringed seal, and polar bear.

About 13 additional cetacean species could occur in the project area, but are unlikely to be encountered along the proposed trackline. If encountered at all, those species would be found only near one end of the track, either near Svalbard or near Alaska. The following 12 species, if encountered at all, would be found close to Svalbard: sperm whale, northern bottlenose whale, long-finned pilot whale, Atlantic white-sided dolphin, Atlantic white-beaked dolphin, harbor porpoise, killer whale, North Atlantic right whale, humpback whale, minke whale, sei whale, fin whale, and blue whale. Two additional pinniped species, the harbor seal and spotted seal, are also unlikely to be encountered.

Although information on the walrus and polar bear are included here, they are managed by the U.S. Fish & Wildlife Service (USFWS) and are not the subject of this authorization. UAF will coordinate with the USFWS regarding the effects of project operations on walruses and polar bears.More detailed information on these species is contained in the UAF application (see **ADDRESSES**).

Potential Effects on Marine Mammals

The effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically

important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Effects of Seismic Surveys on Marine Mammals

The UAF application provides the following information on what is known about the effects on marine mammals of the types of seismic operations planned by UAF. The types of effects considered in here are (1) tolerance, (2) masking of natural sounds, (3) behavioral disturbance, and (4) potential hearing impairment and other non-auditory physical effects (Richardson et al., 1995). Because the airgun sources planned for use during the present project involve only one or two airguns, the effects are anticipated to be considerably less than would be the case with a large array. UAF and NMFS believe it is very unlikely that there would be any cases of temporary or permanent hearing impairment, or non-auditory physical effects. Also, behavioral disturbance is expected to be limited to animals that are at distances less than 3300 m (10827 ft) in deep water (94 percent of survey), 5000 m (16404 ft) in intermediate water depths (5 percent of survey), and 9700 m (31824 ft) in shallow water (1 percent of survey), where the received sound levels greater than160 dB are expected to be. This corresponds to the value NMFS uses for onset of Level B harassment due to impulse sounds. Additional discussion on effects on marine mammal species can be found in the UAF application.

Tolerance

Numerous studies (referenced in L-DEO, 2004) have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers, but that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. However, most measurements of airgun sounds that have been reported concerned sounds from larger arrays of airguns, whose sounds would be detectable farther away than the ones that are planned to be used in the proposed survey. Although various baleen whales, toothed whales, and pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times all three types of mammals have shown no overt reactions. In general, pinnipeds and small odontocetes seem to be more tolerant of exposure to airgun pulses than are baleen whales. Given the low-energy airgun sources planned for use in this proposed project, marine mammals would be expected to tolerate being closer to these sources than would be the case for a larger airgun source typical of most seismic surveys.

Masking

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited, although there are very few specific data of relevance. Some whales are known to continue calling in the presence of seismic pulses. Their calls can be heard between the seismic pulses (e.g., Richardson *et al.*, 1986; McDonald *et al.*, 1995; Greene *et al.*, 1999; Nieukirk *et al.*, 2004). Although there has been one report that sperm whales cease calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994), a more recent study reports that sperm whales off northern Norway continued calling in the presence of seismic pulses (Madsen *et al.*, 2002). That has also been shown during recent work in the Gulf of Mexico (Tyack *et al.* 2003). Given that the airgun sources planned for use here involve only 1 or 2 airguns, there is even less potential for masking of baleen or sperm whale calls during the present study than in most seismic surveys. Masking effects of seismic pulses are expected to be negligible in the case of the odontocete cetaceans, given the intermittent nature of seismic pulses and the relatively low source level of the airgun configurations to be used here. Also, the sounds important to odontocetes are predominantly at much higher frequencies than are airgun sounds and would not be masked by the airguns.

Most of the energy in the sound pulses emitted by airguns is at low frequencies, with strongest spectrum levels below 200 Hz and considerably lower spectrum levels above 1000 Hz. These low frequencies are mainly used by mysticetes, but generally not by odontocetes or pinnipeds. An industrial sound source will reduce the effective communication or echolocation distance only if its frequency is close to that of the marine mammal's signal. If little or no overlap occurs between the frequencies of the industrial noise and the marine mammals, as in the case of many marine mammals relative to airgun sounds, communication and echolocation are not expected to be disrupted. Furthermore, the discontinuous nature of seismic pulses makes significant masking effects unlikely even for mysticetes.

A few cetaceans are known to increase the source levels of their calls in the presence of elevated sound levels, or possibly to shift their peak frequencies in response to strong sound signals (Dahlheim, 1987; Au, 1993; Lesage *et al.*, 1999; Terhune, 1999; as reviewed in Richardson *et al.*, 1995). These studies involved exposure to other types of anthropogenic sounds, not seismic pulses, and it is not known whether these types of responses ever occur upon exposure to seismic sounds. If so, these adaptations, along with directional hearing, pre-adaptation to tolerate some masking by natural sounds (Richardson et al., 1995) and the relatively low-power acoustic sources being used in this survey, would all reduce the possible adverse impacts of masking marine mammal vocalizations.

Behavioral Disturbance by Seismic Surveys

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Not all behavioral disturbances rise to the level of Level B Harassment, which requires a disruption of behavioral patterns of biological importance. Exposure to sound alone may not constitute harassment or ''taking'' (NMFS 2001, p. 9293). Behavioral reactions of marine mammals to sound are difficult to predict. Reactions to sound, if any, depend on species, individual variation, state of maturity, experience, current activity, reproductive state, time of day,

season, and many other factors. If a marine mammal does react to an underwater sound by changing its behavior or moving a small distance, the impacts of the change may not rise to the level of a disruption of a behavioral pattern. However, if a sound source would displace a marine mammal from an important feeding or breeding area, such a disturbance may constitute Level B harassment under the MMPA. In addition, effects that might not constitute Level B harassment may still result in significant displacement of sensitive species, such as bowhead whales, thereby affecting subsistence needs. Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, NMFS estimates the number of marine mammals that may be present within a particular distance of industrial activities or exposed to a particular level of industrial sound and uses these numbers as a proxy. With the possible exception of beaked whales, NMFS believes that this is a conservative approach and likely overestimates the numbers of marine mammals that may experience a disruption of a behavioral pattern.

The sound exposure criteria used to estimate how many marine mammals might be harassed behaviorally by the seismic survey are based on behavioral observations during studies of several species. However, information is lacking for many other species. Detailed studies have been conducted on humpback, gray, and bowhead whales, and on ringed seals. Less detailed data are available for some other species of baleen whales, sperm whales, small toothed whales, and sea otters. Most of those studies have been on behavioral reactions to much larger airgun sources than the airgun configurations planned for use in the present project. Thus, effects are expected to be limited to considerably smaller distances and shorter periods of exposure in the present project than in most of the previous work concerning marine mammal reactions to airguns. Detailed information on potential disturbance effects on baleen whales, toothed whales, and pinnipeds can be found in the UAF application.

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to airgun pulses. Based on current information, NMFS precautionarily sets impulsive sounds equal to or greater than 180 and 190 dB re 1 microPa (rms) as the exposure thresholds for onset of Level A harassment (injury) for cetaceans and pinnipeds, respectively (NMFS, 2000). Those criteria have been used for several years in setting the safety (shut-down) radii for seismic surveys. As discussed in the UAF application and summarized here,

1. The 180–dB criterion for cetaceans is probably quite precautionary, i.e., lower than necessary to avoid TTS let alone permanent auditory injury, at least for delphinids.

2. The minimum sound level necessary to cause permanent hearing impairment is higher, by a variable and generally unknown amount, than the level that induces barely-detectable TTS.

3. The level associated with the onset of TTS is often considered to be lower than levels that may cause permanent hearing damage.

Because the airgun sources planned for use during this project involve only 1 or 2 guns, and with the planned monitoring and mitigation measures, there is little likelihood that any marine mammals will be exposed to sounds sufficiently strong to cause even the mildest (and reversible) form of hearing impairment. Several aspects of the planned monitoring and mitigation measures for this project are designed to detect marine mammals occurring near the airgun(s), and multi-beam sonar, and to avoid exposing them to sound pulses that might (at least in theory) cause hearing impairment. In addition, many cetaceans are likely to show some avoidance of the small area with high received levels of airgun sound (see above). In those cases, the avoidance responses of the animals themselves will likely reduce or prevent any possibility of hearing impairment.

Non-auditory physical effects might also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. It is possible that some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, as discussed below, there is no definitive evidence that any of these effects occur even in marine mammals that are in close proximity to large arrays of airguns. UAF and NMFS believe that it is highly unlikely that any of these non-auditory effects would occur during the proposed survey given the small size of the source, the brief duration of exposure of any given mammal, and the planned mitigation and monitoring measures. The following paragraphs discuss the possibility of TTS, permanent threshold shift (PTS), and non-auditory physical effects.

TTS

TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). When an animal experiences TTS, its hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. Richardson *et al.* (1995) note that the magnitude of TTS depends on the level and duration of noise exposure, among other considerations. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Little data on pulsed sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound.

For toothed whales exposed to single short pulses, the TTS threshold appears to be, at a first approximation, a function of the energy content of the pulse (Finneran *et al.*, 2002). Given the available data, the received level of a single seismic pulse might need to be approximately 210 dB re 1 microPa rms (approx. 221 226 dB pk pk) in order to produce brief, mild TTS. Exposure to several seismic pulses at received levels near 200 205 dB (rms) might result in slight TTS in a small odontocete, assuming the TTS threshold is at a function of the total received pulse energy (Finneran *et al.*, 2002). Seismic pulses with received levels of 200 205 dB or more are usually restricted to a zone of no more than 100 m (328 ft) around a seismic vessel operating a large array of airguns. Such sound levels would be limited to distances within a few meters of the single airgun planned for use during this project.

There are no data, direct or indirect, on levels or properties of sound that are required to induce TTS in any baleen whale. However, TTS is not expected to occur during this survey given that the airgun sources involve only 1 or 2 airguns, and the strong likelihood that baleen whales would avoid the approaching airgun(s), or vessel, before being exposed to levels high enough for there to be any possibility of TTS.

TTS thresholds for pinnipeds exposed to brief pulses (single or multiple) have

not been measured, although exposures up to 183 dB re 1 microPa (rms) have been shown to be insufficient to induce TTS in captive California sea lions (Finneran *et al.*, 2003). However, studies for prolonged exposures show that some pinnipeds may incur TTS at somewhat lower received levels for prolonged exposures than do small odontocetes exposed for similar durations (Kastak *et al.*, 1999; Ketten *et al.*, 2001; Au *et al.*, 2000). More recent indications are that TTS onset in the most sensitive pinniped species studied (harbor seal) may occur at a similar sound exposure level as in odontocetes (Kastak *et al.* 2004).

A marine mammal within 100 m (≤328 ft) of a typical large array of operating airguns might be exposed to a few seismic pulses with levels of ≥205 dB, and possibly more pulses if the mammal moved with the seismic vessel. (As noted above, most cetacean species tend to avoid operating airguns, although not all individuals do so.) However, several of the considerations that are relevant in assessing the impact of typical seismic surveys with arrays of airguns are not directly applicable here:

(1) The planned airgun sources involve only 1 or 2 airguns, with correspondingly smaller radii within which received sound levels could exceed any particular level of concern.

(2) ''Ramping up'' (soft start) is standard operational protocol during startup of large airgun arrays in many jurisdictions. Ramping up involves starting the airguns in sequence, usually commencing with a single airgun and gradually adding additional airguns. This practice will be employed when the 2 G. guns are operated.

(3) Even with a large airgun array, it is unlikely that cetaceans would be exposed to airgun pulses at a sufficiently high level for a sufficiently long period to cause more than mild TTS, given the relative movement of the vessel and the marine mammal. In this project, the airgun sources are much less strong, so the area of influence and duration of exposure to strong pulses is much smaller, especially in deep and intermediate-depth water.

(4) With a large array of airguns, TTS would be most likely in any odontocetes that bow-ride or otherwise linger near the airguns. In the present project, the anticipated 180 dB distances in deep and intermediate-depth water are 325 and 500 m (1066 and 1640 ft), respectively, for the 2 G. gun system, and 50 and 75 m (164 and 246 ft), respectively, for the single Bolt airgun (Table 2). The waterline at the bow of the *Healy* will be approximately 123 m (403 ft) ahead of the airgun.

NMFS believes that, to avoid Level A harassment, cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re 1 microPa (rms). The corresponding limit for pinnipeds is 190 dB. The predicted 180- and 190–dB distances for the airgun arrays operated by UAF during this activity are summarized in Table 1 in this document.

It has also been shown that most whales tend to avoid ships and associated seismic operations. Thus, whales will likely not be exposed to such high levels of airgun sounds. Because of the slow ship speed, any whales close to the trackline could move away before the sounds become sufficiently strong for there to be any potential for hearing impairment. Therefore, there is little potential for whales being close enough to an array to experience TTS. In addition, ramping up multiple airguns in arrays has become standard operational protocol for many seismic operators and will occur when the 2 G. guns are operated.

PTS

When PTS occurs there is physical damage to the sound receptors in the ear. In some cases there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges. Although there is no specific evidence that exposure to pulses of airgun sounds can cause PTS in any marine mammals, even with the largest airgun arrays, physical damage to a mammal's hearing apparatus can potentially occur if it is exposed to sound impulses that have very high peak pressures, especially if they have very short rise times (time required for sound pulse to reach peak pressure from the baseline pressure). Such damage can result in a permanent decrease in functional sensitivity of the hearing system at some or all frequencies.

Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. However, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals, based on their similar anatomy and inner ear structures. The low-to-moderate levels of TTS that have been induced in captive odontocetes and pinnipeds during recent controlled studies of TTS have been confirmed to be temporary, with no measurable residual PTS (Kastak *et al.*, 1999; Schlundt *et al.*, 2000; Finneran *et al.*, 2002; Nachtigall *et al.*, 2003). In terrestrial mammals, the received sound level from a single non-impulsive sound exposure must be far above the TTS threshold for any risk of permanent hearing damage (Kryter, 1994; Richardson et al., 1995). For impulse sounds with very rapid rise times (e.g., those associated with explosions or gunfire), a received level not greatly in excess of the TTS threshold may start to elicit PTS. The rise times for airgun pulses are rapid, but less rapid than for explosions.

Some factors that contribute to onset of PTS are as follows: (1) exposure to single very intense noises, (2) repetitive exposure to intense sounds that individually cause TTS but not PTS, and (3) recurrent ear infections or (in captive animals) exposure to certain drugs.

Cavanagh (2000) has reviewed the thresholds used to define TTS and PTS. Based on his review and SACLANT (1998), it is reasonable to assume that PTS might occur at a received sound level 20 dB or more above that which induces mild TTS. However, for PTS to occur at a received level only 20 dB above the TTS threshold, it is probable that the animal would have to be exposed to the strong sound for an extended period.

Sound impulse duration, peak amplitude, rise time, and number of pulses are the main factors thought to determine the onset and extent of PTS. Based on existing data, Ketten (1994) has noted that the criteria for differentiating the sound pressure levels that result in PTS (or TTS) are location and species-specific. PTS effects may also be influenced strongly by the health of the receiver's ear.

Given that marine mammals are unlikely to be exposed to received levels of seismic pulses that could cause TTS, it is highly unlikely that they would sustain permanent hearing impairment. If we assume that the TTS threshold for odontocetes for exposure to a series of seismic pulses may be on the order of 220 dB re 1 microPa (pk-pk) (approximately 204 dB re 1 microPa rms), then the PTS threshold might be about 240 dB re 1 microPa (pk-pk). In the units used by geophysicists, this is 10 bar-m. Such levels are found only in the immediate vicinity of the largest airguns (Richardson *et al.*, 1995; Caldwell and Dragoset, 2000). However, as noted previously in this document, it is very unlikely that an odontocete would remain within a few meters of a large airgun for sufficiently long to incur

PTS. The TTS (and thus PTS) thresholds of baleen whales and pinnipeds may be lower, and thus may extend to a somewhat greater distance from the source. However, baleen whales generally avoid the immediate area around operating seismic vessels, so it is unlikely that a baleen whale could incur PTS from exposure to airgun pulses. Some pinnipeds do not show strong avoidance of operating airguns.

In summary, during this project, it is highly unlikely that marine mammals could receive sounds strong enough and over a sufficient period of time to cause permanent hearing impairment. In the proposed project marine mammals are unlikely to be exposed to received levels of seismic pulses strong enough to cause TTS, and because of the higher level of sound necessary to cause PTS, it is even less likely that PTS could occur. This is due to the fact that even levels immediately adjacent to the single GI-airgun may not be sufficient to induce PTS because the mammal would not be exposed to more than one strong pulse unless it swam alongside an airgun for a period of time.

Strandings and Mortality

Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.*, 1993; Ketten, 1995). Airgun pulses are less energetic and have slower rise times than underwater detonations. While there is no documented evidence that airgun arrays can cause serious injury, death, or stranding, the association of mass strandings of beaked whales with naval exercises and, in one case, an L-DEO seismic survey have raised the possibility that beaked whales may be especially susceptible to injury and/or behavioral reactions that can lead to stranding when exposed to strong pulsed sounds.

It is important to note that seismic pulses and mid-frequency military sonar pulses are quite different. Sounds produced by the types of airgun arrays used to profile sub-sea geological structures are broadband with most of the energy below 1 kHz. Typical military mid-frequency sonars operate at frequencies of 2 to 10 kHz, generally with a relatively narrow bandwidth at any one time (though the center frequency may change over time). Because seismic and sonar sounds have considerably different characteristics and duty cycles, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar pulses can, in special circumstances, lead to hearing damage and, indirectly, mortality suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity pulsed sound.

In addition to mid-frequency sonar-related strandings (see 69 FR 74906 (December 14, 2004) for additional discussion), there was a September, 2002 stranding of two Cuvier's beaked whales in the Gulf of California (Mexico) when a seismic survey by the *R/V Maurice Ewing* was underway in the general area (Malakoff, 2002). The airgun array in use during that project was the *Ewing*'s 20–gun 8490–in^3 array. This might be a first indication that seismic surveys can have effects, at least on beaked whales, similar to the suspected effects of naval sonars. However, the evidence linking the Gulf of California strandings to the seismic surveys is inconclusive, and is not based on any physical evidence (Hogarth, 2002; Yoder, 2002). The ship was also operating its multi-beam bathymetric sonar at the same time but this sonar had much less potential than these naval sonars to affect beaked whales. Although the link between the Gulf of California strandings and the seismic (plus multi-beam sonar) survey is inconclusive, this event, in addition to the various incidents involving beaked whale strandings associated with naval exercises, suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales.

The present project will involve lower-energy sound sources than used in typical seismic surveys. That, along with the monitoring and mitigation measures that are planned, and the infrequent occurrence of beaked whales in the project area, will minimize any possibility for strandings and mortality.

Non-auditory Physiological Effects

Possible types of non-auditory physiological effects or injuries that might theoretically occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. There is no evidence that any of these effects occur in marine mammals exposed to sound from airgun arrays. However, there have been no direct studies of the potential for airgun pulses to elicit any of these effects. If any such effects do occur, they would probably be limited to unusual situations when animals might be exposed at close range for unusually long periods.

Long-term exposure to anthropogenic noise may have the potential to cause physiological stress that could affect the health of individual animals or their reproductive potential, which could theoretically cause effects at the population level (Gisner (ed.), 1999). However, there is essentially no information about the occurrence of noise-induced stress in marine mammals. Also, it is doubtful that any single marine mammal would be exposed to strong seismic sounds for sufficiently long that significant physiological stress would develop. That is especially so in the case of the present project which will deploy only 1 or 2 airguns, the ship is moving 3 4 knots, and for the most part the tracklines will not ''double back'' through the same area.

Gas-filled structures in marine animals have an inherent fundamental resonance frequency. If stimulated at this frequency, the ensuing resonance could cause damage to the animal. There may also be a possibility that high sound levels could cause bubble formation in the blood of diving mammals that in turn could cause an air embolism, tissue separation, and high, localized pressure in nervous tissue (Gisner (ed), 1999; Houser *et al.*, 2001). In 2002, NMFS held a workshop (Gentry (ed.), 2002) to discuss whether the stranding of beaked whales in the Bahamas in 2000 might have been related to air cavity resonance or bubble formation in tissues caused by exposure to noise from naval sonar. A panel of experts concluded that resonance in air-filled structures was not likely to have caused this stranding. Among other reasons, the air spaces in marine mammals are too large to be susceptible to resonant frequencies emitted by mid- or low-frequency sonar; lung tissue damage has not been observed in any mass, multi-species stranding of beaked whales; and the duration of sonar pings is likely too short to induce vibrations that could damage tissues (Gentry (ed.), 2002).

Opinions were less conclusive about the possible role of gas (nitrogen) bubble formation/growth in the Bahamas stranding of beaked whales. Workshop participants did not rule out the possibility that bubble formation/growth played a role in the stranding and participants acknowledged that more research is needed in this area. The only available information on acoustically-mediated bubble growth in marine mammals is modeling that assumes prolonged exposure to sound.

A short paper concerning beaked whales stranded in the Canary Islands in 2002 suggests that cetaceans might be subject to decompression injury in some situations (Jepson *et al.*, 2003). If so, that

might occur if they ascend unusually quickly when exposed to aversive sounds. However, the interpretation that the effect was related to decompression injury is unproven (Piantadosi and Thalmann, 2004; Fernandez *et al.*, 2004). Even if that effect can occur during exposure to mid-frequency sonar, there is no evidence that this type of effect occurs in response to low-frequency airgun sounds. It is especially unlikely in the case of the proposed survey, involving only 1 or 2 airguns that will operate in any one location only briefly.

In summary, little is known about the potential for seismic survey sounds to cause either auditory impairment or other non-auditory physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would be limited to short distances from the sound source. However, the available data do not allow for meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in these ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes, and some pinnipeds, are unlikely to incur auditory impairment or other physical effects. Also, the planned mitigation and monitoring measures are expected to minimize any possibility of serious injury, mortality or strandings.

Possible Effects of Mid-frequency Sonar Signals

A SeaBeam 2112 multi-beam 12–kHz bathymetric sonar system and a sub-bottom profiler will be operated from the source vessel nearly continuously during the planned study. A pinger will be operated during all coring.

Sounds from the SeaBeam 2112 multi-beam sonar system are very short pulses, depending on water depth. Most of the energy in the sound pulses emitted by the multi-beam is at moderately high frequencies, centered at 12 kHz. The beam is narrow (approximately 2) in fore-aft extent and wide (approximately 130°) in the cross-track extent. Any given mammal at depth near the trackline would be in the main beam for only a fraction of a second. Navy sonars that have been linked to avoidance reactions and stranding of cetaceans generally: (1) are more powerful than the SeaBeam 2112 sonar, (2) have a longer pulse duration, and (3) are directed close to horizontally (vs. downward for the SeaBeam sonars). The area of possible influence of the bathymetric sonar is much smaller-a narrow band oriented in the cross-track direction below the source vessel. Marine mammals that encounter the bathymetric sonar at close range are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam, and will receive only small amounts of pulse energy because of the short pulses and ship speed. In assessing the possible impacts of the 15.5–kHz Atlas Hydrosweep (similar to the SeaBeam sonar), Boebel et al. (2004) noted that the critical sound pressure level at which TTS may occur is 203.2 dB re 1 microPa (rms). The critical region included an area of 43 m (141 ft) in depth, 46 m (151 ft) wide athwartship, and 1 m (3.3 ft) fore-and-aft (Boebel et al., 2004). In the more distant parts of that (small) critical region, only slight TTS would be incurred. Therefore, as harassment or injury from pulsed sound is a function of total energy received, the actual harassment or injury threshold for the bathymetric sonar signals (approximately 10 ms) would be at a much higher dB level than that for longer duration pulses such as seismic signals. As a result, NMFS believes that marine mammals are unlikely to be harassed or injured from the SeaBeam multibeam sonars.

Sounds from the sub-bottom profiler are very short pulses; pulse duration ranges from 0.5 to 25 milliseconds, and the interval between pulses can range between 0.25 s and 10 s, depending upon water depth. A 3.5–kHz transducer emits a conical beam with a width of 26° and the 12 kHz transducer emits a conical beam with a width of 30°. The swept (chirp) frequency ranges from 2.75 kHz to 6 kHz. Most of the energy from the sub-bottom profiler is directed downward from the transducer array. Sound levels have not been measured directly for the sub-bottom profiler used by the Healy, but Burgess and Lawson (2000) measured sounds propagating more or less horizontally from a similar unit with similar source output (205 dB re 1 microPa m). The 160– and 180– dB re 1 microPa rms radii, in the horizontal direction, were estimated to be, respectively, near 20 m (66 ft) and 8 m (26 ft) from the source, as measured in 13 m or 43 ft water depth. The corresponding distances for an animal in the beam below the transducer would be greater, on the order of 180 m (591 ft) and 18 m (59 ft), assuming spherical spreading.

Sounds from the 12–kHz pinger are very short pulses, occurring for 0.5, 2, or 10 ms once every second, with source level approximately 192 dB re 1 microPa at a one pulse per second rate. The 12–kHz signal is omnidirectional. The pinger produces sounds that are within the range of frequencies used by small odontocetes and pinnipeds that occur or may occur in the area of the planned survey.

Masking by Mid-frequency Sonar Signals

Marine mammal communications will not be masked appreciably by the multibeam sonar signals or the sub-bottom profiler given the low duty cycle and directionality of the sonars and the brief period when an individual mammal is likely to be within its beam. Furthermore, the 12–kHz multi-beam will not overlap with the predominant frequencies in baleen whale calls, further reducing any potential for masking in that group.

While the 12–kHz pinger produces sounds within the frequency range used by odontocetes that may be present in the survey area and within the frequency range heard by pinnipeds, marine mammal communications will not be masked appreciably by the pinger signals. This is a consequence of the relatively low power output, low duty cycle, and brief period when an individual mammal is likely to be within the area of potential effects. In the case of mysticetes, the pulses do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses Resulting from Mid-frequency Sonar Signals

Behavioral reactions of free-ranging marine mammals to military and other sonars appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.*, 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned strandings by beaked whales. Also, Navy personnel have described observations of dolphins bow-riding adjacent to bow-mounted mid-frequency sonars during sonar transmissions. However, all of these observations are of limited relevance to the present situation. Pulse durations from these sonars were much longer than those of the bathymetric sonars to be used during the proposed survey, and a given mammal would have received many pulses from the naval sonars. During UAF's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by.

Captive bottlenose dolphins and a white whale exhibited changes in behavior when exposed to 1–s pulsed sounds at frequencies similar to those that will be emitted by the bathymetric

sonar to be used by UAF and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.*, 2000; Finneran *et al.*, 2002). The relevance of these data to free-ranging odontocetes is uncertain and in any case the test sounds were quite different in either duration or bandwidth as compared to those from a bathymetric sonar.

UAF and NMFS are not aware of any data on the reactions of pinnipeds to sonar sounds at frequencies similar to those of the 12–kHz multibeam sonar. Based on observed pinniped responses to other types of pulsed sounds, and the likely brevity of exposure to the bathymetric sonar sounds, pinniped reactions are expected to be limited to startle or otherwise brief responses of no lasting consequences to the individual animals.

The pulsed signals from the pinger are much weaker than those from the bathymetric sonars and sub-bottom profiler. In summary, NMFS does not anticipate behavioral disturbance from the mid-frequency sources discussed unless marine mammals get very close to the source.

Hearing Impairment and Other Physical Effects

Given recent stranding events that have been associated with the operation of naval sonar, there is concern that sonar noise can cause serious impacts to marine mammals. However, the multi-beam sonars proposed for use by UAF are quite different than sonars used for navy operations. Pulse duration of the bathymetric sonars is very short relative to the naval sonars. Also, at any given location, an individual marine mammal would be in the beam of the multi-beam sonar for much less time given the generally downward orientation of the beam and its narrow fore-aft beam-width. (Navy sonars often use near-horizontally-directed sound.) These factors would all reduce the sound energy received from the multi-beam sonar relative to that from the sonars used by the Navy. Therefore, hearing impairment by multi-beam bathymetric sonar is unlikely.

Source levels of the sub-bottom profiler are much lower than those of the airguns and the multi-beam sonar, which are discussed above. Sound levels from a sub-bottom profiler similar to the one on the *Healy* were estimated to decrease to 180 dB re 1 μPa (rms) at 8 m (26 ft) horizontally from the source (Burgess and Lawson, 2000), and at approximately 18 m (59 ft) downward from the source. Furthermore, received levels of pulsed sounds that are necessary to cause temporary or especially permanent hearing impairment in marine mammals appear to be higher than 180 dB (see earlier). Thus, it is unlikely that the sub-bottom profiler produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source. The sub-bottom profiler is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the sub-bottom profiler. In the case of mammals that do not avoid the approaching vessel and its various sound sources, mitigation measures that would be applied to minimize effects of the higher-power sources would further reduce or eliminate any minor effects of the sub-bottom profiler. Given the brevity of the pulses from each source [sub-bottom profiler, multi-beam sonar, airgun(s)], and the directionality of the first two sources, it would be rare for an animal to receive pulses from 2 or 3 of the sources simultaneously. In the unlikely event that simultaneous reception did occur, the combined received level would be little different from that attributable to the strongest single source (see equation 2.9 in Richardson *et al.* 1995, p. 30).

Source levels of the pinger are much lower than those of the G. airgun and bathymetric sonars. It is unlikely that the pinger produces pulse levels strong enough to cause temporary hearing impairment or (especially) physical injuries even in an animal that is (briefly) in a position near the source.

Estimates of Take by Harassment for the Arctic Ocean Seismic Survey

Given the proposed mitigation (see Mitigation later in this document), all anticipated takes involve a temporary change in behavior that may constitute Level B harassment. The proposed mitigation measures will minimize or eliminate the possibility of Level A harassment or mortality. UAF has calculated the ''best estimates'' for the numbers of animals that could be taken by Level B harassment during the proposed Arctic Ocean seismic survey using data obtained during marine mammal surveys in and near the Arctic Ocean by Stirling *et al.* (1982), Kingsley (1986), Christensen *et al.* (1992), Koski and Davis (1994), Moore (2000a), Whitehead (2002), and Moulton and Williams (2003), and on estimates of the sizes of the areas where effects could potentially occur (Table 2).

This section provides estimates of the number of potential ''exposures'' of marine mammals to sound levels ≥160, the criteria for the onset of Level B Harassment, by operations with the two-G. gun array (500 in^3) or the single Bolt airgun (1200 in^3). No animals are expected to exhibit responses to the sonars, sub-bottom profiler, or pinger given their characteristics described previously (e.g., narrow, downward-directed beam). Therefore, no additional incidental takings are included for animals that might be affected by the multi-beam sonars or 12–kHz pinger.

Table 2 incorporates corrected density estimates and provides the best estimate of the numbers of each species that would be exposed to seismic sounds greater than 160 dB. Estimates are based on consideration of numbers of marine mammals that might be disturbed by 5075 km of seismic surveys across the Arctic Ocean, which includes a 25 percent allowance over the planned 4060–km track to allow for turns, lines that might have to be repeated due to poor data quality, or for minor changes to the survey design. A detailed description on the methodology used by UAF to arrive at the estimates of Level B harassment takes that are provided in Table 2 can be found in UAF's IHA application for the Arctic Ocean survey.

Table 2. Estimates of the possible numbers of marine mammal exposures to 160 dB during UAF's proposed seismic program in the polar pack ice between Alaska and Svalbard, August-September 2005. The proposed sound sources are two G. guns with volume 250 in3 each or a single Bolt airgun with volume 1200 in3. Received levels of airgun sounds are expressed in dB re 1 μPa (rms, averaged over pulse duration). Species with stars are listed as endangered under the ESA.

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Table 2. Estimates of the possible numbers of marine mammal exposures to 160 dB during UAF's proposed seismic program in the polar pack ice between Alaska and Svalbard, August-September 2005. The proposed sound sources are two G. guns with volume 250 in^3 each or a single Bolt airgun with volume 1200 in^3. Received levels of airgun sounds are expressed in dB re 1 μPa (rms, averaged over pulse duration). Species with stars are listed as endangered under the ESA.

	Number of Exposures to Sound Levels ≥ 160dB								
	Best Estimate				Maximum Estimate				
Species	Barrow	Polar Pack	Svalbard	Total	Barrow	Polar Pack	Svalbard	Total	Requested Take
Delphinidae									
Atlantic white-beaked dolphin	0	0	0	0	0	0	0	0	**10**
Atlantic white-sided dolphin	0	0	0	0	0	0	0	0	**10**
Killer whale	0	0	0	0	0	0	0	0	**5**
Long-finned pilot whale	0	0	0	0	0	0	0	0	**10**
Total Delphinids	0	0	0	0	0	0	0	0	
Odontocetes									
* Sperm whale	0	0	0	0	0	0	5	5	**5**
Ziphidae									
Northern bottlenose whale	0	0	0	0					
Mondontidae									
Beluga	27	2	0	29	107	10	0	117	**117**
Narwhal	0	38	1	39	1	153	2	156	**156**
Phocoenidae									
Harbor porpoise	0	0	0	0	2	0	0	2	**5**
Mysticetes									
* North Atlantic right whale	0	0	0	0	0	0	0	0	**2**
* Bowhead whale	51	9	0	61	202	36	0	238	**238**
Gray whale	35	0	0	35	141	0	0	141	**141**
* Humpback whale	0	0	0	0	0	0	0	0	**5**
Minke whale	0	0	0	0	0	0	0	0	**5**
* Sei whale	0	0	0	0	0	0	0	0	**5**
* Fin whale	0	0	0	0	0	0	0	0	**5**
* Blue whale	0	0	0	0	0	0	0	0	**5**
Total Other Cetaceans	113	50	2	164	452	198	10	661	
Pinnipeds									
Walrus	2	0	0	2	8	0	0	8	
Bearded seal	101	17	12	131	179	70	21	270	**270**
Harbor seal	0	0	0	0	0	0	0	0	**0**
Spotted seal	1	0	0	1	4	0	0	4	**5**
Ringed seal	1986	152	236	2373	3512	607	417	4536	**4536**
Hooded seal	0	0	4	4	0	0	7	7	**7**
Harp seal	0	0	12	12	0	0	21	21	**21**
Total Pinnipeds	2090	169	264	2523	3703	677	467	4847	
Carnivora									
Polar bear	13	2	2	17	32	5	4	41	

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Preliminary Conclusions

Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6–8 km (3–4 n.mi) and occasionally as far as 20–30 km (11–16 n.mi) from the source vessel, although, the sources in these observations were more powerful than those used in this project. However, reactions at the longer distances appear to be atypical of most species and situations, particularly when feeding whales are involved (Miller *et al.* 2005). Fewer than 95 mysticetes are expected to be encountered during the proposed survey in the Arctic Ocean (Table 2) and disturbance effects would be confined to shorter distances given the relatively low-energy acoustic source to be used during this project. Also, based on calibration of 160 dB radii data obtained in deep water (Tolstoy *et al.*, 2004), the estimated numbers presented in Table 2 are considered overestimates of actual numbers that may be harassed.

Odontocete reactions to seismic pulses, or at least the reactions of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. In fact, there are documented instances of delphinids and Dall's porpoise approaching active seismic vessels. However, dolphins, as well as some other types of odontocetes, sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking into account the small total volume and relatively low sound output of the sources proposed in this project, and the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of a small area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of Level B harassment. Furthermore, the estimated numbers of animals potentially exposed to sound levels sufficient to cause appreciable disturbance are very low percentages of the affected populations, as described below.

Based on the 160–dB criterion, the best estimates of the numbers of individual cetaceans that may be exposed to sounds ≥160 dB re 1 microPa (rms) represent <1 percent of the populations of each species in the Arctic Ocean and adjacent waters. For species listed as endangered under the Endangered Species Act (ESA), estimates include no North Atlantic right whales, humpback, sei whales, fin or blue whales; <0.1 percent of the Northeast Atlantic Ocean population of sperm whales, and ≤0.6 percent of the Bering-Chukchi-Beaufort bowhead whale population of >10,470+. In the cases of belugas, narwhals and gray whales, the potential reactions are expected to involve no more than small numbers (29 to 35) of exposures.

It is unlikely that any North Atlantic right whales (or Northeast Atlantic bowheads) will be exposed to seismic sounds ≥160 dB re 1 microPa (rms). However, UAF requests authorization to expose up to two North Atlantic right whales to ≥160 dB, given the possibility of encountering one or more of this endangered species. If a right whale is sighted by the vessel-based observers, or if a bowhead is sighted in the Svalbard area, the airgun(s) will be shut down regardless of the distance of the whale from the airgun(s).

Low numbers of monodontids may be exposed to sounds produced by the 1 or 2 airguns during the proposed seismic study, and the numbers potentially affected are small relative to the population sizes. The best estimates of the numbers of belugas and narwhals that might be exposed to ≥160 dB represent <1 percent of their populations. This assumes that narwhals encountered in the polar pack ice in the central Arctic Ocean belong to the Baffin Bay Davis Strait population. If they are actually members of the East Greenland population, then the estimated size of that population is too low because it did not include surveys of the central Arctic Ocean.

Two estimates of the numbers of marine mammals that might be exposed to sounds from the 2–G. gun array or the single Bolt airgun during the 2005 trans-Arctic seismic survey were presented in Table 2, depending on the density criteria used (best vs. maximum). UAF requested ''take authorizations'' for each species based on the estimated maximum number of exposures to ≥160 dB re 1 microPa (rms), i.e., the highest of the various estimates. That figure likely overestimates the actual number of animals that will be exposed to the sound (see above). Even so, the estimates for the proposed survey are quite low percentages of the population sizes.

Mitigation measures such as controlled speed, course alteration, observers, ramp ups, and shut downs when marine mammals are seen within defined ranges should further reduce short-term reactions, and minimize any effects on hearing. In all cases, the effects are expected to be short-term, with no lasting biological consequence. In light of the type of take expected and the small percentages of affected stocks of cetaceans, the action is expected to have no more than a negligible impact on the affected species or stocks of cetaceans.

Effects on Pinnipeds

Two pinniped species (ringed seal and bearded seal) are likely to be encountered in the study area. Also, it is possible that a small number (0–12) of harp seals, hooded seals, spotted seals, harbor seals, or walruses may be encountered. An estimated 2373 individual ringed seals and 131 bearded seals (<0.5 percent their Arctic Ocean and adjacent waters population) may be exposed to airgun sounds at received levels greater than or equal to 160 dB re 1 microPa (rms) during the seismic survey. It is probable that only a small percentage of those would actually be disturbed. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment. As is the case for cetaceans, the short-term exposures to sounds from the sources in this project are not expected to result in any long-term consequences for the individuals or their populations and the activity is expected to have no more than a negligible impact on the affected species or stocks of pinnipeds.

Effects on Polar Bears

Effects on polar bears are anticipated to be minor at most. Although the best estimate of polar bears that will be encountered during the survey is 16, almost all of these would be on the ice, and therefore they would be unaffected by underwater sound from the airgun(s). For the few bears that are in the water, levels of airgun and sonar sound would be attenuated because polar bears generally do not dive much below the surface. Received levels of airgun sound are reduced substantially just below the surface, relative to those at deeper depths, because of the pressure release effect at the surface

Potential Effects on Habitat

The proposed seismic survey will not result in any permanent impact on habitats used by marine mammals, or to the food sources they utilize. The main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

One of the reasons for the adoption of airguns as the standard energy source for marine seismic surveys was that they (unlike the explosives used in the distant past) do not result in any

appreciable fish kill. Various experimental studies showed that airgun discharges cause little or no fish kill, and that any injurious effects were generally limited to the water within a meter or so of an airgun. However, it has recently been found that injurious effects on captive fish, especially on fish hearing, may occur at somewhat greater distances than previously thought (McCauley *et al.*, 2000a,b, 2002; 2003). Even so, any injurious effects on fish would be limited to short distances from the source. Also, many of the fish that might otherwise be within the injury-zone are likely to be displaced from this region prior to the approach of the airguns through avoidance reactions to the passing seismic vessel or to the airgun sounds as received at distances beyond the injury radius.

Fish often react to sounds, especially strong and/or intermittent sounds of low frequency. Sound pulses at received levels of 160 dB re 1 microPa (peak) may cause subtle changes in behavior. Pulses at levels of 180 dB (peak) may cause noticeable changes in behavior (Chapman and Hawkins, 1969; Pearson *et al.*, 1992; Skalski *et al.*, 1992). It also appears that fish often habituate to repeated strong sounds rather rapidly, on time scales of minutes to an hour. However, the habituation does not endure, and resumption of the disturbing activity may again elicit disturbance responses from the same fish.

Fish near the airguns are likely to dive or exhibit some other kind of behavioral response. This might have short-term impacts on the ability of cetaceans to feed near the survey area. However, only a small fraction of the available habitat would be ensonified at any given time, and fish species would return to their pre-disturbance behavior once the seismic activity ceased. Thus, the proposed surveys would have little impact on the abilities of marine mammals to feed in the area where seismic work is planned. Some of the fish that do not avoid the approaching airguns (probably a small number) may be subject to auditory or other injuries.

Zooplankton that are very close to the source may react to the airgun's shock wave. These animals have an exoskeleton and no air sacs; therefore, little or no mortality is expected. Many crustaceans can make sounds and some crustacea and other invertebrates have some type of sound receptor. However, the reactions of zooplankton to sound are not known. Some mysticetes feed on concentrations of zooplankton. A reaction by zooplankton to a seismic impulse would only be relevant to whales if it caused a concentration of zooplankton to scatter. Pressure changes of sufficient magnitude to cause this type of reaction would probably occur only very close to the source, so few zooplankton concentrations would be affected. Impacts on zooplankton behavior are predicted to be negligible, and this would translate into negligible impacts on feeding mysticetes.

Potential Effects on Subsistence Use of Marine Mammals

Subsistence remains the basis for Alaska Native culture and community. Subsistence hunting and fishing continue to be prominent in the household economies and social welfare of some Alaskan residents, particularly among those living in small, rural villages (Wolfe and Walker, 1987). In rural Alaska, subsistence activities are often central to many aspects of human existence, including patterns of family life, artistic expression, and community religious and celebratory activities.

Marine mammals are legally hunted in Alaskan waters near Barrow by coastal Alaska Natives. Nearby communities with subsistence economies include Barrow, Nuisqsut, and Kaktovik. Species hunted include: bowhead whales, beluga whales, ringed, spotted, and bearded seals, walrus, and polar bears. In the Barrow area, bowhead whales provided approximately 69 percent of the total weight of marine mammals harvested from April 1987 to March 1990. During that time, on a numerical basis, ringed seals were harvested the most frequently (394 animals). More detailed information regarding the level of subsistence by species is provided in the application (UAF, 2005).

In the event that both marine mammals and hunters would be near the Healy when it begins operating north of Barrow, the proposed project could potentially impact the availability of marine mammals for harvest in a very small area immediately around the Healy. However, the majority of marine mammals are taken by hunters within approximately 33 km (18 n.mi) off shore, and the *Healy* is expected to commence the seismic survey farther offshore than that. Operations in that area are scheduled to occur in August, and hunting in offshore waters generally does not occur at that time of year (the bowhead hunt near Barrow normally does not begin until more than a month later). Considering that, and the limited times and location where the planned seismic survey overlaps with hunting areas, the proposed project is not expected to have an unmitigable adverse effect on the availability of marine mammals for subsistence harvest.

In Norwegian waters, a limited amount of hunting takes place on or near Svalbard. The human population of Svalbard is approximately 1700. Of the marine mammals found near Svalbard only the minke whale, bearded seal, and ringed seal may be taken by local hunters (the commercial sealing grounds for harp and hooded seals are distant from Svalbard). The seismic survey will terminate northwest of Svalbard territorial waters. Any ship operations closer to Svalbard will be similar to those of other vessels operating in the area, will not involve airgun operations, and will not adversely impact subsistence harvests.

Mitigation

For the proposed seismic survey in the Arctic Ocean in August - September 2005, UAF will use airgun sources involving one or two airguns and a downward direction of energy. The downward directional nature of the airgun(s) to be used in this project is an important mitigating factor as it will result in reduced sound levels at any given horizontal distance as compared with the levels expected at that distance if the source were omnidirectional with the stated nominal source level. The relatively small size of these sources is also an important mitigation measure that will reduce the potential for effects relative to those that might occur with large airgun arrays. This measure is in conformance with NMFS policy of encouraging seismic operators to use the lowest intensity airguns practical to accomplish research objectives.

The following mitigation measures, as well as marine mammal visual monitoring (discussed later in this document), will be implemented for the subject seismic survey: (1) speed and course alteration (provided that they do not compromise operational safety requirements); (2) power or shut-down procedures; (3) special mitigation measures (shut-downs) for the North Atlantic right whale and Northeast Atlantic bowhead whale, because of special concern associated with their very low population sizes, and (4) ramp-up procedures.

Speed and Course Alteration

If a marine mammal is detected outside its respective safety zone (180 dB for cetaceans, 190 dB for pinnipeds) and, based on its position and the relative motion, is likely to enter the safety zone, the vessel's speed and/or direct course may, when practical and safe, be changed in a manner that also

minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety zone. If the mammal appears likely to enter the safety zone, further mitigative actions will be taken (i.e., either further course alterations or shut down of the airguns).

Power-down Procedures

A power down involves decreasing the number of airguns in use such that the radius of the 180–dB (or 190–dB) zone is decreased to the extent that marine mammals are not in the safety zone. A power down may also occur when the vessel is moving from one seismic line to another. During a power down, one airgun is operated. In this project, a power down is possible when the two G. gun array is in use, but not when single Bolt airgun is in use. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut down occurs when all airgun activity is suspended.

If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's speed and/or course cannot be changed to avoid having the mammal enter the safety radius, the airguns may (as an alternative to a complete shut down) be powered down before the mammal is within the safety radius. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be powered down immediately if this is a reasonable alternative to a complete shut down. During a power down of the 2–G. gun system, one airgun (e.g., 250 in^3) will be operated. If a marine mammal is detected within or near the smaller safety radius around that single airgun (Table 2), the other airgun will be shut down (see next subsection).

Following a power down, airgun activity will not resume until the marine mammal has cleared the safety zone. The safety zones for both one and two Sodera 250–in^3 G. guns, as well as the single 1200–in3 Bolt airgun at both 180 and 190 dB, are described in Table 1. The animal will be considered to have cleared the safety zone if it is visually observed to have left the safety zone, if it has not been seen within the zone for 15 minutes in the case of small odontocetes and pinnipeds, or if it has not been seen within the zone for 30 minutes in the case of mysticetes and large odontocetes, including sperm and beaked whales.

Shut-down Procedures

The operating airgun(s) will be shut down completely if a marine mammal approaches or enters the then-applicable safety radius and a power down is not practical. The operating airgun(s) will also be shut down completely if a marine mammal approaches or enters the estimated safety radius of the source that would be used during a power down.

Airgun activity will not resume until the marine mammal has cleared the safety radius. The animal will be considered to have cleared the safety radius if it is visually observed to have left the safety radius, or if it has not been seen within the radius for 15 min (small odontocetes, pinnipeds, and sea turtles) or 30 min (mysticetes and large odontocetes, including sperm and beaked whales).

Start-Up Procedures

A ''ramp up'' procedure will be followed when the 2–G. gun cluster begins operating after a specified-duration period without airgun operations. NMFS normally recommends that the rate of ramp up be no more than 6 dB per 5–min period. The specified period depends on the speed of the source vessel and the size of the airgun array being used. Ramp up will begin with one of the two G. guns (250 in*3*). The other G. gun will be added after a period of 5 min. This will result in an increase of no more than 6 dB per 5–min period when going from one G. gun to the full two G. gun system, which is the normal rate of ramp up for larger airgun arrays. During the ramp up (i.e. when only one G. gun is operating), the safety zone for the full two G. gun system will be maintained.

If the complete safety radius has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime, ramp up will not commence unless one G. gun has been operating during the interruption of the seismic survey operations. This means that it will not be permissible to ramp up the two-G. gun source from a complete shut down in thick fog or at other times when the outer part of the safety zone is not visible. If the entire safety radius is visible using vessel lights and/or night vision devices (NVDs) (as may be possible under moonlit and calm conditions), then start up of the airguns from a shut down may occur at night. If one airgun has operated during a power-down period, ramp up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away if they chose. Ramp up of the airguns will not be initiated if a marine mammal is sighted within or near the applicable safety radii during the day or a night.

Marine Mammal Monitoring

Vessel-based marine mammal observers (MMOs) will monitor marine mammals near the seismic source vessel during all daytime hours and during any start ups of the airgun(s) at night. Airgun operations will be powered down or shut down when marine mammals are observed within, or about to enter, designated safety radii where there is a possibility of significant effects on hearing or other physical effects. Vessel-based MMOs will also watch for marine mammals near the seismic vessel for at least 30 min prior to the planned start of airgun operations after an extended shut down of the airgun. When feasible, observations will also be made during daytime periods without seismic operations (e.g., during transits and during coring operations).

During seismic operations across the Arctic Ocean, four observers will be based aboard the vessel. MMOs will be appointed by UAF with NMFS concurrence. A Barrow resident knowledgeable about the mammals and fish of the area is expected to be included in the MMO team aboard the Healy. At least one observer, and when practical two observers, will monitor marine mammals near the seismic vessel during ongoing daytime operations and nighttime start ups of the airgun. Use of two simultaneous observers will increase the proportion of the animals present near the source vessel that are detected. MMOs will normally be on duty in shifts of duration no longer than 4 hours. The USCG crew will also be instructed to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey the crew will be given additional instruction on how to do so.

The *Healy* is a suitable platform for marine mammal observations. When stationed on the flying bridge, the eye level will be 27.7 m (91 ft) above sea level, and the observer will have an unobstructed view around the entire vessel. If surveying from the bridge, the observer's eye level will be 19.5 m (64 ft) above sea level and approximately 25° of the view will be partially obstructed directly to the stern by the stack. During daytime, the MMOs will scan the area around the vessel systematically with reticle binoculars (e.g., 7 50 Fujinon) and with the naked

eye. During darkness, NVDs will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), if and when required. Laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. Those are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly.

Taking into consideration the additional costs of prohibiting nighttime operations and the likely impact of the activity (including all mitigation and monitoring), NMFS has preliminarily determined that the proposed mitigation and monitoring ensures that the activity will have the least practicable impact on the affected species or stocks. Two marine mammal observers will be required to monitor the safety radii (using shipboard lighting or NVDs at night) for at least 30 minutes before ramp-up begins and verify that no marine mammals are in or approaching the safety radii; start-up may not begin unless the entire safety radii are visible; and marine mammals will have sufficient notice of a vessel approaching with an operating seismic airgun, thereby giving them an opportunity to avoid the approaching noise source. Additionally, a power-down or shut-down will occur if a marine mammal is detected within the safety radius.

Reporting

UAF will submit a report to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and the marine mammals that were detected near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90–day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the amount and nature of potential ''take'' of marine mammals by harassment or in other ways.

Endangered Species Act (ESA)

Under section 7 of the ESA, the National Science Foundation (NSF), the agency funding UAF, has begun consultation on this proposed seismic survey. NMFS will also consult on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA. Preliminarily, NMFS believes that the only ESA listed species that may experience Level B Harassment is the bowhead whale.

National Environmental Policy Act (NEPA)

The NSF and UAF have prepared an Environmental Assessment (EA) for the oceanographic survey planned for the Arctic Ocean. NMFS has posted this EA on the NMFS website and solicits public comments regarding impacts to marine mammals. NMFS will review the EA and the public comments and subsequently either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. The EA for this activity is available upon request or on the NMFS website (see **ADDRESSES**). Comments regarding impacts to marine mammals may be submitted by mail, fax, or email (see **ADDRESSES**). All other comments should be addressed to UAF or the National Science Foundation.

Preliminary Conclusions

NMFS has preliminarily determined that the impact of conducting the seismic survey in the Arctic Ocean may result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species or stocks.

For reasons stated previously in this document, this preliminary determination is supported by: (1) the likelihood that, given sufficient notice through slow ship speed and ramp-up, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious; (2) recent research that indicates that TTS is unlikely (at least in delphinids) until levels closer to 200–205 dB re 1 microPa are reached rather than 180 dB re 1 microPa; (3) the fact that 200–205 dB isopleths would be well within 100 m (328 ft) of the vessel even in shallow water; and (4) the likelihood that marine mammal detection ability by trained observers is close to 100 percent during daytime and remains high at night to that distance from the seismic vessel. As a result, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the proposed mitigation measures mentioned in this document.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, the proposed seismic program will not interfere with any legal subsistence hunts, since seismic operations will not be conducted in the same space and time as the hunts in subsistence whaling and sealing areas and will not adversely affect marine mammals used for subsistence purposes.

Proposed Authorization

NMFS proposes to issue an IHA to UAF for conducting a low-intensity oceanographic seismic survey in the Arctic Ocean, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: May 4, 2005.

Michael Payne,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–9333 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Commercial Availability Request under the United States-Singapore Free Trade Agreement (USSFTA)

May 4, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for Public Comments concerning a request for modifications of the USSFTA rules of origin for apparel items made from certain yarns and fabrics.

SUMMARY: The Government of the United States has received a request dated April 8, 2005, from the Government of Singapore for consultations under Article 3.18.4(a)(i) of the USSFTA. Singapore is seeking agreement to revise the rules of origin for certain apparel goods to address availability of supply of certain yarns and fabrics in the territories of the Parties. The request covers products that have been the subject of prior

determinations made by CITA between April 6, 2004 and January 18, 2005 pursuant to the Caribbean Basin Trade Partnership Act (CBTPA), and the Andean Trade Promotion and Drug Eradication Act (ATPDEA).

Section 202(o)(2) of the United States - Singapore Free Trade Agreement Implementation Act authorizes the President to proclaim a modification to the USSFTA rules of origin for textile and apparel products that are necessary to implement an agreement with Singapore pursuant to Article 3.18.4 of the USSFTA after complying with the consultation and layover requirements of that Act. Prior to entering negotiations with Singapore regarding its request, it is appropriate to seek public comment regarding the request. CITA hereby solicits public comments on this request, in particular with regard to whether the yarns and fabrics described below can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by June 16, 2004 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

BACKGROUND:

Under the United States-Singapore Free Trade Agreement (USSFTA), USSFTA countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the USSFTA rules of origin, which are set out in Annex 3A to the USSFTA. The USSFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the USSFTA countries. In consultations regarding such a change, the USSFTA countries are to consider issues of availability of supply of fibers, yarns, or fabrics in the free trade area and whether domestic producers are capable of supplying commercial quantities of the good in a timely manner.

The government of the United States received a request from the government of Singapore requesting consultations on the rules of origin for certain products that have been the subject of prior determinations made by CITA under AGOA, CBTPA and ATPDEA, and requesting that the government of the United States consider whether the USSFTA rules of origin for these products should be modified to allow the use of certain yarns and fabrics that do not originate in the territory of the United States or Singapore. The products covered by this request are:

(1) Certain viscose rayon filament yarns, of the specifications detailed below, classified in subheading 5403.41.0000 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles;

Specifications:

1. Viscose Filament Yarn
DTEX 166/40 Bright Centrifugal
Tenacity, cN/tex, min. - 142.0
Elongation at rupture, % - 18.0 - 24.0
Elongation at rupture variation factory, % max. - 8.1
Twist direction - S

2. Viscose Filament Yarn
DTEX 330/60 Bright Centrifugal
Tenacity, cN/tex, min. - 142.0
Elongation at rupture, % - 18.0 - 24.0
Elongation at rupture variation factor, % max. - 8.1
Twist direction - S

(2) Certain fabrics, classified in subheading 5210.11 of the Harmonized Tariff Schedule of the United States (HTSUS), not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 70 metric, used in the production of women's and girls' blouses;

(3) Certain combed compact yarns, of wool or fine animal hair, classified in subheadings 5107.10, 5107.20, or 5108.20 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles;

(4) 100 percent cotton yarn-dyed woven flannel fabrics, made from 14 through 41 NM single ring-spun yarns, classified in 5208.43.00 of the Harmonized Tariff Schedule of the United States (HTSUS), of construction 2 X 1 twill weave, weighing 200 grams per square meter or less, for use in apparel articles excluding gloves;

(5) Certain woven, 100 percent cotton, flannel fabrics, of the specifications detailed below, classified in the indicated subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), for use in shirts, trousers, nightwear, robes, dressing gowns, and woven underwear:

Specifications:

Fabric 1

HTS Subheading:	5208.42.30.00
Fiber Content:	100% Cotton
Weight:	152.6 g/m2
Width:	150 centimeters cuttable
Thread Count:	24.4 warp ends per centimeter; 15.7 filling picks per centimeter; total: 40.1 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 20.3 metric, open end spun; overall average yarn number: 39.4 metric
Finish:	of yarns of different colors; napped on both sides, sanforized

Fabric 2

HTS Subheading:	5209.41.60.40
Fiber Content:	100% Cotton
Weight:	251 g/m2
Width:	160 centimeters cuttable
Thread Count:	22.8 warp ends per centimeter; 17.3 filling picks per centimeter; total: 40.1 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 8.46 metric, open end spun; overall average yarn number: 24.1 metric
Finish:	Of yarns of different colors; napped on both sides, sanforized

Fabric 3

HTS Subheading:	5209.41.60.40
Fiber Content:	100% Cotton
Weight:	251 g/m2
Width:	160 centimeters cuttable
Thread Count:	20.1 warp ends per centimeter; 16.5 filling picks per centimeter; total: 36.6 threads per square centimeter
Yarn Number:	Warp: 27.07 metric, ring spun; filling: 10.16 metric, open end spun; overall average yarn number: 23.3 metric
Finish:	Of yarns of different colors; napped on both sides, sanforized

(6) Certain woven, 100 percent cotton, flannel fabrics, of the specifications detailed below, classified in the indicated subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), for use in shirts, trousers, nightwear, robes, dressing gowns, and woven underwear:

Specifications:

Fabric 1:

HTS Subheading:	5208.32.30.40
Fiber Content:	100% Cotton
Weight:	152.6 g/m2
Width:	150 centimeters cuttable
Thread Count:	24.4 warp ends per centimeter; 15.7 filling picks per centimeter; total: 40.1 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 20.3 metric, open end spun; overall average yarn number: 39.4 metric
Finish:	(Piece) dyed; napped on both sides, sanforized

Fabric 2:

HTS Subheading:	5209.31.60.50
Fiber Content:	100% Cotton

Weight:	251 g/m2
Width:	160 centimeters cuttable
Thread Count:	22.8 warp ends per centimeter; 15 filling picks per centimeter; total: 37.8 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 8.46 metric, open end spun; overall average yarn number: 24.1 metric
Finish:	(Piece) dyed; napped on both sides, sanforized

Fabric 3:

HTS Subheading:	5209.31.60.50
Fiber Content:	100% Cotton
Weight:	203 g/m2
Width:	150 centimeters cuttable
Thread Count:	20.5 warp ends per centimeter; 17.3 filling picks per centimeter; total: 37.8 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 13.5 metric, open end spun; overall average yarn number: 27.9 metric
Finish:	(Piece) dyed; napped on both sides, sanforized

Fabric 4:

HTS Subheading:	5209.31.60.50
Fiber Content:	100% Cotton
Weight:	291.5 g/m2
Width:	160 centimeters cuttable
Thread Count:	23.2 warp ends per centimeter; 15 filling picks per centimeter; total: 38.2 threads per square centimeter
Yarn Number:	Warp: 27.07 metric, ring spun; filling: 8.46 metric, open end spun; overall average yarn number: 20.1 metric
Finish:	(Piece) dyed; napped on both sides, sanforized

Fabric 5:

HTS Subheading:	5209.31.60.50
Fiber Content:	100% Cotton
Weight:	291.5 g/m2
Width:	160 centimeters cuttable
Thread Count:	26.8 warp ends per centimeter; 16.5 filling picks per centimeter; total: 43.3 threads per square centimeter
Yarn Number:	Warp: 25.46 metric, ring spun; filling: 10.16 metric, open end spun; overall average yarn number: 23.8 metric
Finish:	(Piece) dyed; napped on both sides, sanforized

Fabric 6:

HTS Subheading:	5209.31.60.50
Fiber Content:	100% Cotton
Weight:	254 g/m2
Width:	160 centimeters cuttable
Thread Count:	20 warp ends per centimeter; 14.5 filling picks per centimeter; total: 34.5 threads per square centimeter
Yarn Number:	Warp: 28.8 metric, ring spun; filling: 8.46 metric, open end spun; overall average yarn number: 20.1 metric
Finish:	(Piece) dyed; napped on both sides, sanforized

Fabric 7:

HTS Subheading:	5209.41.60.40
Fiber Content:	100% Cotton
Weight:	251 g/m2
Width:	160 centimeters cuttable
Thread Count:	22.8 warp ends per centimeter; 15 filling picks per centimeter; total: 37.8 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 8.46 metric, open end spun; overall average yarn number: 24.1 metric
Finish:	gingham check or plaid of yarns of different colors; napped on both sides, sanforized

Fabric 8: Style 4245

HTS Subheading:	5209.41.60.40
Fiber Content:	100% Cotton
Weight:	251 g/m2
Width:	160 centimeters cuttable
Thread Count:	19.7 warp ends per centimeter; 11.8 filling picks per centimeter; total: 31.5 threads per square centimeter
Yarn Number:	Warp: 20.3 metric, ring spun; filling: 8.46 metric, open end spun; overall average yarn number: 20.1 metric
Finish:	Plaid of yarns of different colors; napped on both sides, sanforized

(7) Certain woven, 100 percent cotton, napped fabrics, of the specifications detailed below, classified in subheading 5209.31.60.50 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in shirts, trousers, nightwear, robes, dressing gowns, and woven underwear:

Specifications:

Fabric 1

HTS Subheading:	5209.31.60.50
Fiber Content:	100% Cotton
Weight:	291.5 g/m2
Width:	160 centimeters cuttable
Thread Count:	24.41 warp ends per centimeter; 16.53 filling picks per centimeter; total: 40.94 threads per square centimeter
Yarn Number:	Warp: 25.4 metric, ring spun; filling: 10.16 metric, open end spun; overall average yarn number: 14.04 metric
Finish:	(Piece) dyed; napped on both sides, sanforized

Fabric 2

HTS Subheading:	5209.31.60.50
Fiber Content:	100% Cotton
Weight:	305 g/m2
Width:	160 centimeters cuttable
Thread Count:	24.41 warp ends per centimeter; 18.11 filling picks per centimeter; total: 42.52 threads per square centimeter
Yarn Number:	Warp: 25.4 metric, ring spun; filling: 10.16 metric, open end spun; overall average yarn number: 13.95 metric
Finish:	(Piece) dyed; napped on both sides, sanforized

(8) Certain woven, 100 percent cotton, double-napped flannel fabric, of specifications detailed below, classified in HTSUS subheading 5209.31.6050, for use in shirts, trousers, nightwear, robes, dressing gowns, and woven underwear:

Specifications:

HTS Subheading:	5209.31.6050
Fiber Content:	100% Cotton
Weight:	203 g/m2
Width:	150 centimeters cuttable
Thread Count:	21 warp ends per centimeter; 18 filling picks per centimeter; total: 39 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 13.54 metric, open end spun; overall average yarn number: 19.2 metric
Finish:	(Piece) dyed; napped on both sides, sanforized

CITA is soliciting public comments regarding this request, particularly with respect to whether the yarns and fabrics listed above can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be received no later than June 16, 2004. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that any of the yarns or fabrics listed above can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer stating that it produces a yarn or fabric that is in the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-

confidential version and a non-confidential summary.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–9325 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–DS

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Electrospun Fibers and an Apparatus Therefor

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR part 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 6,860,156 B1 entitled ''Electrospun Fibers and an Apparatus Therefor'' issued June 22, 2004. This patent has been assigned to the United States Government as represented by the Secretary of the Navy.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone: (508) 233–4928 or E-mail: *Robert.Rosenkrans@nantick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–9311 Filed 5–9–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Draft Supplemental Environmental Impact Statement for the Boston Harbor Inner Harbor Maintenance Dredging Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, New England District is preparing a Supplemental Environmental Impact Statement (SEIS) to maintenance dredge the federal navigation channels landward of Spectacle Island in Boston Harbor, MA. Maintenance dredging of the navigation channels landward of Spectacle Island is needed to remove shoals and restore the navigation channels to their authorized depths. Ships are currently experiencing tidal delays and potential damage from grounding. Material dredged from the federal channels will either be disposed at the Massachusetts Bay Disposal Site (if the material is suitable for ocean disposal) or, if the material is not suitable for ocean disposal, in confined aquatic disposal (CAD) cell(s). Major navigation channel improvements (depending) were made in 1999 through 2001 in the Reserved Channel, the Mystic River, Inner Confluence and the Chelsa River. A final EIS was prepared for this previous navigation improvement project in June of 1995 in which the use of CAD cells in the Mystic River, Inner Confluence, and Chelsea River were investigated. CAD cells not used during the construction of the previous navigation improvement project will be investigated for acceptability during the preparation of this SEIS.

ADDRESSES: If you wish to be placed on the mailing list for this project, or have questions about the proposed action and the DSEIS, please contact Ms. Catherine Rogers, Ecologist, U.S. Army Corps of Engineers, New England District, Evaluation Branch, 696 Virginia Road, Concord, MA 01742.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Rogers, (978) 318–8231.

SUPPLEMENTARY INFORMATION: The U.S. Army Corps of Engineers is authorized by the various Rivers and Harbor Acts and Water Resources Development Acts to conduct maintenance dredging of the federal navigation channels and anchorage areas in Boston Harbor.

In addition to maintenance dredging of the inner harbor, a feasibility study is currently underway to investigate deepening of the main shipping channels in the port of Boston seaward of the Ted Williams Tunnel to a depth greater than the currently authorized depths. This feasibility study, which will also include the preparation of a Supplemental EIS to the 1995 Record of Decision for the navigation improvement project, will examine the engineering feasibility, economic justification, social and cultural resource impacts, and environmental acceptability of the proposed channel deepening. The existing −40 foot MLLW main harbor entrance channel from Broad Sound, through President Roads, and up to the Marine Terminal just seaward of the Ted Williams Tunnel will be examined for depths up to −50 feet MLLW, as will the Reserved Channel. Deepening of a small area of the Mystic River Channel upstream of the Moran Terminal, from the current −35 foot depths to −40 feet will also be examined, as will deepening the Chelsea River Channel from the current −38 foot depth −40 feet.

Maintenance dredging of the federal Main Ship channel seaward of Spectacle Island, the President Roads anchorage area, and the Broad Sound North Channel is scheduled to be completed by May 2005. Material dredged from these channels was determined to be suitable for ocean water disposal and was disposal at the U.S. Environmental Protection Agency designated dredged material Massachusetts Bay Disposal Site.

Alternatives: The no action alternative will be investigated. Material unsuitable for ocean disposal would most likely be disposed within confined aquatic disposal (CAD) cells within the federal navigation channels above the Ted Williams Tunnel. The draft and final EIS for the previous Boston Harbor navigation improvement project investigated other alternative disposal sites for the disposal of dredged material. Material suitable for ocean disposal would likely be disposed at the Massachusetts Bay Disposal Site. A draft SEIS is expected to be completed by October 2005.

Dated: April 25, 2005.

Thomas L. Koning,

Colonel, Corps of Engineers, New England District.

[FR Doc. 05–9316 Filed 5–9–05; 8:45 am]

BILLING CODE 3710–24–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 are available for licensing by the Department of the Navy. U.S. Patent No. 6,879,011 entitled ''Magnetically Shielded Circuit Board'' and U.S. Patent Application No. 11/108,150 entitled ''Method for Field Calibrating an Ion Spectrometer''.

ADDRESSES: Requests for copies of the inventions cited should be directed to the Naval Surface Warfare Center, Crane Div., Code 054, Bldg 1, 300 HWY 361, Crane, IN 47522–5001 and must include the patent number.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Bailey, Naval Surface Warfare Center, Crane Div., Code 054, Bldg 1, 300 HWY 361, Crane, IN 47522–5001, telephone 812–854–1865. An application for license may be downloaded from: *http://www.crane.navy.mil/newscommunity/techtrans_CranePatents.asp.*

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: May 3, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–9268 Filed 5–9–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the U.S. Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent No. 6,745,715: STERN FLAP CORRECTIVE MOTION AND FUEL SAVING CONTROL SYSTEM FOR MARINE VESSELS.//U.S. Patent No. 6,746,005: CONSTANT NATURAL FREQUENCY PASSIVE-ACTIVE MOUNT.//U.S. Patent No. 6,751,161: FLUIDBORNE SOUND PROJECTOR WITH SWEEP CLEANING FACILITIES.//U.S. Patent No. 6,752,921: BIOREACTOR TANK INTERNALLY CHAMBERED TO SEQUENTIALLY PERFORM BIOLOGICAL TREATMENT AND MEMBRANE FILTRATION.//U.S. Patent No. 6,765,487: UNDERWATER DETECTION AND DETERRENT SYSTEM.//U.S. Patent No. 6,773,851: SYNTHESIS OF LI2MN409 USING LITHIUM PERMANGANATE PRECURSOR.//U.S. Patent No. 6,779,476: LOW SOLAR ABSORBING NONSKID COMPOSITION AND APPLIED CONFIGURATION FOR A FLIGHT DECK.//U.S. Patent No. 6,798,632: POWER FREQUENCY ELECTROMAGNETIC FIELD COMPENSATION SYSTEM.//U.S. Patent No. 6,799,126: NONDESTRUCTIVE METHOD FOR DETECTING STRUCTUAL ANOMALIES IN COMPOSITES.//U.S. Patent No. 6,799,396: WATERTIGHT DOOR CLOSURE.//U.S. Patent No. 6,802,962: DECK DRAIN COVER PLATE ASSEMBLY.//U.S. Patent No. 6,805,067: CONTOUR STERN FLAP.//U.S. Patent No. 6,810,365: MONITORING WASTE LIQUID TO DETERMINE MEMBRANE CLEANSING PERFORMANCE.//U.S. Patent No. 6,847,153: POLYURETHANE ELECTROSTRICTION.//U.S. Patent No. 6,854,279: DYNAMIC DESICCATION COOLING SYSTEM FOR SHIPS.//U.S. Patent No. 6,864,858: RADAR REFLECTING RESCUE DEVICE.//U.S. Patent No. 6,879,256: SEAL COMPRESSION INDICATION SYSTEM.

ADDRESSES: Requests for copies of the patents cited should be directed to: Naval Surface Warfare Center Carderock Division, Code 0117, 9500 MacArthur Blvd, West Bethesda, MD 20817–5700, and must include the patent number.

FOR FURTHER INFORMATION CONTACT: Joseph Teter Ph.D., Director, Technology Transfer Office, Naval Surface Warfare Center Carderock Division, Code 0117, 9500 MacArthur Blvd, West Bethesda, MD 20817–5700, telephone 301–227–4299.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: May 3, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–9277 Filed 5–9–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel; Correction

AGENCY: Department of the Navy, DOD.

ACTION: Notice of closed meeting; correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** of April 26, 2005, announcing a closed meeting of the CNO Executive Panel. The document contained incorrect date and time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Christopher Corgnati, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, 703–681–4909.

Correction

In the **Federal Register** of April 26, 2005, in FR Doc. 05–8268, on page 21403, in the second column, correct the **DATES** caption to read:

DATES: The meeting will be held on Friday, June 24, 2005, from 9 a.m. to 10 a.m.

Dated: May 3, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–9276 Filed 5–9–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The CNO Executive Panel is to provide consensus advice to the Chief of Naval Operations. The meeting will consist of discussions on strategy, force structure, personnel and organizational issues facing the Navy.

DATES: The meeting will be held on Thursday, May 26, 2005, from 9 a.m. to 11 a.m.

ADDRESSES: The meeting will be held in the Center for Naval Analyses Multipurpose Room, 4825 Mark Center Drive, Alexandria, VA 22311.

FOR FURTHER INFORMATION CONTACT: Commander Erik Ross, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, 703–681–4908.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: May 3, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 05–9269 Filed 5–9–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management

Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 9, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 4, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: Public Libraries Survey, 2005–2007.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 55; *Burden Hours:* 3,080.

Abstract: Mandated under Public Law 107–279, this survey collects annual descriptive data on the universe of public libraries in the U.S. and the Outlying Areas. Information such as public service hours per year, circulation of library books, etc., number of librarians, population of legal service area, expenditures for library collection, staff salary data, and access to technology are collected.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2708. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–9259 Filed 5–9–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 9, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 4, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: State Library Agencies Survey, 2005–2007.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 51; *Burden Hours:* 1,071.

Abstract: State library agencies are the official agencies of each state charged by state law with the extension and development of public library services throughout the state. The purpose of this survey is to provide state and federal policymakers with information about StLAs, including their governance, allied operations, developmental services to libraries and library systems, support of electronic information networks and resources, number and types of outlets, and direct services to the public.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the

''Browse Pending Collections'' link and by clicking on link number 2709. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–9260 Filed 5–9–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On April 26, 2005, the Department of Education published a notice in the **Federal Register** (Page 21403, Column 2) for the information collection, ''The Professional Development Impact Study—Full Study Data Collection Instruments''. The Type of Review is hereby corrected to Revision. Under Reporting and Recordkeeping Hour Burden, the number of responses is corrected to 1,224 and the burden hours is corrected to 754. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: May 4, 2005.

Angela C. Arrington,

Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

[FR Doc. 05–9258 Filed 5–9–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC05–549–001, FERC–549]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

May 3, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and reinstatement of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received one comment in response to an earlier **Federal Register** notice of March 1, 2005 (70 FR 9937–9938) and has noted this in its submission to OMB.

DATES: Comments on the collection of information are due by May 31, 2005.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at (202) 395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC05–549–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–549, ''Gas Pipeline Rates: NGPA Title III and NGA Blanket Certificate Transactions''.

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0086.

The Commission is now requesting that OMB approve a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary for the Commission to carry out its responsibilities in implementing the statutory provisions of sections 311 and 312 of the Natural Gas Policy Act (NGPA) and Section 7 of the Natural Gas Act (NGA). The reporting requirements for implementing these provisions are contained in 18 Code of Federal Regulations (CFR) Part 284. Under Part 284 of the Commission's regulations non-interstate pipelines that perform transportation service under NGPA section 311 (intrastate pipelines) or blanket certificates issued under section 7 of the NGA are required to file an annual report containing specific details of each transaction initiated during the

reporting year. Interstate pipelines performing unbundled sales service under a blanket certificate granted under Part 284 of the regulations are required to file an annual report detailing specific information on each transaction initiated during the reporting year.

In Order No. 644 (68 FR 66323, November 26, 2003), the Commission amended its regulations regarding blanket certificates for unbundled gas sales services held by interstate natural gas pipelines and blanket marketing certificates held by persons making sales for resale of gas at negotiated rates in interstate commerce. The Commission required that pipelines and all sellers for resale adhere to a code of conduct with respect to gas sales.

The information collected in these reports is used by the Commission to monitor the jurisdictional transportation activities of intrastate, Hinshaw pipelines and the unbundled sales activities of interstate natural gas pipelines and persons holding blanket marketing certificates. The Commission also uses the information to ensure the integrity of the gas sales market that remains under the Commission's jurisdiction. These are mandatory filing and recordkeeping requirements in the Code of Federal Regulations under 18 CFR 284.126, 284.281–284.288 and 284.401–284.403.

5. *Respondent Description:* The respondent universe currently comprises 222 filings (average per year) subject to the Commission's jurisdiction. Of the 222, 77 filings are for the transportation report under 284.126.

6. *Estimated Burden:* 1,290 total hours, 222 respondents (average per year), 1 response per respondent, and 11.2 hours per response (average) for the two filings.

7. *Estimated Cost Burden to Respondents:* 1,290 hours / 2080 hours per year × $108,558 per year = $44,154 (reporting) + $477,300 (22 × $2150) (recordkeeping) = $521,145. The cost per respondent is equal to $2,349.

Statutory Authority: Sections 311–312 of the NGPA (15 U.S.C. 3371–3372) and Section 7 of the NGA (15 U.S.C. 717f).

Magalie R. Salas,

Secretary.

[FR Doc. E5–2251 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–299–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2005.

Take notice that on April 29, 2005, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective June 1, 2005.

CIG states that the tariff sheets clarify the daily authorized storage overrun process and update the criteria for requesting enhanced storage injections.

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. E5–2275 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–157–000]

Columbia Gas Transmission Company; Notice of Application

May 3, 2005.

Take notice that Columbia Gas Transmission Company (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP05–157–000 on April 26, 2005, an application pursuant to section 7(b) of the Natural Gas Act (NGA), to abandon, by removal, two obsolete compressor units and appurtenant facilities at the Dundee Compressor Station, located in Schuyler County, New York, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or TTY, (202) 208–1659.

Any questions regarding this application should be directed to Fredric J. George, Senior Attorney, at (304) 357–2359 (telephone) or (304) 357–3206 (fax).

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in

the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 24, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2246 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–303–000]

Discovery Gas Transmission LLC; Notice of Tariff Filing

May 4, 2005.

Take notice that on April 28, 2005, Discovery Gas Transmission LLC (Discovery) tendered for filing and acceptance in its FERC Gas Tariff Original Volume No. 1 the following tariffs sheets to continue its current Fuel, Lost and Unaccounted For Gas retention rate of 0.0%:

Sixth Revised Sheet No. 33
Sixth Revised Sheet No. 44
Sixth Revised Sheet No. 53

Discovery further states that copies of the filing have been mailed to each of its customers, interested State Commissions and other interested persons.

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 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. E5–2278 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–121–001]

El Paso Natural Gas Company; Notice of Withdrawal of Request for Clarification and/or Rehearing

May 3, 2005.

On June 25, 2004, ConocoPhillips Company (ConocoPhillips) filed a timely request for clarification and/or rehearing of an order issued May 26, 2004 by the Director of the Division of Pipeline Certificates of the Commission's Office of Energy Projects. The Director's Order granted a request by El Paso Natural Gas Company under section 7(b) of the Natural Gas Act to abandon a short segment of pipeline in San Juan County, New Mexico known as the Chaco Plant Discharge Line. On July 26, 2004, the Commission issued an order granting rehearing for further consideration.

On April 12, 2005, ConocoPhillips filed a notice of withdrawal of its request for clarification and/or rehearing. No one filed a motion in opposition to the withdrawal, and the Commission took no action to disallow it. Accordingly, pursuant to Rule 216 of the Commission's Rules of Practice and Procedure, 18 CFR 385.216 (2004), the withdrawal became effective on April 27, 2005, 15 days from the date of filing of the notice of withdrawal.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2254 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–298–000]

Enbridge Pipelines (KPC); Notice of Proposed Changes in FERC Gas Tariff

May 4, 2005.

Take notice that April 29, 2005, Enbridge Pipelines (KPC) (Enbridge KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing, with an effective date of June 1, 2005.

Enbridge KPC further petitions the Commission for a grant of limited waiver from section 23.1 of the General Terms and Conditions of the Enbridge KPC Tariff, as well as any other waivers of the Enbridge KPC Tariff that the Commission deems necessary, to allow the out-of-cycle FRA Filing to become effective on 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. E5–2274 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–048]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rate

May 4, 2005.

Take notice that on April 29, 2005, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 8.01o, reflecting an effective date of June 1, 2005.

Gulfstream states that the purpose of this filing is to implement a negotiated rate transaction with Florida Power Corporation under Rate Schedule FTS that was previously approved by the Commission in its June 9, 2003 Order.

Gulfstream states that copies of its filing have been mailed or, if requested, transmitted by e-mail to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2272 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–311–000]

Kinder Morgan Interstate Gas Transmission LLC, Notice of Tariff Filing

May 4, 2005.

Take notice that on April 29, 2005, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume No. 1–B, First Revised Sheet No. 11G, to be effective June 1, 2005.

KMIGT states that a copy of this filing has been served upon all of its customers and effected 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. E5–2285 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–297–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2005.

Take notice that on April 29, 2005, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Tenth Revised Sheet No. 66C, with an effective date of May 30, 2005.

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. E5–2273 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–304–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff and Filing of Non-Conforming Service Agreement

May 4, 2005.

Take notice that on April 29, 2005, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Tenth Revised Sheet No. 373 and Second Revised Sheet No. 374, to become effective May 30, 2005. Northwest states that it also tendered for filing a Rate Schedule TF–1 non-conforming service agreement.

Northwest states that the purpose of this filing is to: (1) Submit a nonconforming Rate Schedule TF–1 service agreement for Commission acceptance for filing, (2) list this agreement on the list of nonconforming service agreements in Northwest's tariff; and (3) remove two service agreements from the list of non-conforming service agreements in Northwest's tariff that expired by their own terms.

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. E5–2279 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–307–000]

Panhandle Eastern Pipe Line Company, LP; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2005.

Take notice that on April 29, 2005, Panhandle Eastern Pipe Line Company, LP (Panhandle) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective June 1, 2005:

First Revised Sheet No. 343
First Revised Sheet No. 344

Panhandle states that the purpose of this filing is to remove tariff provisions implementing the Commission's CIG/Granite State discounting policy reflected in § 27.8 of its general terms and conditions.

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. E5–2281 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–308–000]

Panhandle Eastern Pipe Line Company, LP; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2005.

Take notice that on April 29, 2005, Panhandle Eastern Pipe Line Company, LP (Panhandle) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective June 1, 2005:

First Revised Sheet No. 3A
First Revised Sheet No. 3B

Panhandle states that the purpose of this filing is to revise the tariff maps to reflect changes in the pipeline facilities and the points at which service is provided.

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. E5–2282 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–654–000, ER05–654–001]

Phoenix Energy Trading, LLC; Notice of Issuance of Order

May 3, 2005.

Phoenix Energy Trading, LLC (Phoenix) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of capacity and energy at market-based rates. Phoenix also requested waiver of various Commission regulations. In particular, Phoenix requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Phoenix.

On April 27, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Phoenix should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is May 27, 2005.

Absent a request to be heard in opposition by the deadline above, Phoenix is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Phoenix, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Phoenix's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2250 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2188–112]

PPL Montana, LLC; Notice Dismissing Request for Rehearing as Moot

May 3, 2005.

On December 21, 2004, Commission staff issued an order modifying and approving the final pulse flow protocol filed under Article 413 of the license for Missouri-Madison Project No. 2188, located on the Madison and Missouri Rivers in Gallatin, Madison, Lewis and Clark, and Cascade Counties, Montana [1]

On January 19, 2005, PPL Montana, LLC, filed a request for clarification and rehearing of one element of staff's December 21 order. By letter issued February 9, 2005, Commission staff provided the requested clarification. Therefore, the January 19 request for rehearing is moot.

This notice constitutes final agency action. Requests for rehearing by the Commission of this dismissal must be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2252 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

[1] 109 FERC ¶ 61,303 (2004).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filing

May 3, 2005.

Regional Transmission Organizations (RT01–99–000, RT01–99–001, RT01–99–002 and RT01–99–003); Bangor Hydro-Electric Company, et al. (RT01–86–000, RT01–86–001 and RT01–86–002); New York Independent System Operator, Inc., et al. (RT01–95–000, RT01–95–001 and RT01–95–002); PJM Interconnection, L.L.C., et al. (RT01–2–000, RT01–2–001, RT01–2–002 and RT01–2–003); PJM Interconnection, L.L.C. (RT01–98–000); and ISO New England, Inc. and New York Independent System Operator, Inc. (RT02–3–000)

Take notice that PJM Interconnection, L.L.C., New York Independent System Operator, Inc. and ISO New England, Inc. have posted on their Internet Web sites charts and information updating their progress on the resolution of ISO seams.

Any person desiring to comment on this information should file comments with the Commission, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such comments should be filed on or before the comment date. Comments may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Paper filings may be sent to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: May 24, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2245 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–300–000]

Sea Robin Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2005.

Take notice that on April 29, 2005, Sea Robin Pipeline Company, LLC (Sea Robin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 4, to become effective June 1, 2005.

Sea Robin states that the purpose of this filing is to revise the tariff map to reflect changes in the pipeline facilities and the points at which service is provided.

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.

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Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2276 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–301–000]

Sea Robin Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2005.

Take notice that on April 29, 2005, Sea Robin Pipeline Company, LLC (Sea Robin) tendered for as part of its FERC Gas Tariff, Second Revised Volume No. 1, to become effective June 1, 2005:

First Revised Sheet No. 188
First Revised Sheet No. 189

Sea Robin states that the purpose of this filing is to remove tariff provisions implementing the Commission's CIG/Granite State discounting policy reflected in section 20.2 of its general terms and conditions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2277 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–306–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

May 4, 2005.

Take notice that on April 29, 2005, TransColorado Gas Transmission Company (TransColorado) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 235, to be effective June 1, 2005.

TransColorado states that a copy of this filing has been served upon all of its customers and effected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2280 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–309–000]

Trunkline Gas Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2005.

Take notice that on April 29, 2005, Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective June 1, 2005:

First Revised Sheet No. 322,
Third Revised Sheet No. 323.

Trunkline states that the purpose of this filing is to remove tariff provisions implementing the Commission's CIG/Granite State discounting policy reflected in section 28.8 of its General Terms and Conditions.

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. E5–2283 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–310–000]

Trunkline Gas Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2005.

Take notice that on April 29, 2005, Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 9, to become effective June 1, 2005.

Trunkline states that the purpose of this filing is to revise the tariff map to reflect changes in the pipeline facilities and the points at which service is provided.

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. E5–2284 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–98–000]

Vermont Electric Cooperative, Inc.; Notice of Institution of Investigation and Refund Effective Date

May 3, 2005.

On April 28, 2005, the Commission issued an order that initiated an investigation under section 206 of the Federal Power Act (FPA) concerning the continued justness and reasonableness of Vermont Electric Cooperative, Inc.'s (VEC) rate formulas, including VEC's continued use of a 21.5 percent fixed carrying charge in calculating formula rates under its OATT and Rate Schedule No. 4. *Vermont Electric Cooperative, Inc.,* 111 FERC ¶ 61,127 (2005).

The refund effective date in Docket No. EL05–98–000, established pursuant to section 206(b) of the FPA, will be 60 days from the date of publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2248 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–71–000]

Mystic Development, LLC, Complainant v. Boston Edison Company and NSTAR Electric & Gas Corporation, Respondents; Notice of Institution of Investigation and Refund Effective Date

May 3, 2005.

On April 29, 2005, the Commission issued an order that initiated an investigation and a trial-type evidentiary hearing under section 206 of the Federal Power Act (FPA). *Mystic Development, LLC* v. *Boston Edison Company and NSTAR Electric & Gas Corporation*, 111 FERC ¶ 61,133 (2005).

The refund effective date in Docket No. EL05–71–000, established pursuant to section 206(b) of the FPA, is May 1, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2247 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–509–005, et al.]

Delmarva Power & Light Company, et al.; Electric Rate and Corporate Filings

May 3, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Delmarva Power & Light Company and PJM Interconnection, LLC

[Docket Nos. ER04–509–005, ER04–1250–004, and EL05–62–002]

Take notice that on April 26, 2005, Delmarva Power & Light Company (Delmarva) submitted seven executed Mutual Operating Agreements (MOA) with, respectively: the City of Seaford, Delaware; the City of Milford, Delaware; the City of Newark, Delaware; the City of New Castle, Delaware; the Town of Middletown, Delaware; the Town of Clayton, Delaware; and the Town of Smyrna, Delaware as service agreements under PJM Interconnection, LLC's (PJM) open access transmission tariff in compliance with the order issued February 25, 2005 by the Commission in *Delmarva Power & Light Co.*, 110 FERC ¶ 61,186 (2005). Delmarva requests an effective date of July 1, 2004.

Delmarva states that copies of the filing were served upon the Municipalities, PJM Interconnection, L.L.C., Delaware Municipal Electric Corporation, the Delaware Public Service Commission and the official service list in these proceedings.

Comment Date: 5 p.m. eastern time on May 17, 2005.

2. American Electric Power Service Corporation

[Docket Nos. ER04–1003–004, ER04–1007–004 ER05–392–001, ER05–394–001, ER05–420–001, ER05–432–001, ER05–450–001]

Take notice that on April 26, 2005, American Electric Power Service Corporation (AEPSC) on behalf of the AEP operating companies in its East Zone, (namely Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company) submitted a compliance filing pursuant to the Commission's Order issued February 25, 2005 in Docket No. ER04–1003–002, *et al.*, 110 FERC ¶ 61,197 (2005).

AEPSC states that copies of the filing were served on all parties on the official service lists in the above-captioned proceedings.

Comment Date: 5 p.m. eastern time on May 17, 2005.

3. Duke Energy Lee, LLC

[Docket No. ER04–641–004]

Take notice that, on April 26, 2005, Duke Energy Lee, LLC submitted a refund report pursuant to the order issued January 25, 2005 in Duke Energy Lee, LLC, 110 FERC ¶ 61,057 (2005).

Duke Energy Lee, LLC states that copies of the filing were served on parties on the official service list in the above captioned proceeding and upon the Illinois Commerce Commission.

Comment Date: 5 p.m. eastern time on May 17, 2005.

4. Midwest Independent Transmission System Operator, Inc. (Docket Nos. ER05–6–001, –002, –003, –005, –007, –009, –013); Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, LLC, et al. (Docket Nos. EL04–135–003, –004, –005, –007, –009, –011, –015); Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, LLC, et al. (Docket Nos. EL02–111–020, –021, –022, –024, –026, –028, –031, –033); Ameren Services Company, et al. (Docket No. EL03–212–017, –018, –019, –021, –023, –025, –029)

Take notice that on April 26, 2005, PJM Interconnection, L.L.C. (PJM) and the Midwest Independent System Operator, Inc. (Midwest ISO) submitted a certification to the Commission that they are ready to bill and settle Seams Elimination Charge/Cost Adjustments/Assignments (SECA) payments to the PJM Transmission Owners and the Midwest ISO Transmission Owners with the April 2005 (issued and settled in May 2005) invoice for April service. PJM and Midwest ISO state that the certification is made in accordance with the filing made by PJM and the PJM Transmission Owners on November 24, 2005 in compliance with the Commission's November 18, 2004 order, 109 FERC ¶ 61,168 (2004).

Comment Date: 5 p.m. eastern time on May 17, 2005.

5. Midwest Independent Transmission System Operator, Inc. and Ameren Services Co., et al.

[Docket Nos. ER05–6–019, EL04–135–021, EL02–111–039, EL03–212–035]

Take notice that on April 26, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and Midwest ISO Transmission Owners (collectively Applicants) jointly submitted for filing revisions to Schedule 22 of the Midwest ISO Open Access Transmission and Energy Markets Tariff in compliance with the Commission's November 18, 2004 Order in Docket No. ER05–6–000, et al., *Midwest Independent Transmission System Operator, Inc.* 109 FERC ¶ 61,168 (2004) to reflect recent revisions in the PJM Interconnection, L.L.C. (PJM) transmission owners lost revenues as shown for the first time in the PJM transmission owners' March 22, 2005 filing, as amended on March 25, 2005, in Docket Nos. ER05–6–016, EL04–135–018, EL02–111–036 and EL03–212–032.

Applicants state that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on May 17, 2005.

6. Barrick Goldstrike Mines Inc.

[Docket No. ER05–665–001]

Take notice that on April 26, 2005, Barrick Goldstrike Mines Inc. (Barrick) submitted an amended application for an order accepting its proposed market-based rate tariff and granting certain blanket authorizations and waivers of the Commission's regulations. Barrick's original application was filed on March 2, 2005 and was assigned Docket No. ER05–665–000.

Comment Date: 5 p.m. eastern time on May 17, 2005.

7. San Diego Gas & Electric Company

[Docket No. ER05–839–000]

Take notice that on April 26, 2005, San Diego Gas & Electric Company (SDG&E) submitted a request to withdraw their April 19, 2005 filing in Docket No. ER05–839–000.

Comment Date: 5 p.m. eastern time on May 17, 2005.

8. Tampa Electric Company

[Docket No. ER05–857–000]

Take notice that on April 22, 2005, Tampa Electric Company (Tampa Electric) filed a notice pursuant to the order issued March 30, 2005 in *North American Electric Reliability Council*, 110 FERC ¶ 61,388, stating that: (1) It uses the North American Electric Reliability Council's (NERC's) revised transmission loading relief (TLR) procedures; and (2) its open access transmission tariff (OATT) shall be considered so modified. Tampa Electric also tendered for filing First Revised Sheet No. 121, which updates the notice concerning use of the NERC TLR procedures in the OATT. Tampa Electric requests an effective date of April 1, 2005.

Tampa Electric states that copies of the filing have been served on all persons on the service list in Docket No. ER05–580–000, all customers under Tampa Electric's OATT, and the Florida Public Service Commission.

Comment Date: 5 p.m. Eastern Time on May 13, 2005.

9. Puget Sound Energy, Inc.

[Docket No. ER05–861–000]

Take notice that on April 26, 2005, Puget Sound Energy, Inc. (Puget) filed with the Commission an amendment to

the agreement for a Temporary Puget Sound Area and Northern Intertie Redispatch Pilot Program (PSANI Agreement), which establishes a temporary, voluntary redispatch program on the Federal Columbia River Transmission System. Puget states that the amendment extends the termination date of the PSANI Agreement until October 31, 2005. Puget requests an effective date of April 1, 2005.

Comment Date: 5 p.m. eastern time on May 17, 2005.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–864–000]

Take notice that on April 26, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a large generator interconnection agreement among Forward Energy LLC, American Transmission Company LLC and the Midwest ISO.

The Midwest ISO states that a copy of the filing was served on the parties to the Interconnection Agreement.

Comment Date: 5 p.m. eastern time on May 17, 2005.

11. Southern California Edison Company

[Docket No. ER05–866–000]

Take notice that on April 26, 2005, Southern California Edison Company (SCE) submitted for filing an Interconnection Facilities Agreement (Interconnection Agreement), Service Agreement No. 135 under SCE's Wholesale Distribution Access Tariff (WDAT), FERC Electric Tariff, First Revised Volume No. 5 and an associated Service Agreement for Wholesale Distribution Service (WDAT Service Agreement), Service Agreement No. 136 under the WDAT, between SCE and the Blacksand Partners, L.P. (Blacksand). SCE states that the Interconnection Agreement and the Service Agreement specify the terms and conditions under which SCE will provide wholesale Distribution Service for approximately 5.6 MW produced by the Blacksand Project and delivered to the ISO Grid at SCE's Olinda Substation.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California, and Blacksand.

Comment Date: 5 p.m. eastern time on May 17, 2005.

12. PJM Interconnection, L.L.C.

[Docket No. ER05–867–000]

Take notice that on April 26, 2005, PJM Interconnection, L.L.C. (PJM), submitted for filing amendments to Schedule 12 of the Amended and Restated PJM Operating Agreement (Operating Agreement) to update the PJM Member List to include new members, corporate name changes, and withdrawn members. Pursuant to section 35.15 of the Commission's regulations, 18 CFR 35.15, and sections 4.1(c) and 18.18.2 of the Operating Agreement, PJM also submits for filing notice that several entities have withdrawn their memberships in PJM and a notice of cancellations for the Additional Member Agreements that have FERC Rate Schedule designations and are being cancelled due to the PJM member withdrawals.

PJM states that copies of this filing were served electronically upon all PJM members, including the withdrawing parties, and each state electric utility regulatory commission in the PJM region, and requests waiver of the Commission's tariff-change posting requirements as necessary to permit such electronic service. PJM states that it shall serve by first class mail postage prepaid the entities that have withdrawn from PJM membership.

Comment Date: 5 p.m. eastern time on May 17, 2005.

13. ISO New England Inc. and New England Power Pool Participants Committee

[Docket No. ER05–870–000]

Take notice that on April 26, 2005, ISO New England Inc. (ISO) and the New England Power Pool (NEPOOL) Participants Committee submitted an application pursuant to section 205 of the Federal Power Act to revise Market Rule 1 and Appendix F thereto to add provisions for Minimum Generation Emergency Credits and Charges.

The ISO and NEPOOL state that copies of the filing have been served on all NEPOOL Participants, and the Governors and utility regulatory agencies of the New England States.

Comment Date: 5 p.m. eastern time on May 16, 2005.

14. Aquila, Inc.

[Docket Nos. ER05–871–000, ER05–872–000, ER05–873–000, ER05–874–000]

Take notice that on April 26, 2005, Aquila, Inc., on behalf of its operating divisions, Aquila Networks-MPS, Aquila Networks-WPC, Aquila Networks-WPK and Aquila Networks-L&P, (collectively, Aquila) submitted new and revised tariff sheets for each of its four Open Access Transmission Tariffs (OATTs) to incorporate the *pro forma* large generator interconnection procedures, without modification, in compliance with the Commission's Order Nos. 2003, 2003–A and 2003–B. Aquila states that it also republished each of the OATTs, in their entirety, as revised volumes to update the OATTs to reflect Aquila's correct corporate names and to comply with the requirements of Order No. 614 regarding Designation of Electric Rate Schedule Sheets.

Aquila states that copies of the filing have been mailed to its OATT customers, the Colorado Public Utilities Commission, the Kansas State Corporation Commission and the Missouri Public Service Commission.

Comment Date: 5 p.m. eastern time on May 17, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2267 Filed 5–9–05; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–75–000, et al.]

Granite Ridge Energy, LLC, et al.; Electric Rate and Corporate Filings

May 2, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Granite Ridge Energy, LLC; JPMorgan Chase Bank, N.A.; Merrill Lynch Credit Products, LLC; and SPO Partners II, L.P.

[Docket No. EC05–75–000]

Take notice that on April 27, 2005, Granite Ridge Energy, LLC (Granite Ridge), JPMorgan Chase Bank, N.A. (JPMCB), Merrill Lynch Credit Products, LLC (MLCP), and SPO Partners II, L.P. (SPO) filed an application pursuant to section 203 of the Federal Power Act, requesting the Commission to authorize the indirect disposition of jurisdictional facilities that may result from the transfer of indirect equity interests in Granite Ridge to and from JPMCB, MLCP, SPO and Castlerigg Partners, L.P.

Comment Date: May 18, 2005.

2. Brooklyn Navy Yard Cogeneration Partners, L.P.; BMC Acquisition LLC: B–41 Acquisition LLC; YC Acquisition LLC; and York Research Corporation

[Docket No. EC05–76–000]

Take notice that on April 28, 2005, BMC Acquisition LLC; B–41 Acquisition LLC; YC Acquisition LLC (collectively, Buyers); Brooklyn Navy Yard Cogeneration Partners, L.P. (BNYCP); and York Research Corporation (collectively, with Buyers and BNYCP, Applicants), tendered for filing with the Federal Energy Regulatory Commission, pursuant to section 203 of the Federal Power Act and Part 33 of the Commission's regulations, an application for authorization that would allow the Buyers to acquire and exercise an option to purchase upstream ownership interests in BNYCP. Pursuant to 18 CFR 33.9 (2004), the Applicants seek privileged treatment for Exhibits C–2 and C–4 to the application.

Comment Date: 5 p.m. eastern time on May 18, 2005.

3. Wisconsin Electric Power Company

[Docket No. ER98–855–006]

Take notice that on April 25, 2005, Wisconsin Electric Power Company (Wisconsin Electric) submitted a compliance filing pursuant to the Commission's Order issued March 24, 2005, 110 FERC ¶ 61,340. Wisconsin Electric states that the proposed filing incorporates the change of status reporting requirements adopted by the Commission in Order 652, *Reporting Requirements for Changes in Status for Public Utilities with Market-Based Rate Authority*, 110 FERC ¶ 61,097.

Wisconsin Electric states that copies of this filing were served on all parties to this proceeding.

Comment Date: 5 p.m. eastern time on May 16, 2005.

4. California Independent System Operator Corporation

[Docket Nos. ER03–1102–008 and EL05–14–001]

Take notice that on April 25, 2005, the California lndependent System Operator Corporation (CAISO) submitted a filing in compliance with the Commission order issued March 24, 2005 in Docket No. ER03–1102–003, *et al.*, 110 FERC ¶ 61,333.

The CAISO states that this filing has been served upon all parties on the official service lists for the captioned dockets. In addition, the CAISO has posted this filing on the CAISO Home Page.

Comment Date: 5 p.m. eastern time on May 16, 2005.

5. Devon Power LLC; Middletown Power LLC; and Montville Power

[Docket No. ER04–23–013]

Take notice that on April 20, 2005, Devon Power LLC, Middletown Power LLC and Montville Power, (collectively NRG) tendered an errata to their filing submitted March 1, 2005, in Docket No. ER04–23–010.

Comment Date: 5 p.m. eastern time on May 11, 2005.

6. Dartmouth PPA Holdings LLC and Dartmouth Power Associates Limited Partnership

[Docket Nos. ER05–598–001 and ER05–599–001]

Take notice that on April 25, 2005, Dartmouth PPA Holdings, LLC, and Dartmouth Power Associates Limited Partnership submitted a compliance filing pursuant to the Commission's order issued April 14, 2005 in Docket Nos. ER05–598–000 and ER05–599–000, 111 FERC ¶ 61, 039, to incorporate the change of status reporting requirements adopted by the Commission in Order 652, *Reporting Requirements for Changes in Status for Public Utilities with Market-Based Rate Authority,* 110 FERC ¶ 61,097.

Comment Date: 5 p.m. eastern time on May 16, 2005.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–662–001]

Take notice that on April 25, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) amended its March 1, 2005 filing in Docket No. ER05–662–000 to provide an exhibit. Midwest ISO requests an effective date of February 23, 2005.

Midwest ISO states that a copy of this filing was served on all parties on the service list maintained by the Secretary in this proceeding.

Comment Date: 5 p.m. eastern time on May 16, 2005.

8. ATPower & Energy, LLC

[Docket No. ER05–859–000]

Take notice that on April 25, 2005, ATPower & Energy, LLC (ATPower & Energy) petitioned the Commission for acceptance of ATPower & Energy 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.

Comment Date: 5 p.m. eastern time on May 16, 2005.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–862–000]

Take notice that on April 25, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a Letter Agreement among PSEG Lawrenceburg Energy Company LLC, Cinergy Services, Inc., as agent for The Cincinnati Gas & Electric Company and the Midwest ISO.

Midwest ISO states that a copy of this filing was served on PSEG Lawrenceburg Energy Company LLC and Cinergy Services, Inc.

Comment Date: 5 p.m. eastern time on May 16, 2005.

10. Wisconsin Electric Power Company

[Docket No. ER05–863–000]

Take notice that on April 25, 2005, Wisconsin Electric Power Company (Wisconsin Electric) submitted revisions to its Market Based Power Sales and Resale Transmission Tariff, FERC Electric Tariff, Original Volume No. 8. Wisconsin Electric states that the proposed amendments are minor revisions to correct dates and typographical errors on two tariff sheets.

Wisconsin Electric states that copies of this filing were served on all parties listed In Attachment C to the filing.

Comment Date: 5 p.m. eastern time on May 16, 2005.

11. Sheboygan Power, LLC

[Docket No. ER05–869–000]

Take notice that on April 22, 2005, Alliant Energy Corporate Services, Inc., on behalf of Sheboygan Power, LLC (SPLLC), submitted for filing with the Commission SPLLC's Rate Schedule No. 1 for Short-Term Sales of Test Power to permit SPLLC to sell wholesale test electric capacity and energy to Wisconsin Power and Light Company during the testing of SPLLC's electric generating facility. Alliant requests an effective date of April 28, 2005.

Comment Date: 5 p.m. eastern time on May 16, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2268 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–1528–011, et al.]

Wisconsin Public Service Corporation, et al.; Electric Rate and Corporate Filings

April 29, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Sheboygan Power, LLC and Wisconsin Power and Light Company

[Docket No. EC05–73–000]

Take notice that on April 26, 2005, Alliant Energy Corporate Services, Inc., (AECS) on behalf of Sheboygan Power, LLC (SPLLC), and Wisconsin Power and Light Company (WPL), (collectively, Applicants) filed an application requesting the Commission to authorize SPLLC's transfer of control over limited FERC-jurisdictional generator interconnection facilities to WPL (the transfer). AECS states that the transfer will arise in the context of SPLLC's development and lease to WPL of a new, approximately 300 MW generating facility in Wisconsin pursuant to Wisconsin's ''Leased Generation Law'', subject to state regulatory oversight and approval.

Comment Date: 5 p.m. eastern time on May 17, 2005.

2. Oklahoma Municipal Power Authority v. American Electric Power Service Corp.

[Docket No. EL05–38–002

Take notice that, on April 25, 2005, American Electric Power Service Corporation (AEP) submitted an unexecuted Network Integration Transmission Service Agreement with Oklahoma Municipal Power Authority pursuant to the Commission's order issued March 4, 2005 in *Oklahoma Municipal Power Authority* v. *American Electric Power Service Corp.,* 110 FERC ¶ 61,228 (2005).

AEP states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on May 16, 2005.

3. Wisconsin Public Service Corporation, WPS Power Development, Inc., and WPS Energy Services, Inc. (Docket Nos. ER95–1528–011 and ER96–1088–036); Combined Locks Energy Center, LLC (ER01–2659–005); WPS Empire State, Inc. (ER02–2199–003); WPS Beaver Falls Generation, LLC (ER03–54–003); WPS Niagara Generation, LLC (ER03–55–003); WPS Syracuse Generation, LLC (ER03–56–003); Mid-American Power, LLC (ER96–1858–016); Quest Energy, LLC (ER03–674–003); Sunbury Generation, LLC (ER99–3420–005) WPS Canada Generation, Inc. and WPS New England Generation, Inc. (ER99–1936–004); WPS Westwood Generation, LLC (ER01–1114–004); Advantage Energy, Inc. (ER97–2758–011); and Upper Peninsula Power Company (ER05–89–00)

Take notice that on April 25, 2005, WPS Resources Corporation (WPSR), on behalf of its subsidiaries listed in the caption above, tendered for filing tariff sheets (Tariff Sheets) in compliance with the Commission's March 25, 2005 order in *Wisconsin Public Service Corporation, et al.*, 110 FERC ¶ 61,353 (2005).

WPSR states that a copy of the filing was served upon all parties to the Commission's official service lists in the above-captioned dockets and the Public Service Commission of Wisconsin.

Comment Date: 5 p.m. eastern time on May 16, 2005.

4. Northeast Utilities Service Company; Select Energy, Inc.; Select Energy New York, Inc; and Northeast Generation Company

[ER99–4463–005, ER99–14–011, and ER02–556–006]

Take notice that on April 25, 2005, Northeast Utilities Service Company, on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, and Public Service of New Hampshire (the NU Operating Companies); Select Energy, Inc.; Select Energy New York, Inc.; and Northeast Generation Company jointly submitted a compliance filing pursuant to the Commission's order issued March 24, 2005 in Docket No. ER96–496–010, *et al.*, 110 FERC ¶ 61,237.

Comment Date: 5 p.m. eastern time on May 13, 2005.

5. Direct Energy Services, LLC

[Docket No. ER05–876–000]

Take notice that on April 25, 2005, Direct Energy Services, LLC (Seller) petitioned the Commission for an order:

(1) Accepting Seller's proposed FERC Rate Schedule No. 1 for filing; (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations, and (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates. Seller has requested that the Commission grant waiver of the 60-day prior notice requirement.

Comment Date: 5 p.m. eastern time on May 16, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2270 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 382–026, Project No. 178–017]

Southern California Edison Company, Pacific Gas & Electric Company; Notice Extending Comment Period for Draft Environmental Assessment

May 3, 2005.

On March 22, 2005, the Commission issued a notice of availability of the draft environmental assessment (DEA) evaluating the relicensing applications for the Borel Hydroelectric Project (P–382–026), located on the Kern River near the town of Bodfish in Kern County, California, and the Kern Canyon Hydroelectric Project (P–178–017), located on the Kern River, near the town of Bakersfield in Kern County, California. Comments were due within 45 days of the issuance date of the notice. Because some participants were not notified of the availability of the DEA, we are extending the comment date 15 days until May 20, 2005.

A copy of the DEA is on file with the Commission and is available for public inspection. The DEA is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any comments should be filed no later than May 20, 2005, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''Borel Hydroelectric Project No. 382–026'' and/or ''Kern Canyon Hydroelectric Project No. 178–017'' to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link. For further information, contact Emily Carter at (202) 502–6512 or *emily.carter@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–2253 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1656–000]

California Independent System Operator Corporation; Notice of FERC Staff Participation

May 3, 2005.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on May 3, 2005, members of its staff will participate in a conference call on the Draft Simplified and Reorganized California Independent System Operator (CAISO) Tariff, hosted by the CAISO. The primary purpose of this initial draft is to incorporate language found in Protocols into the existing CAISO Tariff and to recommend the deletion of duplicative language.

Sponsored by the CAISO, the meeting is open to all stakeholders, and staff's attendance is part of the Commission's ongoing outreach efforts. The meeting may discuss matters at issue in Docket No. ER02–1656–000.

FOR FURTHER INFORMATION CONTACT: Katherine Gensler at katherine.gensler@ferc.gov; (916) 294–0275.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2249 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance at a Midwest ISO Market-Related Meeting

May 4, 2005.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the following meeting involving the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), noted below:

Meeting Topic: A review of the first few weeks of energy market operations with special consideration given to dispatch of peaking units, bid/offer procedures, start/stop directions and communications protocols.

Thursday, May 5, 2005 (11 a.m.—4 p.m. e.s.t.)

Lakeside Conference Center (directly across from Midwest ISO's

headquarters), 630 West Carmel Drive, Carmel, IN 46032.

The discussions may address matters at issue in the following proceedings:

Docket No. ER04–691 and EL04–104, Midwest Independent Transmission System Operator, Inc., *et al.*

Docket No. EL02–65–000, *et al.*, Alliance Companies, *et al.*

Docket No. RT01–87–000, *et al.*, Midwest Independent Transmission System Operator, Inc.

Docket No. ER03–323, *et al.*, Midwest Independent Transmission System Operator, Inc.

Docket No. ER04–375, Midwest Independent Transmission System Operator, Inc., *et al.*

Docket Nos. EL04–43 and EL04–46, Tenaska Power Services Co. and *Cargill Power Markets, LLC* v. *Midwest Independent Transmission System Operator, Inc.*

This meeting is open to the public.

For more information, contact Patrick Clarey, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov,* or Christopher Miller, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov.*

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2271 Filed 5–9–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ORD–2004–0019; FRL–7909–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Health Effects of Environmental Exposures Among Children Living in the Detroit, MI Area, EPA ICR Number 2167.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. The ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 9, 2005.

ADDRESSES: Submit your comments, referencing docket ID number ORD–2004–0019, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ann H. Williams, Office of Research and Development, Mail Code 58–C, Environmental Protection Agency, Research Triangle Park, NC 27711.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 7, 2004 (69 FR 70680), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. EPA received and responded to one request for information.

EPA has established a public docket for this ICR under Docket ID No. ORD–2004–0019, which is available for public viewing at the Office of Research and Development Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Research and Development Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Title: Detroit Children's Health Study: Health Effects of Environmental Exposures among Children Living in the Detroit, Michigan Area.

Abstract: This epidemiologic study will be conducted by EPA's National Health and Environmental Effects Research Laboratory. This study will examine the role of long-term environmental exposures, particularly local sources of ambient air pollution, in children's respiratory health conditions such as allergies and asthma. The participation of parents and children in this collection of information is strictly voluntary.

Children's respiratory health will be assessed by a parent-completed questionnaire and by simple measures of the child's lung function and exhaled breath. The twenty-page questionnaire will be distributed to the parents of children enrolled in the fourth and fifth grades at selected public schools in Detroit and Dearborn. The questionnaire includes a request for permission for their child to participate in measurements of lung parameters. Later, at a subset of these schools, those children with parental consent will be asked to perform simple measurements of air flow rates, lung volumes, and exhaled nitric oxide. The schools will be selected based on school location with respect to major roadways and major emission point sources.

Children's long-term environmental exposures will be assessed based on a detailed lifetime residential history from the questionnaire, supplemental air quality measurements collected at a selected group of schools distributed throughout the school district, and an air quality model incorporating geographic information on local sources of air pollutants. Central site measurements of ambient air pollutants will be collected at the time of the lung function examinations.

The collected information will be used to estimate the epidemiologic

associations between respiratory health conditions and long-term exposures to ambient air pollutants in the study community. The epidemiologic analysis will examine the association of air quality parameters with a higher prevalence of respiratory conditions, with lower lung function, or with higher levels of exhaled nitric oxide after appropriate control for other determinants of respiratory health.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is 0.4 hours per parent questionnaire and 0.75 hours per set of child respiratory health measures. This survey will not be repeated. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are school officials, parents and children in the Detroit and Dearborn Public Schools.

Estimated Number of Respondents: 18,500.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 8,250 hours.

Estimated Total Annual Cost: $113,468, includes $0 annualized capital or O&M costs and $113,468 in Labor costs.

Dated: May 3, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–9319 Filed 5–9–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0122; FRL–7700–7]

Nanoscale Materials; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will conduct a public meeting on nanoscale materials to discuss a potential voluntary pilot program for certain nanoscale materials and the information needed to adequately inform the conduct of the pilot program. Nanoscale materials are chemical substances containing structures in the length scale of approximately 1 to 100 nanometers, and may have different molecular organizations and properties than the same chemical substances in a larger size. Some of the nanoscale materials are new chemical substances subject to notification requirements under section 5 of the Toxic Substances Control Act (TSCA) and, therefore, are subject to review for potential human health and environmental risks before they are manufactured and enter commerce. Other nanoscale materials are existing chemical substances that may enter commerce without notification to EPA. EPA is considering a potential voluntary pilot program for such nanoscale materials. To that end, EPA is requesting comments at the public meeting on: (1) The scope and purpose of a voluntary pilot program for nanoscale materials that are existing chemical substances, (2) kinds of information that are relevant to the evaluation of potential risks from exposure to nanoscale materials, (3) chemical characterization and nomenclature of nanoscale materials for regulatory purposes, and (4) identification of interested stakeholders. These comments will inform EPA on possible approaches to protect human health and the environment from exposure to such chemical substances.

DATES: The meeting will be held on June 23, 2005, from 9 a.m. to 5 p.m.

Requests to provide oral comments at the meeting must be received in writing by the technical person listed under **FOR FURTHER INFORMATION CONTACT:** before June 9, 2005. Please note that time for oral comments may be limited, depending on the number of requests received.

Requests to attend the meeting may be submitted to the technical person listed under **FOR FURTHER INFORMATION CONTACT:** by June 16, 2005. Please note that this advance request will assist in planning adequate seating; however, members of the public can attend without prior notification to the technical person. Requests for special accommodations may be submitted to the technical person by June 16, 2005.

Written comments, identified by docket identification (ID) number OPPT–2004–0122, may be submitted to the docket at any time before the meeting date.

ADDRESSES: The meeting will be held at the Washington Plaza, 10 Thomas Circle NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address:*TSCA-Hotline@epa.gov*.

For technical information contact: Flora Chow, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8983; e-mail address:*chow.flora@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who manufacture, import, process, or use nanoscale materials that are chemical substances subject to TSCA jurisdiction. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers (NAICS 325), e.g., persons manufacturing, importing, processing, or using chemicals for commercial purposes.
- Petroleum and coal product industries (NAICS 324), e.g., persons manufacturing, importing, processing, or using chemicals for commercial purposes.

Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may have an interest in this matter. If you have any questions regarding the applicability of this action to a particular entity, consult the technical 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 OPPT–2004–0122. 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 EPA Docket Center, Rm. B–102 Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA docket center reading room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register** listings at*http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at*http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

About two decades ago, research indicated that certain nanoscale materials exhibit unexpectedly unique and novel properties. The existence of structures at the nanoscale level may confer a distinct set of physical, chemical, and biological properties.

EPA is interested in whether commercial activities of nanoscale materials may present a potential risk to human health and the environment because of their unique physical structure and consequent properties. Available information on potential hazards and exposures is limited (Refs. 1 and 2). Therefore, EPA is considering how best to evaluate the risks associated with nanoscale materials and how to manage those risks. TSCA is often viewed as a regulatory gap filler, which is intended to provide regulatory and information collection authority lacking in some other environmental statutes (Refs. 3, 4, and 5). TSCA applies to chemical substances and mixtures. The term ''chemical substance'' means any organic or inorganic substance of a particular molecular identity. The term specifically excludes: Pesticides; tobacco or tobacco products; certain nuclear materials; firearms and ammunition; food; food additives; drugs; cosmetics; and medical devices. Chemical substances when used in these other categories fall under the jurisdiction of other federal laws.

Among TSCA's regulatory tools are reporting requirements that apply prior to manufacture or import of any new chemical substance, and the ability of EPA to regulate a substance prior to commencement of manufacture if it appears that it may involve unreasonable risk of injury to health or the environment. A chemical substance is ''new'' if it is not on the TSCA Chemical Substance Inventory (the TSCA Inventory), EPA's official list of existing chemical substances. Therefore, a chemical substance that is a nanoscale material not on the TSCA Inventory (i.e., a new chemical substance) must be reported to EPA in a premanufacture notification (PMN) under section 5 of TSCA before commercial activities are allowed. EPA has authority under section 5 to review potential health and environmental risks of all aspects of the commercial activities (Ref. 3). Once a new chemical substance completes the PMN process and has been listed on the TSCA Inventory, the chemical substance is considered to be an existing chemical substance. A chemical substance that is a nanoscale material on the TSCA inventory (i.e., an existing chemical substance), absent other requirements, is not subject to EPA review prior to manufacture or use. Existing chemical substances that present an unreasonable risk of injury to human health or the environment may be regulated under section 6 of TSCA (Ref. 3). Because currently available chemical representation and nomenclature conventions may not be adequate for some nanoscale materials, ambiguity exists regarding how and when to distinguish nanoscale materials as new or existing chemical substances. In the current state of development of structural characterization upon which nomenclature conventions are based, issues remain.

In addition to regulatory tools, EPA engages in voluntary partnerships with the chemical industry and other stakeholders to facilitate risk reduction activities. These activities are generally less resource intensive and offer more flexible approaches to management of potential risks. Recent examples of voluntary programs on existing chemicals are the High Production Volume (HPV) Challenge Program and the Voluntary Children's Chemical Evaluation Program (VCCEP). Both programs are designed to provide information on certain groups of chemicals. Evaluation of this information will enable a better public understanding of potential hazards and exposures.

EPA is considering a pilot program of voluntary reporting of information pertaining to nanoscale materials that are existing chemical substances. Information derived from a pilot program will allow EPA and the affected industry to better understand the issues with respect to potential risks and for EPA to gain experience in the evaluation of such types of chemical substances.

EPA expects that the following parameters will be important in the context of a potential voluntary pilot program to provide information on nanoscale materials.

- What should be the scope of a voluntary pilot program?
- What information should be included in a voluntary pilot program? What other pertinent information regarding the properties of the particular nanoscale material would be relevant to EPA review?
- How long should a voluntary pilot program last?
- How should participants in the voluntary pilot program be identified?
- What should trigger a voluntary submission under the pilot program?
- How likely would it be for companies to volunteer for such a program? What could be the incentive structure to encourage participation?
- Should participation in a voluntary pilot program have TSCA Inventory consequences? A voluntary pilot program would not affect the TSCA Inventory status of a nanoscale material that is an existing chemical substance. As indicated previously, nanoscale materials that are not listed on the TSCA Inventory are considered new chemical substances. These new chemical substances require the submission of a PMN before they can be manufactured or used for commercial purposes.

III. Issues for EPA and stakeholders

In general, EPA is requesting comments on the following issues: (1) The scope and purpose of a voluntary pilot program for nanoscale materials that are existing chemical substances, (2) kinds of information that are relevant to the evaluation of potential risks from exposure to nanoscale materials, (3) chemical characterization and nomenclature of nanoscale materials for regulatory purposes, and (4) identification of interested stakeholders. Comments in these specific areas will be particularly helpful:

- Feasibility and value of a voluntary pilot program.
- Scope and design of a voluntary pilot program, including elements such as: purpose (e.g., R & D, use involving environmental release, any commercial use), administration, outcomes, duration, and next steps.
- Information that would be useful in the evaluation of potential effects on human health and the environment from exposure to nanoscale materials.
- Size, dimensions, and shapes of chemical substances that should be considered nanoscale materials.
- Types of information (e.g., unique and novel properties) that would be useful to provide for purposes of: informing the voluntary pilot program; and helping to name and characterize nanoscale materials (including features to distinguish them from otherwise similar chemical substances that do not involve nanoscale structures).
- Manufacturing processes for nanoscale materials and how they relate to identities of the products from the nanoscale manufacturing processes.
- Identification of interested stakeholders.

IV. References

The following references have been placed in the official docket that was established under docket ID number OPPT–2004–0122 for this action as indicated in Unit I.B.2.

1. Aitken, R.J., Creely, K.S., Tran, C.L. 2004. Nanoparticles: An Occupational Hygiene Review. Suffolk, U.K.: Health and Safety Executive, Research Report 274.

2. VDI Technologiezentrum GmbH. 2004. Industrial Application of Nanomaterials - Chances and Risks. Technology Analysis. Luther W, ed. Dusseldorf, Germany: Future Technologies No. 54.

3. USEPA. 2005. Considerations Relevant to Toxic Substances Control Act (TSCA) Application to Nanoscale Materials. Office of Prevention, Pesticides and Toxic Substances. Office of Pollution Prevention and Toxics.

4. **Federal Register.** June 3, 2003. TSCA Section 8(e): Notification of Substantial Risk; Policy Clarification and Reporting Guidance. 68 FR 33129.

5. **Federal Register.** January 12, 2005. TSCA Section 8(e) Reporting Guidance; Correction, Clarification of Applicability, and Announcement Regarding the Issuance Questions and Answers. 70 FR 2162.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Nanotechnology, Nanoscale materials.

Dated: April 25, 2005.

Susan B. Hazen,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 05–9324 Filed 5–9–05; 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Sunshine Act Notice; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on May 12, 2005, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- April 14, 2005 (Open and Closed)

B. Reports

- Corporate/Non-Corporate Report
- Risk Profile of U.S. Agriculture
- Risk Profile of the Farm Credit System

C. New Business—Regulations

- Capital Adequacy Risk-Weighting Revisions—Final Rule

Dated: May 5, 2005.

James M. Morris,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 05–9426 Filed 5–6–05; 2:19 pm]

BILLING CODE 6705–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Interagency Advisory on the Unsafe and Unsound Use of Limitation of Liability Provisions and Certain Alternative Dispute Resolution Provisions in External Audit Engagement Letters

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Proposed interagency advisory; request for comment.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC), on behalf of the Office of Thrift Supervision (OTS), Treasury; the Board of Governors of the Federal Reserve System (Board); the Federal Deposit Insurance Corporation (FDIC); the National Credit Union Administration (NCUA); and the Office of the Comptroller of the Currency (OCC), Treasury (collectively, the Agencies), is seeking public comment on a proposed Interagency Advisory on the Unsafe and Unsound Use of Limitation of Liability Provisions and Certain Alternative Dispute Resolution Provisions in External Audit Engagement Letters. The proposal advises financial institutions' boards of directors, audit committees, and management that they should ensure that they do not enter any agreement that contains external auditor limitation of liability provisions with respect to financial statement audits.

DATES: Comments must be received on or before June 9, 2005.

ADDRESSES: Comments should be directed to: FFIEC, Program Coordinator, 3501Fairfax Drive, Room 3086, Arlington, VA 22226; by e-mail to *FFIEC-Comments@fdic.gov;* or by fax to (703) 516–5487. Comments will be available for public inspection during regular business hours at the above address. Appointments to inspect comments are encouraged and can be arranged by calling the FFIEC at (703) 516–5588.

FOR FURTHER INFORMATION CONTACT: *OTS:* Jeffrey J. Geer, Chief Accountant, at *jeffrey.geer@ots.treas.gov* or (202) 906–6363; or Patricia

Hildebrand, Senior Policy Accountant, at *patricia.hildebrand@ots.treas.gov* or (202) 906–7048.

Board: Terrill Garrison, Supervisory Financial Analyst, at *terrill.garrison@frb.gov* or (202) 452–2712.

FDIC: Harrison E. Greene, Jr., Senior Policy Analyst (Bank Accounting), Division of Supervision and Consumer Protection, at *hgreene@fdic.gov* or (202) 898–8905; or Michelle Borzillo, Counsel, Supervision and Legislation Section, Legal Division, at *mborzillo@fdic.gov or* (202) 898–7400.

NCUA: Karen Kelbly, Chief Accountant, at *kelblyk@ncua.gov* or (703) 518–6389.

OCC: Brent Kukla, Accounting Fellow, at *brent.kukla@occ.treas.gov* or (202) 874–4978.

SUPPLEMENTARY INFORMATION:

I. Background

The Agencies have observed an increase in the types and frequency of provisions in certain financial institutions' external audit engagement letters that limit the auditors' liability. While these provisions do not appear in a majority of financial institution engagement letters, the provisions are becoming more prevalent. The Agencies believe such provisions may weaken an external auditor's objectivity, impartiality, and performance; therefore, inclusion of these provisions in financial institution engagement letters raises safety and soundness concerns.

While these provisions take many forms, they can be generally categorized as an agreement by a financial institution that is a client of an external auditor to:

- Indemnify the external auditor against claims made by third parties;
- Hold harmless or release the external auditor from liability for claims or potential claims that might be asserted by the client financial institution; or
- Limit the remedies available to the client financial institution.

Collectively, these and similar types of provisions are referred to in the proposed advisory as limitation of liability provisions.

II. Comments

The FFIEC has approved the publication of the proposed advisory on behalf of the Agencies to seek public comment to fully understand the effect of the proposed advisory on the inappropriate use of limitation of liability provisions on external auditor engagements. While public comments are welcome on all aspects of this advisory, the Agencies are specifically seeking comments on the following questions. Please provide information that supports your position.

1. The advisory, as written, indicates that limitation of liability provisions are inappropriate for all financial institution external audits.

a. Is the scope appropriate? If not, to which financial institutions should the advisory apply and why?

b. Should the advisory apply to financial institution audits that are not required by law, regulation, or order?

2. What effects would the issuance of this advisory have on financial institutions' ability to negotiate the terms of audit engagements?

3. Would the advisory on limitation of liability provisions result in an increase in external audit fees?

a. If yes, would the increase be significant?

b. Would it discourage financial institutions that voluntarily obtain audits from continuing to be audited?

c. Would it result in fewer audit firms being willing to provide external audit services to financial institutions?

4. The advisory describes three general categories of limitation of liability provisions.

a. Is the description complete and accurate?

b. Is there any aspect of the advisory or terminology that needs clarification?

5. Appendix A of the advisory contains examples of limitation of liability provisions.

a. Do the examples clearly and sufficiently illustrate the types of provisions that are inappropriate?

b. Are there other inappropriate limitation of liability provisions that should be included in the advisory? If so, please provide examples.

6. Is there a valid business purpose for financial institutions to agree to any limitation of liability provision? If so, please describe the limitation of liability provision and its business purpose.

7. The advisory strongly recommends that financial institutions take appropriate action to nullify limitation of liability provisions in 2005 audit engagement letters that have already been accepted. Is this recommendation appropriate? If not, please explain your rationale (including burden and cost).

III. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Agencies have reviewed the proposed advisory and determined that it does not contain a collection of information pursuant to the Act.

IV. Proposed Advisory

The text of the proposed advisory follows:

Interagency Advisory on the Unsafe and Unsound Use of Limitation of Liability Provisions and Certain Alternative Dispute Resolution Provisions in External Audit Engagement Letters

Purpose

This advisory, issued jointly by the Office of Thrift Supervision (OTS), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC) (collectively, the Agencies), alerts financial institutions' [1] boards of directors, audit committees, management, and external auditors to the safety and soundness implications of provisions that limit the external auditor's liability in a financial statement audit. While the Agencies have observed several types of these provisions in external audit engagement letters, this advisory applies to any agreement that a financial institution enters into with its external auditor that limits the external auditor's liability with respect to financial statement audits.

Agreements by financial institutions to limit their external auditors' liability or to submit to certain alternative dispute resolution (ADR) provisions that also limit the external auditors' liability may weaken the external auditors' objectivity, impartiality, and performance and thus, reduce the Agencies' ability to rely on external audits. Therefore, such agreements raise safety and soundness concerns, and entering into such agreements is generally considered to be an unsafe and unsound practice.

In addition, such provisions may not be consistent with the auditor independence standards of the U.S. Securities and Exchange Commission (SEC), the Public Company Accounting Oversight Board (PCAOB), and the American Institute of Certified Public Accountants (AICPA).

Background

A properly conducted external audit provides an independent and objective view of the reliability of a financial institution's financial statements. The external auditor's objective in an audit

[1] As used in this document, the term financial institutions includes banks, bank holding companies, savings associations, savings and loan holding companies, and credit unions.

of financial statements is to form an opinion on the financial statements taken as a whole. When planning and performing the audit, the external auditor considers the financial institution's internal control over financial reporting. Generally, the external auditor communicates any identified deficiencies in internal control to management, which enables management to take appropriate corrective action. For these reasons, the Agencies encourage all financial institutions to obtain external audits of their financial statements. The Federal Financial Institutions Examination Council's (FFIEC) Interagency Policy Statement on External Auditing Programs of Banks and Savings Associations [2] notes ''[a]n institution's internal and external audit programs are critical to its safety and soundness.'' The policy also states that an effective external auditing program ''can improve the safety and soundness of an institution substantially and lessen the risk the institution poses to the insurance funds administered by'' the FDIC.

Typically, a written engagement letter is used to establish an understanding between the external auditor and the financial institution regarding the services to be performed in connection with the external audit of the financial institution. The engagement letter commonly describes the objective of the external audit, the reports to be prepared, the responsibilities of management and the external auditor, and other significant arrangements (*e.g.*, fees and billing). As with any important contract, the Agencies encourage boards of directors, audit committees, and management to closely review all of the provisions in the external audit engagement letter before agreeing to sign. To assure that those charged with engaging the external auditor make a fully informed decision, any agreement such as an engagement letter that affects the financial institution's legal rights should be carefully reviewed by the financial institution's legal counsel.

While the Agencies have not observed provisions that limit an external auditor's liability in the majority of external audit engagement letters reviewed, the Agencies have observed a significant increase in the types and frequency of these provisions. These provisions take many forms,[3] but they can be generally categorized as an agreement by a financial institution that is a client of an external auditor to:

- Indemnify the external auditor against claims made by third parties;
- Hold harmless or release the external auditor from liability for claims or potential claims that might be asserted by the client financial institution; or
- Limit the remedies available to the client financial institution.

Collectively, these and similar types of provisions will be referred to in this advisory as ''limitation of liability provisions.''

Financial institutions'' boards of directors, audit committees, and management should also be aware that certain financial institution insurance policies (such as error and omission policies and director and officer liability policies) may not cover the financial institutions' losses arising from claims that are precluded by the limitation of liability provisions.

Limitation of Liability Provisions

Many financial institutions are required to have their financial statements audited while others voluntarily choose to undergo such audits. For example, banks, savings associations, and credit unions with $500 million or more in total assets are required to have annual independent audits.[4] Certain savings associations (for example, those with a CAMELS rating of 3, 4, or 5) and savings and loan holding companies are also required by OTS regulations to have annual independent audits.[5] Furthermore, financial institutions that are public companies [6] must have annual independent audits. The Agencies rely on the results of external audits as part of their assessment of the safety and soundness of a financial institution's operations.

In order for an external audit to be effective, the external auditors must be independent in both fact and appearance, and they must perform all necessary procedures to comply with generally accepted auditing standards established by the AICPA and, if applicable, the standards of the PCAOB. When a financial institution executes an agreement that limits the external auditor's liability, the external auditor's objectivity, impartiality, and performance may be weakened or compromised and the usefulness of the external audit for safety and soundness purposes may be diminished.

Since limitation of liability provisions can impair the external auditor's independence and may adversely affect the external auditor's performance, they present safety and soundness concerns for all financial institution external audits. By their very nature, these provisions can remove or greatly weaken an external auditor's objective and unbiased consideration of problems encountered in the external audit engagement and induce the external auditor to depart from the standards of objectivity and impartiality required in the performance of a financial statement audit. The existence of such provisions in an external audit engagement letter may lead to the use of less extensive or less thorough procedures than would otherwise be followed, thereby reducing the benefits otherwise expected to be derived from the external audit. Accordingly, financial institutions should not enter into external audit arrangements that include any limitation of liability provisions. This applies regardless of the size of the financial institution, whether the financial institution is public or not, and whether the external audit is required or voluntary.

Auditor Independence

Currently, auditor independence standard-setters include the AICPA, the SEC, and the PCAOB. Depending upon the audit client, an external auditor is subject to the independence standards of one or more of these standard-setters. For all credit unions under NCUA's regulations, and for other non-public financial institutions that are not required to have annual independent audits pursuant to Part 363 of the FDIC's regulations or pursuant to OTS's regulations, the Agencies' rules require only that an external auditor meet the AICPA independence standards; they do not require the financial institution's external auditor to comply with the independence standards of the SEC and the PCAOB.

In contrast, for financial institutions subject to the audit requirements in Part 363 of the FDIC's regulations or subject to OTS's regulations, the external auditor should be in compliance with the AICPA's Code of Professional Conduct and meet the independence requirements and interpretations of the SEC and its staff.[7] In this regard, in a

[2] Published in the **Federal Register** on September 28, 1999 (64 FR 52319–27). The NCUA, a member of the FFIEC, has not adopted the policy statement.

[3] Examples of auditor limitation of liability provisions are illustrated in Appendix A.

[4] For banks and savings associations, see Section 36 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831m) and Part 363 of the FDIC's regulations (12 CFR part 363). For credit unions, see Section 202(a)(6) of the Federal Credit Union Act (12 U.S.C. 1782(a)(6)) and Part 715 of the NCUA's regulations (12 CFR part 715).

[5] See OTS regulation at 12 CFR 562.4.

[6] Public companies are companies subject to the reporting requirements of the Securities Exchange Act of 1934.

[7] See FDIC Regulation 12 CFR Part 363, Appendix A—Guidelines and Interpretations; Guideline 14,

December 13, 2004, Frequently Asked Question (FAQ) on the application of the SEC's auditor independence rules, the SEC reiterated its long-standing position that when an accountant and his or her client enter into an agreement which seeks to provide the accountant immunity from liability for his or her own negligent acts, the accountant is not independent. The FAQ also states that including in engagement letters a clause that would release, indemnify, or hold the auditor harmless from any liability and costs resulting from knowing misrepresentations by management would impair the auditor's independence.[8] The SEC's FAQ is consistent with Section 602.02.f.i. (Indemnification by Client) of the SEC's Codification of Financial Reporting Policies. (Section 602.02.f.i. and the FAQ are included in Appendix B.)

Based on this SEC guidance and the Agencies' existing regulations, limitation of liability provisions are already inappropriate in auditor engagement letters entered into by:

- Public financial institutions that file reports with the SEC or with the Agencies;
- Financial institutions subject to Part 363; and
- Certain other financial institutions that OTS regulations at 12 CFR 562.4 require to have annual independent audits.

In addition, many of these limitation of liability provisions may violate the AICPA independence standards. Because limitation of liability provisions may impair an auditor's independence and may adversely affect the external auditor's objectivity, impartiality, and performance, the provisions present safety and soundness concerns for all financial institution external audits.

Alternative Dispute Resolution Agreements and Jury Trial Waivers

The Agencies have also observed that some financial institutions are agreeing in their external audit engagement letters to submit disputes over external auditor services to mandatory and binding alternative dispute resolution, binding arbitration, or some other binding non-judicial dispute resolution process (collectively referred to as mandatory ADR) or to waive the right to a jury trial. By agreeing in advance to submit disputes to mandatory ADR, the financial institution is effectively agreeing to waive the right to full discovery, limit appellate review, and limit or waive other rights and protections available in ordinary litigation proceedings. While ADR may expedite case resolution and reduce costs, financial institutions should consider the value of the rights being waived. Similarly, by waiving a jury trial, the financial institution may effectively limit the amount it might receive in any settlement of its case. The loss of these legal protections can reduce the value of the financial institution's claim in an audit dispute.

The Agencies recognize that ADR procedures and jury trial waivers may be efficient and cost-effective tools for resolving disputes in some cases. However, financial institutions should take care to understand the ramifications of agreeing to submit audit disputes to mandatory ADR or to waive a jury trial before an audit dispute arises.

In particular, pre-dispute mandatory ADR agreements in external audit engagement letters present safety and soundness concerns when they incorporate additional limitations of liability, or when mandatory ADR agreements operate under rules of procedure that may limit auditor liability. Examples of such limitations on liability include provisions:

- Capping the amount of actual damages that may be claimed;
- Prohibiting claims for punitive damages or other remedies; or
- Shortening the time in which the financial institution may file a claim.

Thus, financial institutions should not enter into pre-dispute mandatory ADR arrangements that incorporate limitation of liability provisions, whether the limitations on liability form part of an audit engagement letter or are set out separately.

The Agencies encourage all financial institutions to review each proposed external audit engagement letter presented by an audit firm and understand the limitations on the ability to recover effectively from an audit firm in light of any mandatory ADR agreement or jury trial waiver. Financial institutions should also review the rules of procedure referenced in the ADR agreement to ensure that the potential consequences of such procedures are acceptable to the institution. In addition, financial institutions should recognize that ADR agreements may themselves contain limitation of liability provisions as described in this advisory.

Conclusion

Financial institutions' boards of directors, audit committees, and management should ensure that they do not enter any agreement that contains external auditor limitation of liability provisions with respect to financial statement audits. In addition, financial institutions should document their business rationale for agreeing to any other provisions that alter their legal rights.

The inclusion of limitation of liability provisions in external audit engagement letters and other agreements that are inconsistent with this advisory will generally be considered an unsafe and unsound practice. The Agencies may take appropriate supervisory action if such provisions are included in external audit engagement letters or other agreements related to financial statement audits that are executed (accepted or agreed to by the financial institution) after the date of this advisory. Furthermore, if boards of directors, audit committees, or management have already accepted an external audit engagement letter or related agreement for a fiscal 2005 or subsequent financial statement audit (*i.e.*, fiscal years ending on or after January 1, 2005), the Agencies strongly recommend that boards of directors, audit committees, and management consult with legal counsel and the external auditor and take appropriate action to have any limitation of liability provision nullified.

Financial institutions' boards of directors, audit committees, and management should also check with their insurers to determine the effect, if any, on their ability to recover losses as a result of the external auditors' actions that were not recovered because of the limitation of liability provisions.

As indicated in the Interagency Policy Statement on External Auditing Programs of Banks and Savings Associations, the Agencies' examiners will consider the policies, processes, and personnel surrounding a financial institution's external auditing program in determining whether (1) the engagement letter covering external auditing activities is adequate and does not raise any safety and soundness concerns and (2) the external auditor maintains appropriate independence regarding relationships with the financial institution under relevant professional standards.

Role of the Independent Public Accountant—Independence; and OTS Regulation 12 CFR 562.4(d)(3)(i), Qualifications for independent public accountant.

[8] AICPA Ethics Ruling 94 (ET § 191.188–189) currently concludes that indemnification for ''knowing misrepresentations by management'' does not impair independence. At this writing, the AICPA's Professional Ethics Executive Committee has formed a task force that is studying the use of indemnification clauses in engagement letters and how such clauses may affect an auditor's independence.

Appendix A

Examples of Limitation of Liability Provisions

Presented below are some of the types of limitation of liability provisions (with an illustrative example of each type) that the Agencies observed in financial institutions' external audit engagement letters. The inclusion in external audit engagement letters or agreements related to the financial statement audit of any of the illustrative provisions (which do not represent an all-inclusive list) or any other language that would produce similar effects is generally considered an unsafe and unsound practice.

1. ''Release From Liability for Auditor Negligence'' Provision

In this type of provision, the financial institution agrees *not* to hold the audit firm liable for *any* damages, *except* to the extent determined to have resulted from the willful misconduct or fraudulent behavior by the audit firm.

Example: In no event shall [the audit firm] be liable to the Financial Institution, whether a claim be in tort, contract or otherwise, for any consequential, indirect, lost profit, or similar damages relating to [the audit firm's] services provided under this engagement letter, except to the extent finally determined to have resulted from the willful misconduct or fraudulent behavior of [the audit firm] relating to such services.

2. ''No Damages'' Provision

In this type of provision, the financial institution agrees that in *no event* will the external audit firm's liability include responsibility for *any* claimed incidental, consequential, punitive, or exemplary damages.

Example: In no event will [the audit firm's] liability under the terms of this Agreement include responsibility for any claimed incidental, consequential, or exemplary damages.

3. ''Limitation of Period To File Claim'' Provision

In this type of provision, the financial institution agrees that *no* claim will be asserted after a fixed period of time that is shorter than the applicable statute of limitations, effectively agreeing to limit the financial institution's rights in filing a claim.

Example: It is agreed by the Financial Institution and [the audit firm] or any successors in interest that no claim arising out of services rendered pursuant to this agreement by, or on behalf of, the Financial Institution shall be asserted more than two years after the date of the last audit report issued by [the audit firm].

4. ''Losses Occurring During Periods Audited'' Provision

In this type of provision, the financial institution agrees that the external audit firm's liability will be limited to any losses occurring during periods covered by the external audit, and will *not* include any losses occurring in later periods for which the external audit firm is not engaged. This provision may not only preclude the collection of consequential damages for harm in later years, but also may preclude any recovery at all. It appears that the external audit firm would have no liability until the external audit report is actually delivered and any liability thereafter might be limited to the period covered by the external audit. In other words, it might limit the external audit firm's liability to the period before there is any liability. Read more broadly, the external audit firm might be liable for losses that arise in subsequent years only if the firm continues to be engaged to audit the client's financial statements in those years.

Example: In the event the Financial Institution is dissatisfied with [the audit firm's] services, it is understood that [the audit firm's] liability, if any, arising from this engagement will be limited to any losses occurring during the periods covered by [the audit firm's] audit, and shall *not* include any losses occurring in later periods for which [the audit firm] is not engaged as auditors.

5. ''No Assignment or Transfer'' Provision

In this type of provision, the financial institution agrees that it will *not* assign or transfer any claim against the external audit firm to another party. This provision could limit the ability of another party to pursue a claim against the external auditor in a sale or merger of the financial institution, in a sale of certain assets or line of business of the financial institution, or in a supervisory merger or receivership of the financial institution. This provision may also prevent the financial institution from subrogating a claim against its external auditor to the financial institution's insurer under its directors' and officers' liability or other insurance coverage.

Example: The Financial Institution agrees that it will not, directly or indirectly, agree to assign or transfer any claim against [the audit firm] arising out of this engagement to anyone.

6. ''Knowing Misrepresentations by Management'' Provision

In this type of provision, the financial institution releases and indemnifies the external audit firm from any claims, liabilities, and costs attributable to any knowing misrepresentation by management.

Example: Because of the importance of oral and written management representations to an effective audit, the Financial Institution releases and indemnifies [the audit firm] and its personnel from any and all claims, liabilities, costs, and expenses attributable to any knowing misrepresentation by management.

7. ''Indemnification for Management Negligence'' Provision

In this type of provision, the financial institution agrees to protect the external auditor from third party claims arising from the external audit firm's failure to discover negligent conduct by management. It would also reinforce the defense of contributory negligence in cases in which the financial institution brings an action against its external auditor. In either case, the contractual defense would insulate the external audit firm from claims for damages even if the reason the external auditor failed to discover the negligent conduct was a failure to conduct the external audit in accordance with generally accepted audited standards or other applicable professional standards.

Example: The Financial Institution shall indemnify, hold harmless and defend [the audit firm] and its authorized agents, partners and employees from and against any and all claims, damages, demands, actions, costs and charges arising out of, or by reason of, the Financial Institution's negligent acts or failure to act hereunder.

8. ''Damages Not To Exceed Fees Paid'' Provision

In this type of provision, the financial institution agrees to limit the external auditor's liability to the amount of audit fees the financial institution paid the external auditor, regardless of the extent of damages. This may result in a substantial unrecoverable loss or cost to the financial institution.

Example: [The audit firm] shall not be liable for any claim for damages arising out of or in connection with any services provided herein to the Financial Institution in an amount greater than the amount of fees actually paid to [the audit firm] with respect to the services directly relating to and forming the basis of such claim.

Note: The Agencies also observed a similar provision that limited damages to a predetermined amount not related to fees paid.

Appendix B

SEC's Codification of Financial Reporting Policies, Section 602.02.f.i and the SEC's December 13, 2004, FAQ on Auditor Independence

Section 602.02.f.i—Indemnification by Client, 3 Fed. Sec. L. (CCH) ¶ 38,335, at 38,603–17 (2003):

Inquiry was made as to whether an accountant who certifies financial statements included in a registration statement or annual report filed with the Commission under the Securities Act or the Exchange Act would be considered independent if he had entered into an indemnity agreement with the registrant. In the particular illustration cited, the board of directors of the registrant formally approved the filing of a registration statement with the Commission and agreed to indemnify and save harmless each and every accountant who certified any part of such statement, ''from any and all losses, claims, damages or liabilities arising out of such act or acts to which they or any of them may become subject under the Securities Act, as amended, or at 'common law,' other than for their willful misstatements or omissions.''

When an accountant and his client, directly or through an affiliate, have entered into an agreement of indemnity which seeks to assure to the accountant immunity from liability for his own negligent acts, whether of omission or commission, one of the major stimuli to objective and unbiased consideration of the problems encountered in a particular engagement is removed or greatly weakened. Such condition must frequently induce a departure from the standards of objectivity and impartiality which the

concept of independence implies. In such difficult matters, for example, as the determination of the scope of audit necessary, existence of such an agreement may easily lead to the use of less extensive or thorough procedures than would otherwise be followed. In other cases it may result in a failure to appraise with professional acumen the information disclosed by the examination. Consequently, the accountant cannot be recognized as independent for the purpose of certifying the financial statements of the corporation. (Emphasis added.)

U.S. Securities and Exchange Commission; Office of the Chief Accountant: Application of the Commission's Rules on Auditor Independence Frequently Asked Questions; Other Matters—Question 4 (Issued December 13, 2004):

Q: Has there been any change in the Commission's long standing view (Financial Reporting Policies—Section 600—602.02.f.i. ''Indemnification by Client'') that when an accountant enters into an indemnity agreement with the registrant, his or her independence would come into question?

A: No. When an accountant and his or her client, directly or through an affiliate, enter into an agreement of indemnity which seeks to provide the accountant immunity from liability for his or her own negligent acts, whether of omission or commission, the accountant is not independent. Further, including in engagement letters a clause that a registrant would release, indemnify or hold harmless from any liability and costs resulting from knowing misrepresentations by management would also impair the firm's independence. (Emphasis added.)

Dated: May 4, 2005.

Tamara J. Wiseman,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 05–9298 Filed 5–9–05; 8:45 am]

BILLING CODE 6720–01–P, 6210–01,–P, 6714–01–P, 7535–01–P, 4810–33–P

FEDERAL MARITIME COMMISSION

Controlled Carriers Under The Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The Federal Maritime Commission is publishing an updated list of controlled carriers, *i.e.,* ocean common carriers operating in U.S.-foreign trades that are owned or controlled by foreign governments. Such carriers are subject to special regulatory oversight by the Commission under the Shipping Act of 1984.

FOR FURTHER INFORMATION CONTACT: Amy W. Larson, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573. (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission is publishing an updated list of controlled carriers. Section 3(8) of the Shipping Act of 1984 (''Act''), 46 U.S.C. app. 1702(3), defines a ''controlled carrier'' as:

> An ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by a government; ownership or control by a government shall be deemed to exist with respect to any carrier if—
>
> (A) a majority portion of the interest in the carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or
>
> (B) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer, or the chief executive officer of the carrier.

As required by the Shipping Act, controlled carriers are subject to special oversight by the Commission. Section 9(a) of the Act, 46 U.S.C. app. 1708(a), states, in part:

> No controlled carrier subject to this section may maintain rates or charges in its tariffs or service contracts, or charge or assess rates, that are below a level that is just and reasonable, nor may any such carrier establish, maintain, or enforce unjust or unreasonable classifications, rules, or regulations in those tariffs or service contracts. An unjust or unreasonable classification, rule, or regulation means one that results or is likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level. The Commission may, at any time after notice and hearing, prohibit the publication or use of any rates, charges, classifications, rules, or regulations that the controlled carrier has failed to demonstrate to be just and reasonable.

Congress enacted these protections to ensure that controlled carriers, whose marketplace decision making can be influenced by foreign governmental priorities or by their access to non-market sources of capital, do not engage in unreasonable below-market pricing practices which could disrupt trade or harm privately-owned shipping companies.

The controlled carrier list is not a comprehensive list of foreign-owned or -controlled ships or shipowners; rather, it is only a list of ocean common carriers (as defined in section 3(16) of the Act) that are owned or controlled by governments. Thus, tramp operators and other non-common carriers are not included, nor are non-vessel-operating common carriers, regardless of their ownership or control.

Since the last publication of this list on June 9, 2003 (68 FR 34388), the Commission has newly classified two ocean common carriers as controlled carriers. On September 27, 2004, American President Lines, Ltd. and APL Co. Pte, Ltd. (one ocean common carrier designated ''APL'') was classified as a carrier controlled by the Government of the Republic of Singapore (''GOS''). The majority ownership of APL's parent company, Neptune Orient Lines (''NOL'') had been purchased by a GOS controlled holding company. On November 29, 2004, the Commission classified China Shipping (Hong Kong), Ltd. (''CSHK'') as a carrier controlled by the Government of the People's Republic of China. CSHK was a new entrant in the U.S.-foreign trades. Neither APL nor CSHK raised any objections to these classifications.

It is requested that any other information regarding possible omissions or inaccuracies in this list be provided to the Commission's Office of the General Counsel. *See* 46 CFR 501.23. The amended list of currently classified controlled carriers and their corresponding Commission-issued Registered Persons Index numbers is set forth below:

(1) American President Lines, Ltd and APL Co., Pte. (RPI No. 000240)—Republic of Singapore;
(2) Ceylon Shipping Corporation (RPI No. 016589)—Democratic Socialist Republic of Sri Lanka;
(3) COSCO Container Lines Company, Limited (RPI No. 015614)—People's Republic of China;
(4) China Shipping Container Lines Co., Ltd. (RPI No. 016435)—People's Republic of China;
(5) China Shipping Container Lines (Hong Kong) Company, Ltd. (RPI No. 019269)—People's Republic of China;
(6) Compagnie Nationale Algerienne de Navigation (RPI No. 000787)—People's Democratic Republic of Algeria;
(7) Sinotrans Container Lines Co., Ltd. (d/b/a Sinolines)(RPI No. 017703)—People's Republic of China;
(8) Shipping Corporation of India Ltd., The (RPI No. 001141)—Republic of India.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–9322 Filed 5–9–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY:

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR part 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before July 11, 2005.

ADDRESSES: You may submit comments, identified by FR 3080, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *FAX:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Long, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

For further information regarding the purpose and content of the proposed survey contact Jack Walton, Associate Director (202–452–2660), Jeffrey Yeganeh, Manager (202–728–5801), or Susan Foley, Project Leader (202–452–3596), Retail Payments Section, Division of Reserve Bank Operations and Payment Systems.

Proposal to conduct under OMB delegated authority the following survey:

Report title: Check 21 Act Survey.

Agency form number: FR 3080.

OMB control number: 7100–0279.

Frequency: Once.

Reporters: Depository institutions.

Annual reporting hours: 15,000 hours.

Estimated average hours per response: 10 hours.

Number of respondents: 1,500.

General description of report: This information collection is voluntary (12 U.S.C. 5015) and may be accorded confidential treatment under the Freedom of Information Act (5 U.S.C. 552 (b)(4)).

Abstract: Section 16 of the Check 21 Act requires the Federal Reserve to study the implementation of the law and its effect on various aspects of check processing, including funds availability, and to report the results of the study to Congress by April 28, 2007.[1] Specifically, Congress directed the Federal Reserve to study and report to Congress on:

(1) The percentage of total checks cleared in which the paper check is not returned to the paying bank;

(2) The extent to which banks make funds available to consumers for local and nonlocal checks prior to the expiration of maximum hold periods;

(3) The length of time within which depositary banks learn of the nonpayment of local and nonlocal checks;

(4) The increase or decrease in check-related losses over the study period; and

(5) The appropriateness of the time periods and amount limits applicable under sections 603 and 604 of the Expedited Funds Availability Act, as in effect on the date of enactment of the Check 21 Act.

To fully address the issues raised by Congress, the Federal Reserve believes it is necessary to conduct a broad-based survey to ensure the accurate characterization of the nation's evolving check processing system, and the Federal Reserve is hereby publishing for comment a draft survey to gather data from a nationally representative sample of depository institutions, including commercial banks, savings institutions, and credit unions.

Further, the availability for withdrawal of funds deposited by check is governed by the Federal Reserve's Regulation CC, which implements the Expedited Funds Availability Act (EFAA). EFAA and Regulation CC set maximum permissible hold periods for checks deposited into transaction accounts at depository institutions. EFAA directs the Federal Reserve to reduce the statutory funds availability schedules as the check clearing system improves, while also ensuring that the reduced schedules provide depositary banks a reasonable opportunity to learn

[1] The Check 21 Act also directs the Board to include in its report to Congress any recommendations for legislative action.

of the nonpayment of most checks in each category (such as ''nonlocal'' checks and ''local'' checks). The results of the proposed survey would be used to determine whether reducing the hold periods in Regulation CC is warranted.

The proposed survey would consist of five sections. Section I would collect general information on the depository institution, such as name, address, and contact person.

Section II consists of seven questions on respondents' losses and recoveries related to check fraud. In its role as bank of first deposit and as paying bank, an institution would be asked to provide the value and number of check losses incurred in 2005, as well as the value and number of cases associated with recoveries received in 2005 from check losses. As bank of first deposit, institutions would be asked to provide information on their losses by category, such as the origin of the check (*e.g.*, local or non-local), whether the check was dishonored versus subject to a warranty claim, and the age of the account. As paying bank, institutions would be asked to provide their losses by presentment method (original checks, substitute checks, or checks presented electronically). Both the dollar value and the number of cases would be reported. The respondent also would be asked to compare its check losses in 2005 with its check losses in 2004. Section II questions are in response to study requirements 4 and 5.

Section III consists of two questions on the volume of checks, for cases where the institution was the paying bank and for cases where the institution was the bank of first deposit. The institution would be asked to provide the total number and value of checks presented to it in a calendar month, categorized by presentment method (original checks, substitute checks, or checks presented electronically). The institution also would be asked to provide the total number and value of checks deposited at the institution as the bank of first deposit during the same calendar month, categorized by origin of the check. Section III questions are in response to study requirement 1.

Section IV consists of five questions on the institution's funds availability policies and practices for next-day availability, local, and nonlocal checks. The institution would be asked to provide its number of transaction accounts and the percentage of these accounts held by consumers. The institution would also be asked to indicate its published funds availability policy, including the percentage of consumer transaction accounts for which the policy permits hold extensions on a case-by-case basis, and to specify what changes (if any) it has made to its policy in the past two years. The institution would be asked to indicate its funds availability practices for deposits that do not qualify as exception holds under Regulation CC. Finally, institutions would be asked for the percentage of check deposits subject to Regulation CC exception holds that receive later availability than the Regulation CC permitted holds for next-day availability, local, and nonlocal checks. Section IV questions are in response to study requirement 2.

Section V consists of three questions addressing the institution's experiences with returned checks. The institution would be asked to specify the number of business days within which it receives local and nonlocal checks that have been returned unpaid by the paying bank. Two questions request data on notifications and procedures regarding large-dollar returned checks. Section V questions are in response to study requirement 3.

The Federal Reserve will accept comments on all aspects of the proposed survey. In general, the Federal Reserve requests comment on how the survey might be modified to improve its responsiveness to the requirements of section 16 of the Check 21 Act, while also enabling depository institutions to respond to the survey with reasonable burden. More specifically, the Federal Reserve requests comments on the following. To what extent are institutions, in their role as banks of first deposit, able to categorize check losses by local and non-local checks (proposed question 2.2)? To what extent are institutions, in their role as paying banks, able to categorize check losses by presentment method (proposed question 2.6)? How might questions 4.2 and 4.4 be restructured to better capture the frequency with which institutions make funds available sooner than Regulation CC requires? Do the options listed under question 4.3(d) capture the reasons why institutions might have changed their funds availability policies in the past two years? And, finally, do institutions typically track check losses by check or by case (which may involve one or more checks)? The proposed survey is available electronically at *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm.*

Board of Governors of the Federal Reserve System, May 5, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–9318 Filed 5–9–05; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Notice of Agency Information Collection Activities Regarding a Pilot Study Pursuant to Section 319 of the Fair and Accurate Credit Transactions Act of 2003

AGENCY: Federal Trade Commission.

ACTION: Notice and request for comment.

SUMMARY: The information collection requirements described below have been submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The Federal Trade Commission (the ''Commission'' or ''FTC'') is seeking public comments on its proposal to conduct a pilot study in connection with Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act'' or the ''Act'').

DATES: Public comments must be received on or before June 9, 2005.

ADDRESSES: Comments should refer to the ''Accuracy Pilot Study: Paperwork Comment (FTC file no. P044804)'' to facilitate the organization of the comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159 (Annex Y), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *AccuracyPilotStudy@ftc.gov.*

All comments should additionally be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

is subject to lengthy delays due to heightened security precautions.

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

FOR FURTHER INFORMATION CONTACT: Peter Vander Nat, Economist, (202) 326–3518, Federal Trade Commission, Bureau of Economics, 601 New Jersey Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Section 319 of the FACT Act, Public Law 108–159 (2003), requires the FTC to study the accuracy and completeness of information in consumers' credit reports and to consider methods for improving the accuracy and completeness of such information. Section 319 requires the Commission to issue a series of biennial reports to Congress over a period of eleven years. The first report was submitted to Congress in December 2004 (''December 2004 Report'').[2]

As discussed in the December 2004 Report, the FTC intends to conduct a pilot study which will evaluate the feasibility and methodology of a nationwide survey on the accuracy and completeness of consumer reports. On October 20, 2004, the FTC sought comment on the information collection requirements associated with its proposed pilot study. 69 FR 61675. Ten comments were received, which are discussed below.[3] Pursuant to the OMB regulations that implement the PRA, 5 CFR part 1320, the FTC is providing this second opportunity for public comment while seeking OMB approval for the proposed pilot study.

The purpose of the proposed pilot study is to evaluate the feasibility of directly involving consumers in a review of the information in their credit reports. The pilot study does not rely on the selection of a nationally representative sample of consumers, and as the Commission stated in the December 2004 report (at 32), statistical conclusions will not be drawn from this study. The study will involve a small group of consumers who give the designated contractor permission to review their credit reports. The contractor will help the participants to understand their reports and to discern inaccuracies or incompleteness in them. This process of review will also involve contact with the three nationwide consumer reporting agencies (''CRAs'') and those who furnish information (''data furnishers'') to these agencies. The pilot study is primarily a tool to assess whether the collection of certain data pertinent to credit report accuracy can be performed in a way that is not unduly resource-intensive and would not be cost-prohibitive if extended to a nationwide survey (including such matters as identifying and screening participants, as well as involving data furnishers).

Subject to OMB clearance for the study under the Paperwork Reduction Act, the FTC has designated a contractor with high-level expertise in credit reporting issues.[4] The design elements of the study are the following:

1. The study group will be drawn by a randomized procedure that is screened to consist of adult members of households to whom credit has been extended in the form of credit cards, automobile loans, home mortgages, or other forms of installment credit. The FTC will send a letter to potential study participants describing the nature and purpose of the pilot study. The contractor will screen consumers through telephone interviews. The selected study group will consist of approximately 35 consumers having a diversity of credit scores over three broad categories: poor, fair, and good.[5] As various consumers give consent to participate (and thereby give the contractor permission to know their credit scores), if the respective categories of credit scores have an unequal distribution of consumers, then an array will be chosen to favor the consumers with the relatively lower credit scores.

2. The contractor will help the participants obtain their credit reports from the three nationwide CRAs—Equifax, Experian, and TransUnion—through the Web site *http://www.myfico.com.* Each participant will request his or her three credit reports on the same day, although different participants will generally request their reports on different days.

3. The contractor will help the participants review their credit reports by resolving common misunderstandings that they may have about the information in their reports; this will involve educating the participant wherever appropriate (thereby helping them to distinguish between accurate and inaccurate information). In addition, the contractor will help the consumer locate any material differences or discrepancies among their three reports, and check whether these differences indicate inaccuracies.

4. The contractor will facilitate a participant's contact with the CRAs and with data furnishers as necessary to help resolve credit report items that the participant views as inaccurate. To the extent necessary, the contractor will guide participants through the dispute process established by the Fair Credit Reporting Act (''FCRA''), (the FCRA limits this process to 30 days, but the time may be extended to 45 days if the consumer submits relevant information during the 30-day period). The contractor will not contact the CRAs and data furnishers directly during the course of the study, however. The contractor will determine any changes in the participant's FICO credit score resulting from changes in credit report information.[6]

As discussed further below, the contractor will use procedures that avoid the identification of study participants to CRAs and data furnishers. The pilot study will not create any hypothetical disputes, and it will use procedures that regularly pertain to credit reporting activities.

[2] Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003, Federal Trade Commission, December 2004. This report is available at *http://www.ftc.gov/reports/index.htm#2004.*

[3] The comments are available at *http://www.ftc.gov/os/statutes/fcrajump.htm.*

[4] The designated contractor is a consortium comprised of the Credit Research Center from Georgetown University, the University of Missouri via its Center for Business and Industrial Studies, and the Fair Isaac Corporation.

[5] A credit score is a numerical summary of the information in a credit report and is designed to be predictive of the risk of default. Credit scores are created by proprietary formulas that render the following general result: the higher the credit score, the lower the risk of default. The designated contractor for the pilot study plans to use the ''FICO'' credit score, which is a commonly used score in credit reporting that is developed by the Fair Isaac Corporation.

[6] In making this comparison, the contractor will not retrieve from Fair Isaac's Web site a FICO score after the items have been corrected. Fair Isaac, as a member of the designated consortium of contractors, will compute a new FICO score based on the information in the original credit report and any changes directly related to the contractor's review. This method addresses a concern that changes in a credit score retrieved from Fair Isaac's Web site could be the result of the addition of new items rather than corrected items. See comments from the Consumer Data Industry Association at 5; comments from Equifax at 15.

Summary of Comments to the First Federal Register Notice Regarding Pilot Study

Some of the commenters enthusiastically support the proposed pilot study.[7] Other commenters stated that, because they support a study of accuracy and completeness, they want more information about the pilot study.[8]

Several of the commenters are concerned about the purpose of the pilot study. Springboard (at 1–2) summarizes the focus of the proposed pilot study as ''gauging how difficult it is for people to obtain, understand, and correct inaccurate information in their credit reports on a 'do-it-yourself' basis;'' Springboard further fears that the goal of the pilot study is to conclude that the ''do-it-yourself model'' is adequate ''as is.'' In the opposite direction, industry representatives have expressed the fear to FTC staff that the pilot study may be designed to conclude that consumers should generally have expert assistance made available to them in reviewing a credit report. Both of these fears express misunderstandings about the purpose of the pilot study. The pilot study is not intended to replicate normal circumstances under which consumers generally review their credit reports; nor is it intended to evaluate the adequacy or complexity of the dispute process. The purpose of the pilot study is to evaluate the feasability of involving consumers in a review of the accuracy and completeness of the information in their credit reports. The scrutiny applied to the reports of study participants, via the help of an expert coach, would not at all be indicative of a consumer's normal experience in reviewing a credit report. The FTC recognizes that consumers often are not familiar with credit reporting procedures and may have difficulties in understanding a credit report (which may be partly due to a consumer's own misconceptions). The pilot study seeks to evaluate the feasibility of obtaining information pertinent to credit report accuracy by directly involving consumers under expert assistance. This evaluation is a first step in designing a more comprehensive study of credit report inaccuracies.

Several commenters are concerned that the FTC is apparently doing just ''one'' pilot study, further stating that a single pilot study cannot adequately address the issues to be dealt with in preparation for a national study.[9] The Commission has stated in its December 2004 Report (at 35) that several pilot studies may be needed in preparation for a national study.

Privacy Rights Clearinghouse (''PRC'') (at 2) asks whether measures are in place to mask the identity of participants from both CRAs and data furnishers. The study is designed to use only the normal business procedures of the CRAs and data furnishers, and therefore masks the identity of consumers as study participants. First, participants will request their credit reports through the Web site *http://www.myfico.com.* For the CRAs that receive and process these requests, they will be identical in form to thousands of requests that are regularly processed; indeed, nothing in the nature of the request identifies the consumer as a study participant. Second, any follow-up contact by study participants with a CRA or data furnisher will be through the normal process used by consumers when clarifying or disputing information in their credit reports. Thus, CRAs and data furnishers will not be able to identify communications from study participants. In addition, each member of the contractor consortium has signed an agreement not to disclose the identity of any study participant to parties other than the FTC.

PRC questions whether participant's credit reports will be agency records subject to the Privacy Act, 5 U.S.C. 552a, and, if so, whether participants will receive any notice required by that Act. To the extent, if any, that the Act applies, the reports would be part of the agency's existing system for legal, investigational and other records,[10] and, whether or not the Act applies, the FTC intends to include a notice consistent with the Act on any information collection forms (*e.g.*, the letter sent by the FTC to potential study participants). PRC has also questioned whether there will be any express agreement to prohibit secondary uses of the collected data by the contractor. The letter to potential participants will inform them that the contractor has been permitted to collect the data only for the purpose of pilot study, and that other uses by the contractor have been prohibited.

Industry commenters such as the Consumer Data Industry Association (''CDIA''), Experian, Equifax, TransUnion, and the Coalition to Implement the Fact Act (''Coalition''), raise a number of other questions and concerns. They ask what definition the FTC will use for the ''accuracy and completeness'' of credit reports in the pilot study, as well as for a more comprehensive study. The pilot study is not employing a specific definition of accuracy and completeness.[11] Instead, the pilot study is assessing a potential methodology for directly involving consumers in a review of the information in their credit reports. The pilot study will list possible outcomes of the items reviewed on credit reports, as follows:

''Item not disputed by consumer'';
''Disputed by consumer and relevant party agrees to make a change'';
''Disputed by consumer and the relevant party disagrees and maintains the information as originally reported'';
''Disputed by consumer and deleted due to expiration of statutory [FCRA] time frame'';
''Data item not present on report''; or
''Item not applicable.''

This list of outcomes demonstrates that the pilot study will be useful in designing a nationwide survey regardless of how accuracy and completeness are defined for such a survey. No decision has yet been made regarding the definition of these terms for a nationwide survey.

TransUnion (at 3) states that ''[it] is particularly concerned that the FTC has not indicated how it will evaluate the completeness of consumer report information, nor can the FTC's intent be inferred from the Notice.'' Although the pilot study is not measuring incompleteness, one of the outcomes of the review will be ''data item(s) not present on the report.'' The FTC staff recognizes the different reporting cycles of data furnishers and also the voluntary basis on which information is provided to a CRA. Hence, there may be several possible explanations for why an anticipated item is not on a particular credit report.[12] If the results of the pilot study indicate that its methodology is inadequate to study incompleteness, other methods will be considered.

Regarding the pilot study's methodology, Equifax asks (at 17) what the FTC means by ''informal contact.''[13]

[7] See the comments of Bixby Consulting and the comments of the American Financial Services Association (''AFSA''). The comments from Visa USA are also generally supportive and add suggestions about additional studies.

[8] See comments from Springboard Nonprofit Consumer Credit Management (''Springboard'') and Privacy Rights Clearing House (''PRC'').

[9] CDIA at 2; Equifax at 10.

[10] *See http://www.ftc.gov/foia/sysnot/i-1.pdf*

[11] *See also* December 2004 Report at 5 n.10 (discussing different definitions of completeness) and at 16–18 (discussing the accuracy and completeness requirements of the FCRA).

[12] The item may be missing because a data furnisher did not provide the information to a certain CRA (or to any CRA), or—due to the specific reporting cycle of the data furnisher—because it was provided at a time after the credit report was inspected by the consumer. It could also be that the item was submitted to a CRA but was not placed in the correct consumer's file.

[13] The October 20, 2004 Notice indicated that both formal and informal contacts with CRAs and

Continued

For the purpose of the pilot study, ''informal contact'' means any communication between a consumer and CRA or data furnisher that does not involve a formal FCRA dispute. From data presented in testimony before Congress by the Consumer Data Industry Association, it can be inferred that a significant number of participants in the pilot study will use informal contact to resolve discrepancies in their credit report.[14]

Some commenters ask how the pilot study will resolve disputed items about which the consumer and data furnisher simply disagree.[15] The FTC staff does not intend that the pilot study resolve such items, because this study will not be used to draw conclusions about credit report accuracy. Thus, wherever appropriate, the contractor will report that there was no agreement on certain disputed items. Following completion of the pilot study, the FTC staff plans to evaluate the number and potential seriousness of unresolved disagreements in an effort to determine whether there is an appropriate methodology to assess them in a nationwide study.[16]

Industry commenters believe that an assessment of credit report accuracy should evaluate the materiality of errors, *i.e.*, the impact of errors in the context of decisions made by the grantors of credit.[17] As a precursor to the possible study of materiality in nationwide survey, the contractor will determine the change in a commonly used credit score (the FICO score) whenever credit report information is changed by the mutual consent of the consumer and the relevant party (CRA or data furnisher).[18] Some commenters are concerned that the pilot study only uses one credit score.[19] Although the FTC staff acknowledges that there are a variety of credit scores, *i.e.*, different scoring techniques used by the industry, that may be relevant in assessing the materiality of errors, the current pilot study is not making such an assessment because no statistically valid conclusions can be drawn from the small sample of participants.

Industry commenters question why the FTC may permit an ''over-sampling'' of low credit scores in the pilot study, and is thus likely to have a similar procedure for a national study.[20] Although over-sampling is not important for this pilot study (it involves only a small sample, and no statistical conclusions will be drawn from this study), the sampling methodology is potentially important for a nationwide study. One of the goals of the nationwide study under consideration, however ultimately executed, would be to categorize errors by their type and seriousness in terms of consumer harm (FTC December 2004 Report at 34.) In relation to this goal there is a recognized statistical procedure, called ''stratified sampling,'' that divides a population into an array of ''strata'' and knowingly over-samples certain strata.[21] A reason for over-sampling consumers that have low credit scores is that such people are likely to experience greater harm if their credit reports have errors contributing to the low score.

Industry commenters also express a number of additional concerns about the nationwide survey under consideration, which they assert should be addressed by the FTC before the pilot study begins. The FTC staff believes it is premature to resolve these concerns now because the pilot study will be used to assess the utility, costs, and design of the potential nationwide survey.

Estimated Hours of Burden

Consumer participation involves the initial screening and any subsequent time spent to understand, to review, and if deemed necessary, to dispute information in credit reports. The FTC staff estimates that up to 225 consumers may need to be screened through telephone interviews and that each screening interview may last up to 10 minutes, which totals up to 38 hours (225 contacts × (1/6) hour per contact).

With respect to the hours spent by study participants, in some cases the relative simplicity of a credit report may render little need for review, and the consumer's participation may only be an hour. For reports that involve difficulties, it may require a number of hours for the participant to be educated about the report and to resolve any disputed items. For items that are disputed formally, the participant must submit a dispute form, identify the nature of the problem, present verification from the participant's own records to the extent possible, and, upon furnisher response, perhaps submit follow-up information. All participants will have expert assistance available to them, and staff estimates that, on average, approximately 5 hours would be spent per participant, resulting in a total of 175 hours (5 hours × 35 participants).[22] Total burden hours are thus approximately 200 hours (38 hours for screening plus 175 study participant hours).

Estimated Cost Burden

Participation by the consumer is voluntary. All participants will benefit by receiving assistance from the contractor in reviewing their credit reports, and identifying and resolving any errors. No monetary costs are involved for the consumer; specifically, participants will not pay for their credit reports.

William Blumenthal,

General Counsel.

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data furnishers may occur in the process of having consumers review their credit reports. 69 FR 61675.

[14] *See* Statement of Stuart K. Pratt, CDIA, Before the Committee on Banking, Housing and Urban Affairs of the United States Senate, July 9, 2003. CDIA states that there were approximately 16 million consumer-requested credit reports from the three CRAs for year 2003. Roughly 50% of these reports did not lead to a further response from the consumer (such as a call to, or dispute with, a CRA). Regarding the remaining reports, about half of these (*i.e.*, about 4 million reports) involved questions or clarifications; the other half (roughly another 4 million reports) involved a formal dispute.

[15] CDIA at 4; Equifax at 12; TransUnion at 4, 6.

[16] Fair Isaac, as a member of the consortium of contractors, will calculate the potential change in a FICO score regarding information that was challenged by the consumer but not changed on the credit report. This will help FTC staff assess the potential seriousness of unresolved items.

[17] CDIA at 1, 4; Equifax at 9, 16; Experian at 1–2; TransUnion at 4, 6–7.

[18] *See supra* note 6 for an explanation of how the contractor will determine the change in the credit score.

[19] CDIA at 4, 5; Equifax at 14–16; Experian at 2.

[20] Equifax at 11; TransUnion at 6; CDIA at 3.

[21] Textbooks in statistics explain the advantages of this method and also explain the prior knowledge about the strata that is needed to ensure the statistically reliability of the results, including the results for the population as a whole. For an elementary treatment of stratified sampling, see Harnett, Donald L., *Statistical Methods (3rd ed.),* Addison-Wesley Publishing Co., 1984 (pages 253–254).

[22] Data from the Consumer Data Industry Association (see supra note 14) can be used to help create an estimate of the average time spent by participants in reviewing their credit reports. This general estimate, given for the purpose of calculating burden under the Paperwork Reduction Act, is conservative and likely overestimates the amount of time that will be spent by study participants. For reports that do not require the participants to pose any questions to a CRA about their report (estimated to be 50% of reports), the FTC staff estimates the participant's time spent to be an hour or less. For reports that involve questions to a CRA but not a formal dispute (estimated to be 25% of reports), staff estimates the participant's time spent to be 2 to 3 hours. For reports that involve a formal dispute (estimated here to be 25% of consumer-requested reports), there may be significant differences for time spent by the participants, and this variation is itself one element to be discerned by the pilot study. FTC staff believes that, as a preliminary estimate, a formal dispute would not involve more than 15 hours of the participant's time, particularly in light of the fact that the participants will have expert assistance available to them, including guidance through the FCRA dispute process. Overall, the staff has calculated the average time per participant by using the weighted average over the three categories of reports: (.50 × 1 hour) + (.25 × 3 hours) + (.25 × 15 hours) = 5 hours.

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—04/11/2005			
20050750	Hewlett-Packard Company	SAC, LLC	SAC, LLC
20050768	Emerson Electric Co.	Tescom Corporation	Tescom Corporation
20050769	D.E. Shaw Composite Portfolios, L.L.C.	Danielson Holding Corporation	Danielson Holding Corporation
20050772	Harte-Hanks, Inc.	Richard D. Mandt	Flyer Printing Company, Inc.
20050777	Brockway Moran & Partners Fund II, L.P.	Trust 5/18/1988 Jacob Leon Ellman, Alan and Elaine.	IBC Group, Inc.
20050783	Francisco Partners, L.P.	NetIQ Corporation	NetIQ Corporation
20050784	Kelso Investment Associates VII, L.P.	Custom Building Products	Custom Building Products
20050785	CRC Health Group, Inc.	William T. O'Donnell, Jr.	Sierra Tucson LLC
20050788	Huntsworth PLC	Incepta Group plc	Incepta Group plc
20050791	Acxiom Corporation	Digital Impact, Inc.	Digital Impact Inc.
20050803	iPCS, Inc.	Horizon PCS, Inc.	Horizon PCS, Inc.
Transactions Granted Early Termination—04/13/2005			
20050655	ONCAP L.P.	Sterling Investment Partners, L.P.	WIS Holdings Corp.
20050757	Third Point Offshore Fund, Ltd.	Western Gas Resources, Inc.	Western Gas Resources, Inc.
20050759	Inmobiliaria Espacio, S.A.	Alcan Inc.	Pechiney Electronmetallurgie SAS
Transactions Granted Early Termination—04/14/2005			
20050726	Yellow Roadway Corporation	USF Corporation	USF Corporation
20050734	Gardner Denver, Inc.	Thomas Industries, Inc.	Thomas Industries, Inc.
20050782	HSBC Holdings plc	Compression Polymers Holdings LLC.	Compression Polymers Corp Vycom Corp.
20050797	Kelso Investment Associates VII, L.P.	Insurance Auto Auctions, Inc.	Insurance Auto Auctions, Inc.
20050804	Allied Capital Corporation	ZS Service Champ L.P.	Service Champ II, LP
20050805	Yucaipa Corporate Initiatives Fund, I, L.P.	Pathmark Stores, Inc.	Pathmark Stores, Inc.
Transactions Granted Early Termination—04/15/2005			
20050811	Capital Assurance Holdings, LLC	Standard Management Corporation.	Standard Life Insurance Company of Indiana
20050812	Audax Private Equity Fund, L.P.	DLJ Merchant Banking Partners III, L.P.	Advanstar.com, Inc. Advanstar Communications Inc. Home Entertainment Events Questex Media Group, Inc.
20050813	Jeffrey Katzenberg	DWA Escrow LLLP	DreamWorks Animation SKG, Inc.
20050814	David Geffen	DWA Escrow LLLP	Dreamworks Animation SKG, Inc.
20050817	Wachovia Corporation	John E. Cay, III	Palmer & Cay, Inc.
20050819	Abbott Laboratories	MedNova Limited	MedNova Limited.
20050826	Global Toys Acquisition, LLC	Toys "R" Us, Inc.	Toys "R" Us, Inc.
20050833	Apollo Investment Fund IV, L.P.	Apollo Investment Fund IV, L.P.	SkyTerra Communications, Inc.
Transactions Granted Early Termination—04/18/2005			
20050775	Behrman Capital II L.P.	Diakon Lutheran Social Ministries	Diakon Lutheran Social Ministries. Of Northeastern Pennsylvania, Inc. Pennsylvania and Susquehanna Housing, Inc. The Lutheran Home at Toptor. The Lutheran Welfare Service. Tressler Lutheran Service.
20050816	Barry Diller	Ask Jeeves, Inc.	Ask Jeeves, Inc.
20050820	Thayer Equity Investors V, L.P.	Kathleen Rotondaro	CHAC, Inc. Quadel Consulting Corporation.

Trans #	Acquiring	Acquired	Entities
20050821	Thayer Equity Investors V, L.P.	Edward Symes, III	CHAC, Inc. Quadel Consulting Corporation.
20050836	Motient Corporation	Mobile Satellite Ventures LP	TerreStar Networks Inc.
20050837	Great Hill Equity Partners II, L.P.	Everett R. Dobson Irrevocable Family Trust.	ACC Tower Sub, LLC. DCS Tower Sub, LLC.
20050842	Providence Equity Partners IV L.P.	SSI Holdings, LLC	SSI Holdings, LLC.
Transactions Granted Early Termination—04/19/2005			
20050202	Toppan Printing Co., Ltd.	DuPont Photomasks, Inc.	DuPont Photomasks, Inc.
20050799	Ascension Health	Mayo Foundation	St. Luke's Hospital Association
20050828	International Coal Group, Inc.	WLR Recovery Fund, II, L.P.	CoalQuest Development LLC
20050829	International Coal Group Inc.	Anker Coal Group, Inc.	Anker Coal Group Inc.
20050849	Thayer Equity Investors V, L.P.	American Capital Strategies, Ltd.	Roadrunner Freight Systems, Inc.
Transactions Granted Early Termination—04/21/2005			
20050793	SEACOR Holdings Inc.	Seabulk International, Inc.	Seabulk International, Inc.
20050801	Nautilus AIV, L.P.	SEACOR Holdings Inc.	SEACOR Holdings Inc.
20050827	Evercore Capital Partners II L.P.	Diagnostic Imaging Group Holdings, LLC.	Diagnostic Imaging Group Holdings, LLC.
20050830	Entegris, Inc.	Mykrolis Corporation	Mykrolis Corporation.
20050834	Doosan Heavy Industries and Construction Co., Ltd.	Daewoo Heavy Industries and Machinery, Ltd.	Daewoo Heavy Industries and Machinery, Ltd.
Transactions Granted Early Termination—04/22/2005			
20050831	UBS AG	NAU Holding Company, LLC	NAU Holding Company, LLC
20050839	Carmike Cinemas, Inc.	Flora Beth Kerasotes	George G. Kerasotes Corporation
20050840	Apollo Investment Fund IV, L.P.	iPCS, Inc.	iPCS, Inc.
20050844	Odyssey Investment Partners Fund III, LP.	Neff Corp.	Neff Corp.
20050845	DST Systems, Inc.	Computer Sciences Corporation	CSC Healthcare, Inc.
20050850	American Capital Strategies, Ltd.	Lawrence Richenstein	Unwired Technology LLC
20050853	Leucadia National Corporation	Larry and Marianne Williams	Alumni Forest Products, Inc. Idaho Cedar Sales, Inc. Idaho Timber Corporation Idaho Timber Corporation of Albuquerque, Inc. Idaho Timber Corporation of Boise, Inc. Idaho Timber Corporation of Carthage, Inc. Idaho Timber Corporation of Idaho, Inc. Idaho Timber Corporation of Kansas, Inc. Idaho Timber Corporation of Montana, Inc. Idaho Timber Corporation of Mountain Home, Inc. Idaho Timber Corporation of North Carolina, Inc. Idaho Timber Corporation of Texas, Inc.
20050855	Cantor Fitzgerald, L.P.	Maxcor Financial Group Inc.	Maxcor Financial Group Inc.
20050856	FS Equity Partners V, LP	Gryphon Dental Partners, L.P.	Bright Now Dental, Inc.
20050860	MBNA Corporation	KKR 1996 Fund L.P.	Nexstar Financial Corporation

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, or Renee Hallman, Case Management Assistant, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

Donald S. Clark,

Secretary.

[FR Doc. 05–9262 Filed 5–9–05; 8:45 am]

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FEDERAL TRADE COMMISSION

[File No. 031 0087]

New Millennium Orthopaedics, LLC, et al.; Analysis of Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 31, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''New Millennium Orthopaedics, LLC, *et al.*, File No. 031 0087,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments

containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.*

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

FOR FURTHER INFORMATION CONTACT: Gwen Fanger, FTC Western Region, San Francisco (415) 848–5196.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 2, 2005), on the World Wide Web, at *http://www.ftc.gov/os/2005/05/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed Consent Order with New Millennium Orthopaedics, LLC (''NMO''), Orthopaedic Consultants of Cincinnati, Inc., dba Wellington Orthopaedics & Sports Medicine (''Wellington''), and Beacon Orthopaedics & Sports Medicine, Ltd. (''Beacon'') (collectively, ''Respondents''). The agreement settles charges that Wellington and Beacon, through NMO, violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by orchestrating and implementing agreements between competing orthopaedic physician groups to fix prices charged to health plans, and to refuse to deal with such health plans except on collectively-determined terms. The proposed Consent Order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed Consent Order final.

The purpose of this analysis is to facilitate public comment on the proposed Consent Order. The analysis is not intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify their terms in any way. Further, the proposed Consent Order has been entered into for settlement purposes only and does not constitute an admission by any respondent that said respondent violated the law or that the facts alleged in the Complaint (other than jurisdictional facts) are true.

The Complaint

The allegations of the Complaint are summarized below.

NMO is a single-specialty independent practice association consisting of two orthopaedic physician groups, Wellington and Beacon. Both Wellington, a twenty-two member orthopaedic physician group, and Beacon, a ten-member orthopaedic group, provide orthopaedic physician services, including surgical and non-surgical services, in the Cincinnati, Ohio area.

In 2002, Wellington and Beacon formed NMO to act as their negotiating agent with health plans. Through NMO, they agreed on the prices to propose to health plans in negotiating their reimbursement rates. Beginning in August, 2002, representatives of NMO sent letters to representatives of the four major health plans in the Cincinnati area. They proposed an arrangement that would implement a guaranteed base fee schedule and a bonus scheme. Under the bonus scheme, all NMO physicians would receive higher reimbursement rates for all services provided that NMO, as a whole, met established performance targets for increasing the percentage of surgical procedures performed at ambulatory surgery centers (''ASCs'').

The ASC bonus scheme solely targeted outpatient surgery, which was only one aspect of the practices of some NMO physicians. Under the ASC bonus scheme, the measured change in the physicians' behavior was limited to the movement of patients to ASCs. Non-surgeon members of NMO, who accounted for approximately 30% of NMO physicians, lacked the ability to change practice patterns related to ASCs. Thus, the ASC bonus scheme did not act as a substantial incentive for all of the NMO physicians to work together to achieve significant efficiencies for all of their services, which had jointly negotiated rates.

The Complaint alleges that NMO performed no role in enhancing the ability of the physicians to increase the number of procedures performed at ASCs instead of at hospitals. NMO did not implement any enforcement mechanisms to monitor and control the physicians' compliance with the bonus scheme. The bonus scheme, alone, did not affect the NMO physicians' ability to work together to control costs or to improve quality for all jointly negotiated services, including office-based, non-surgical procedures. To a large extent, the scheme was a reward for the physicians' pre-existing practice patterns. For example, prior to signing the agreement, Wellington physicians performed over 50% of their procedures at ASCs without the incentive of the bonus scheme.

Only one health plan agreed to NMO's terms. Nonetheless, NMO continued to attempt to negotiate agreements with the other health plans into 2004.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

NMO also enforced its joint negotiation efforts with one health plan by a concerted refusal to deal in the absence of contract terms agreeable to NMO. In response to one health plan's refusal to negotiate with NMO during the original negotiations in 2002, NMO's Board agreed that both Wellington and Beacon should terminate their existing, separate agreements with the health plan in order to seek contracts with the health plan through NMO. Both groups subsequently jointly terminated their individual agreements with the health plan at the direction of NMO's Board.

Respondents' collective negotiation of fees and other competitively significant contract terms was not reasonably necessary to achieving any efficiency-enhancing integration. Thus, they violated Section 5 of the FTC Act by orchestrating agreements between competing orthopaedic physician groups to fix prices with health plans, and by refusing to deal with one of the health plans that would not meet those terms.

The Proposed Consent Order

The proposed Consent Order is designed to prevent the continuance and recurrence of the illegal conduct alleged in the complaint while, allowing Wellington and Beacon to engage in legitimate, joint conduct.

The proposed Consent Order's specific provisions are summarized below.

Paragraph II.A prohibits Respondents from entering into or facilitating agreements between or among any health care providers: (1) To negotiate on behalf of any physician with any payor; (2) to deal, refuse to deal, or threaten to refuse to deal with any payor; (3) regarding any term, condition, or requirement upon which any physician deals, or is willing to deal, with any payor, including, but not limited to price terms; or (4) not to deal individually with any payor, or not to deal with any payor through any arrangement other than Respondent NMO.

The other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the Respondents from facilitating exchanges of information between health care providers concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B, and Paragraph II.D proscribes encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A. through II.C.

As in other Commission orders addressing health care providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations. Paragraph II does not preclude Wellington and Beacon from engaging in conduct that is reasonably necessary to form or participate in legitimate ''qualified risk-sharing'' or ''qualified clinically-integrated'' joint arrangements, as defined in the proposed Consent Order. Also, Paragraph II would not bar agreements that only involve physicians who are part of the same medical group practice, defined in Paragraph I.E, because it is intended to reach agreements among independent competitors.

Paragraph III requires the dissolution of NMO.

Paragraph IV contains filing and notification requirements related to the dissolution of NMO.

Paragraph V applies only to Wellington and Beacon. It contains notification requirements for Wellington and Beacon. Paragraph V.A requires Wellington and Beacon to send a copy of the Complaint and Consent Order to their physician members who participated in NMO, their management and staff who had any responsibility regarding NMO, and any payors who communicated with NMO, or with whom NMO communicated, with regard to any interest in contracting for physician services. Paragraph V.A.3 also requires Wellington and Beacon to send these payors notice of their right to terminate their agreements with Wellington and Beacon.

Paragraph V.B allows for contract termination if a payor voluntarily submits a request to Wellington and Beacon to terminate its contract. Pursuant to such a request, Paragraph V.B requires Wellington and Beacon to terminate, without penalty, any payor contracts that they had entered into during the collusive period. This provision is intended to eliminate the effects of NMO's joint, price setting behavior. Paragraph V.C requires that Wellington and Beacon each send a copy of any payor's request for termination to every physician who participates in each group.

Paragraph V.D contains notification provisions relating to future contact with physicians, payors, management and staff of each group. Paragraph V.D requires Wellington and Beacon to distribute a copy of the Complaint and Consent Order to each physician who begins participating in each group; each payor who contacts each group regarding the provision of physician services; and each person who becomes an officer, director, manager, or employee of each group for three years after the date on which the Consent Order becomes final.

Paragraph V.E requires Wellington and Beacon to publish a copy of the Complaint and Consent Order, for three years, in any official publication that they send to their participating physicians.

Paragraphs VI–VIII impose various obligations on Wellington and Beacon to report or provide access to information to the Commission to facilitate monitoring their compliance with the Consent Order.

The proposed Consent Order will expire in 20 years from the date it is issued.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–9300 Filed 5–9–05; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disparities in Elderly Pneumococcal Vaccination

Announcement Type: New.

Funding Opportunity Number: RFA IP05–093.

Catalog of Federal Domestic Assistance Number: 93.185

Letter of Intent Deadline: June 9, 2005.

Application Deadline: June 24, 2005.

I. Funding Opportunity Description

Authority: Section 311 [42 U.S.C. 243] and 317(k)(1) [42 U.S.C. 247b(k)(1)] of the Public Health Service Act, as amended.

Background

Disparities in pneumococcal vaccination rates between Blacks and Hispanics 65 years of age and older compared with Whites are substantial and persist after taking into account socioeconomic status and access to care (CDC. ''Racial/ethnic disparities in influenza and pneumococcal vaccination levels among persons aged greater than or equal to 65 years—United States, 1989–2001.'' ''Morbidity and Mortality Weekly Report (MMWR) 2003;'' 52:958–62). While attitudes towards vaccination may contribute to these differences, they are unlikely the sole cause. Recent (unpublished) studies that have examined acceptance of vaccination when vaccine is offered systematically have shown no marked differences in acceptance by race/

ethnicity and reasons for non-vaccination do not vary markedly by race/ethnicity. Recent research has highlighted the fact that Blacks and Whites are largely seen by different providers, and that these providers are different both in terms of their training and in terms of the resources available to them (Bach PB et al., ''Primary care physicians who treat Blacks and Whites.'' ''New England Journal of Medicine (NEJM) 2004'' 351:575–584). Population-level differences in pneumococcal vaccination may thus reflect differences in immunization practices between medical practices where White patients are seen and those where Black and/or Hispanic patients are seen.

Purpose

The purpose of this program is to fund research that will determine the extent to which practice-level differences in adult immunization practices may contribute to the disparities observed in pneumococcal vaccination at the population level.

This program addresses the ''Healthy People 2010'' focus area(s) of Immunization and Infectious Diseases.

Measurable outcomes of the program will be in alignment with the performance goal for the Centers for Disease Control and Prevention's (CDC) National Immunization Program (NIP) to reduce the number of indigenous vaccine-preventable diseases.

Research Objective

Determine if the attributes of practices where Black and/or Hispanic patients are seen compared with practices where Whites are seen contribute to the disparities observed in population pneumococcal vaccination rates.

Activities

Awardee activities for this program are as follows:

- Identify a methodology for selecting a sample of clinical settings that are representative of where elderly Blacks and elderly Whites receive primary care in a geographically defined area (city or region).
- Using this methodology recruit a sufficient number of settings for the study to ensure that statistically valid comparisons among medical practice subgroups can be made. This should be demonstrated by sample size estimates and power calculations.
- Although the primary objective is to focus on comparing settings where Blacks and Whites are seen, the project may be expanded to also include settings where Hispanics are seen.
- Blacks (and Hispanics, if applicable) should account for at least 20 percent of the population and Whites should also account for a minimum 20 percent of the population in the geographically defined area.
- Because pneumococcal immunization disparities persist across socioeconomic status (SES), it is important that the study be able to control for this potential confounder, *i.e.*; a range of SES among practices is important.
- Collect information concerning immunization practices, including, but not limited to:

1. Medical practices facilitating vaccinations through standing orders and telephone or mail reminders;
2. Chart organization that may facilitate or hinder identification of persons needing vaccination;
3. General clinic organization (time spent waiting to see the provider or other staff, and time spent with provider);
4. Collection of information on vaccination coverage rates in sampled practices (either from chart review or from administrative data) to try to correlate provider practices with coverage; and
5. The degree to which patients see same provider over time), and physician knowledge and attitudes about vaccination.

- Although the primary interest is pneumococcal vaccination, activities may be expanded to include influenza vaccination.
- Collaboratively disseminate research findings in peer-reviewed publications and for use in determining national policy.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Provide CDC investigator(s) to monitor the cooperative agreement as project officer(s).
- Participate as active project team members in the development, implementation and conduct of the research project and as coauthors of all scientific publications that result from the project.
- Provide technical assistance on the selection and evaluation of data collection and data collection instruments.
- Assist in the development of research protocols for Institutional Review Boards (IRB) review. The CDC IRB will review and approve the project protocol initially and on at least an annual basis until the research project is completed.
- Contribute subject matter expertise in the areas of epidemiologic methods and statistical analysis, and survey research consultation.
- Participate in the analysis and dissemination of information, data and findings from the project, facilitating dissemination of results.
- Serve as liaisons between the recipients of the project award and other administrative units within the CDC.
- Facilitate an annual meeting between awardee and CDC to coordinate planned efforts and review progress.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Mechanism of Support: U01.

Fiscal Year Funds: 2005.

Approximate Total Funding: $250,000. (Includes direct and indirect costs. This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: $250,000. (Includes direct and indirect costs. This amount is for the first 12-month budget period.)

Floor of Award Range: None.

Ceiling of Award Range: $250,000. (Includes direct and indirect costs. This ceiling is for the first 12-month budget period.)

Anticipated Award Date: August 31, 2005.

Budget Period Length: 12 months.

Project Period Length: 2 years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications are limited to public and private nonprofit organizations and by governments and their agencies, such as: (For profit organizations are not eligible under Section 317(k)(1) [42 U.S.C. 247b(k)(1) of the Public Health Service Act, as amended.)

- Public nonprofit organizations
- Private nonprofit organizations
- Small, minority, women-owned businesses
- Universities
- Colleges

- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 9/2004). Forms and instructions are available in an interactive format on the CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- *Maximum number of pages:* 2.
- *Font size:* 12-point unreduced.
- Double spaced.
- *Paper size:* 8.5 by 11 inches.
- *Page margin size:* One inch.
- Printed only on one side of page.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- Descriptive title of the proposed research.
- Name, address, e-mail address, telephone number, and FAX number of the Principal Investigator.
- Names of other key personnel.
- Participating institutions.
- Number and title of this Announcement.

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone (301)435–0714, E-mail: *GrantsInfo@nih.gov*.

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt1.htm.*

This announcement uses the non-modular budgeting format.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

LOI Deadline Date: June 9, 2005.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: June 24, 2005.

Explanation of Deadlines: LOIs must be received in the CDC Office of Public Health Research (OPHR) and applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you submit your LOI or application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be

notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question concerning your LOI, contact the OPHR staff at 404–371–5277. If you still have a question concerning your application, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds relating to the conduct of research will not be released until the appropriate assurances and IRB approvals are in place.
- Reimbursement of pre-award costs is not allowed.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D–72, Telephone: 404–371–5277, Fax: 404–371–5215, E-mail: *MLerchen@cdc.gov.*

Application Submission Address: Submit the original and one hard copy of your application by mail or express delivery service to: Technical Information Management Section ''RFA IP05–093, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, four additional copies of the application, and all appendices must be sent to: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D–72, Telephone: 404–371–5277, Fax: 404–371–5215, E-mail: *MLerchen@cdc.gov.*

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria equally in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The review criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Are letters of support included, if appropriate?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score: None

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 Part 46 for the protection of human subjects? The involvement of human subjects and protections from research risk relating to their participation in the proposed research will be assessed.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research. The priority score should not be affected by the evaluation of the budget.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness by the OPHR. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance

through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section, a Special Emphasis Panel (SEP), convened by the OPHR in accordance with the review criteria listed above. As part of the initial merit review, all applications will:

- Undergo a process in which only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second programmatic level review by the Office of Science, National Immunization Program.
- Undergo a peer review by a SEP. The SEP will be selected from the NIH pool of scientists or recommendations from the NIP to serve as reviewers on SEPs. Applications will be ranked for the secondary review according to scores submitted by the SEP. Only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic priorities

V.3. Anticipated Announcement and Award Dates

Award Date: August 31, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail from the Scientific Review Administrator, NIP.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–7 Executive Order 12372
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–15 Proof of Non-Profit Status
- AR–22 Research Integrity
- AR–23 States and Faith-Based Organizations
- AR–24 Health Insurance Portability and Accountability Act Requirements
- AR–25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 9/2004 as posted on the CDC website) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Progress Toward Measures of Effectiveness.

b. Additional Information Requested by Program.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For scientific/research issues, contact: Susan Chu, PhD, MSPH, Extramural Program Official, Centers for Disease Control and Prevention, National Immunization Program, MS E–05, 1600 Clifton Road NE., Atlanta, GA 30333, Telephone: (404) 639–8727, E-mail: *SChu@cdc.gov.*

For questions about peer review, contact: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D–72, Telephone: 404–371–5277, Fax: 404–371–5215, E-mail: *MLerchen@cdc.gov.*

For financial, grants management, or budget assistance, contact: Ann Cole, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, MS K–14, Atlanta, GA 30341, Telephone: 770–488–2686, E-mail: *ZLR5@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Dated: May 4, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–9270 Filed 5–9–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Poliovirus Antibody Seroprevalence Among Inner City Preschool Children, Post-OPV Era

Announcement Type: New.

Funding Opportunity Number: RFA IP05–103.

Catalog of Federal Domestic Assistance Number: 93.185.

Dates:

Letter of Intent Deadline: June 9, 2005.

Application Deadline: June 24, 2005.

I. Funding Opportunity Description

Authority: Section 317(k)(1) of the Public Health Service Act, 42 U.S.C. 247b(k)(1).

Background: The U.S. transitioned from reliance on oral poliovirus vaccine (OPV) to exclusive use of inactivated poliovirus vaccine (IPV) in 2000. To date, no studies have assessed the poliovirus seroprevalence status of children since the implementation of the all-IPV schedule in the U.S. Previous studies, done prior to total cessation of OPV, have been affected by circulating OPV. In 2005, all children aged 19–35 months, born and raised in

the U.S. should have received three doses of IPV. Measurement of poliovirus antibodies is important to determine the risk for a poliovirus outbreak in the U.S. Should seroprevalence be less than 90 percent of sampled children, efforts can be directed toward prevention of reintroduction of paralytic poliomyelitis in the U.S.

Purpose: The purpose of the program is to assess susceptibility to poliovirus among preschool-aged children in the United States in two inner city communities in an all-IPV era. This program addresses the ''Healthy People 2010'' focus area(s) of Immunization and Infectious Diseases.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Immunization Program (NIP): Reduce the number of, or prevent, indigenous cases of vaccine-preventable diseases.

Research Objectives:

- To assess poliovirus antibody seroprevalence among preschool children in a population at risk for not being up to date with poliovirus vaccinations in an all-IPV era.
- To determine in this population risk factors for not being adequately protected against poliovirus in an inner city community.

Activities: Awardee activities for this program are as follows:

- Conduct a cross sectional study of serum neutralizing antibodies for poliovirus types 1, 2, and 3 among 600 children aged 19 months–35 months receiving medical care in an inner city healthcare system. Children eligible for recruitment are those admitted to the hospital as a non-critically ill inpatient, or receiving care in an outpatient clinic emergency department, and having blood drawn for other indication in an outpatient emergency department; or whose parents give permission to having blood drawn for the purpose of this study. Children who have received OPV, or have resided or traveled to an OPV country, will be excluded. Two cubic centimeters (ccs) of blood from each child will be collected in a red-top tube or microtainer, and labeled with a unique identification number. After clotting, all blood samples will be centrifuged and the sera collected and labeled with the child's study number. Sera will be stored at −20 degrees C until transported refrigerated to the Centers for Disease Control and Prevention.
- A sample size of 600 children will provide a precision of plus or minus 4 percent (assuming simple random sampling) for estimation of a poliovirus seroprevalence of 90 percent at alpha equal to 0.05. Precision will be greater for higher actual levels of seroprevalence. This same sample size has a 99 percent power to detect a change in prevalence from 95 percent to 80 percent, and a 75 percent power to detect a change from 90 percent to 80 percent. Eligible children will be sampled consecutively during predetermined days/time periods until the target of 600 children is reached.
- A standardized questionnaire will be administered to collect history of vaccination and potential secondary exposure to OPV through travel or contact with traveler(s). Although poliovirus vaccination status is the key variable for this analysis, information on health care coverage and Women, Infants, Children's Supplemental Feeding Program (WIC) status will be collected to evaluate the representativeness of the study population. Vaccination status of each child will be provider verified whenever possible. The questionnaire should take approximately five minutes to complete.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Provide CDC investigators to monitor the cooperative agreement as protocol investigators and project officers.
- Provide consultation, scientific, and technical assistance in designing and conducting the project.
- Provide laboratory testing of sera specimens.
- Assist in the development of Institutional Review Boards (IRB) approval review by all cooperating institutions and CDC.
- Participate in data analysis and interpretation, and co-authoring manuscripts.
- Participate in publication and dissemination of findings.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Mechanism of Support: R01.

Fiscal Year Funds: 2005.

Approximate Total Funding: $140,620. (This amount is an estimate and includes direct and indirect costs, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: $140,620 (includes direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award Range: $140,620 (includes direct and indirect costs).

Anticipated Award Date: August 31, 2005.

Budget Period Length: 12 months.

Project Period Length: 1 Year.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, such as:

- Public nonprofit organizations.
- Private nonprofit organizations.
- Universities.
- Colleges.
- Research institutions.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).
- Political subdivisions of States (in consultation with States).

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

CDC will accept and review applications with budgets greater than the ceiling of the award range.

Special Requirements: If your application is incomplete or non-

responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are encouraged to apply for CDC programs.

Additional Principal Investigator qualifications are as follows:

- Previous demonstration of ability to conduct and successfully complete published peer-reviewed epidemiologic/clinical studies among a pediatric population on vaccine preventable diseases.
- Submission of letters of support.
- Be able to initiate and conclude the study in the project period while fulfilling recruitment goals.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 9/2004). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

Maximum number of pages: Two.

Font size: 12-point unreduced, Single spaced.

Paper size: 8.5 by 11 inches.

Page margin size: One inch. Printed only on one side of page. Written in plain language, avoid jargon.

Your LOI must contain the following information: Descriptive title of the proposed research; Name, address, E-mail address, telephone number, and FAX number of the Principal Investigator; Names of other key personnel; Participating institutions; Number and title of this Announcement.

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO-TIM staff at 770–488–2700, or contact Grants Info, telephone (301)435–0714, e-mail: *GrantsInfo@nih.gov.*

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt1.htm.*

This announcement uses the modular budgeting as well as non-modular budgeting formats. *See: http://grants.nih.gov/grants/funding/modular/modular.htm* for additional guidance on modular budgets. Specifically, if you are submitting an application with direct costs in each year of $250,000 or less, use the modular budget format. Otherwise, follow the instructions for non-modular budget research grant applications.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

LOI Deadline Date: June 9, 2005.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: June 24, 2005.

Explanation of Deadlines: LOIs must be received in the CDC Office of Public Health Research (OPHR) and applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question concerning your LOI, contact the OPHR staff at 404–371–5277. If you still have a question concerning your application, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to

prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Construction.
- Real estate lease or purchase.
- Vehicle purchase.
- Vehicle lease or rental.
- Funds relating to the conduct of research will not be released until the appropriate assurances and IRB approvals are in place.
- Reimbursement of pre-award costs is not allowed.

Awarded funds may not be used for any of the above restrictions with the exception of vehicle rental associated with necessary travel directly to accomplish the requirements and for incidental expenses associated with travel to meetings directly relating to the requirements.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail or delivery service to: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D–72. Telephone: 404–371–5277. Fax: 404–371–5215. E-mail: *MLerchen@cdc.gov.*

Application Submission Address: Submit the original and one hard copy of your application by mail or express delivery service to: Technical Information Management Section-RFA IP05–103, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, four additional copies of the application and all appendices must be sent to: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D–72. Telephone: 404–371–5277. Fax: 404–371–5215. E-mail: *MLerchen@cdc.gov.*

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals. The scientific review group will address and consider each of the following criteria equally in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The review criteria are as follows:

Significance: Does this study address poliovirus immunization status among preschool-aged children in a population at risk for not being up to date in vaccinations in an all-IPV era?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Is the sampling design non-biased? Are the recruitment goals realistic yet sufficient to estimate poliovirus seroprevalence among children at risk for not being adequately immunized? Will the findings be generalizable to other similar populations in the United States? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)? Does the investigator identify an experienced study-coordinator/research nurse to recruit participants, obtain sera samples for a pediatric population and process, store and deliver the specimens? Previous demonstration of ability to conduct and successfully complete published peer-reviewed epidemiologic/clinical studies among a pediatric population on vaccine preventable diseases. Submission of letters of support. Be able to initiate and conclude the study in the project period while fulfilling recruitment goals.

Environment: Does the scientific environment/study site(s) in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is the recruiting site well described and appropriate for enrolling the target population? Are laboratory facilities to process, label, and properly store sera specimens described?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score: Is there evidence that the study site(s) will have access to a population of preschool-aged children at risk for not being up to date with vaccinations?

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 Part 46 for the protection of human subjects? The involvement of human subjects and protections from research risk relating to their participation in the proposed research will be assessed.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research, if applicable? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research. The priority score should not be affected by the evaluation of the budget.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO), and for responsiveness by OPHR. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section, a Special Emphasis Panel (SEP), convened by the OPHR in accordance with the review criteria listed above. As part of the initial merit review, all applications will:

- Undergo a peer review by a SEP. The SEP will be selected from the NIH pool of scientists or recommendations from the NIP to serve as reviewers on SEPs. Applications will be ranked for the secondary review according to scores submitted by the SEP. Only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second programmatic level review by the Office of Science, NIP.

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review).
- Availability of funds.
- Programmatic priorities.

V.3. Anticipated Announcement and Award Dates:

August 31, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR part 74 and part 92. For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements.
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
- AR–6 Patient Care.
- AR–7 Executive Order 12372.
- AR–8 Public Health System Reporting Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–14 Accounting System Requirements.
- AR–15 Proof of Non-Profit Status.
- AR–22 Research Integrity.
- AR–23 States and Faith-Based Organizations.
- AR–24 Health Insurance Portability and Accountability Act Requirements.
- AR–25 Release and Sharing of Data.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 9/2004 as posted on the CDC Web site) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following additional elements:

a. Progress Toward Measures of Effectiveness.

b. Additional Information Requested by Program.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement. For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2700.

For scientific/research issues, contact: Susan Chu, PhD, MSPH, Extramural Program Official, Centers for Disease Control and Prevention, MS E–05, 1600 Clifton Road, Atlanta, GA 30333. Telephone: 404–639–8727. E-mail: *SChu@cdc.gov.*

For questions about peer review, contact: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D–72. Telephone: 404–371–5277. Fax: 404–371–5215. E-mail: *MLerchen@cdc.gov.*

For financial, grants management, or budget assistance, contact: Ann Cole, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2686. E-mail: *ZLR5@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Dated: May 4, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–9274 Filed 5–9–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Expanding the Utilization of Pro-Active Pharmacist Pneumococcal Vaccination Programs

Announcement Type: New.

Funding Opportunity Number: RFA IP05–092.

Catalog of Federal Domestic Assistance Number: 93.185.

Letter of Intent Deadline: June 9, 2005.

Application Deadline: June 24, 2005.

I. Funding Opportunity Description

Authority: Section 311 [42 U.S.C. 243] and 317(k)(1) [42 U.S.C. 247b(k)(1)] of the Public Health Service Act, as amended.

Background

Pneumococcal vaccination rates are less than 50 percent among persons 18–64 with conditions that are indications for vaccination, with particularly low

rates among persons 18–49. In the clinical setting, the challenge of targeting patients based on medical conditions in contrast to targeting based on age is thought to contribute to these low vaccination rates. Pharmacists are in an excellent position to both counsel high-risk patients about pneumococcal vaccination, as well as to offer them pneumococcal vaccinations since vaccination by pharmacists is currently authorized in 43 states. A high proportion of persons that take prescription medication have frequent contacts with pharmacists. Pharmacists, in turn, can identify persons with indications for pneumococcal vaccination. Patients taking medication for chronic cardiovascular disease (*e.g.* congestive heart failure, cardiomyopathies), chronic pulmonary disease (COPD, emphysema), and chronic liver disease are candidates for pneumococcal vaccinations.

It has been shown that customers respond well to pharmacist recommendation and it has also been shown that pharmacist vaccination is effective in increasing vaccination rates among their clients (1–3). Methods used have included patient reminders (either in the form of a sticker on a medication or a mailed reminder) or proactive offering of vaccination when prescriptions are filled.

Citations

1. Grabenstein JD *et al.* ''Effect of vaccination by community pharmacists among adult prescription recipients''. ''Medical Care 2001''; 39:340–348.

2. Grabenstein JD. *et al.* ''Community pharmacists as immunization advocates: a clinical pharmacoepidemiologic experiment''. ''Internat J Pharm Pract. 1993''; 2:5–10.

3. Ernst ME *et al.* ''Implementation of a community pharmacy-based influenza vaccination program''. ''J Am Pharm Assoc 1997''; 37:570–80.

Purpose

The purpose of this program is to examine the feasibility of expanding the utilization of pro-active pharmacist influenza vaccination programs and examine the impact of such programs on pneumococcal vaccination rates among pharmacy clients.

This program addresses the ''Healthy People 2010'' focus area(s) of Immunization and Infectious Diseases.

Measurable outcomes of the program will be in alignment with the performance goal for the Centers for Disease Control and Prevention's (CDC) National Immunization Program (NIP) to reduce the number of indigenous vaccine-preventable diseases.

Research Objectives

- Identify pharmacies without pro-active pharmacist vaccination programs.
- Establish new pro-active pharmacist vaccination programs.
- Determine the adoption rate of pharmacist vaccination and impact on pneumococcal vaccination rates among pharmacy clients.
- Determine resources needed to implement pro-active pharmacist vaccination programs.

Activities

Awardee activities for this program are as follows:

- Define a study universe of pharmacies that will be targeted for implementation of pro-active offering of vaccine (ways in which the universe is defined include, but are not limited to, a pharmacy chain or all pharmacies in a community). This sample should include pharmacies that serve clients with a range of sociodemographic characteristics and should include at least 30 pharmacies.
- Determine the conditions and respective indicator medications that will be targeted based on the relative prevalence of indications for pneumococcal vaccination in customer population in age group. At least three conditions should be included.
- Promote the implementation of pro-active offering of pneumococcal vaccination, providing technical assistance as needed. To promote continuity of care, pharmacies should plan to inform primary care providers when clients have received pneumococcal vaccine by sending them information for the patient's records (*e.g.* by mail or fax).
- Although the primary interest is pneumococcal vaccination in persons 18–64 with high risk conditions, interventions can be expanded to include persons 65 and older (targeted based on age rather than indicator medications) and to include influenza vaccination. Implementation of pneumococcal vaccination outside of the influenza vaccination season may be optimal given added work-load related to influenza vaccination activities.
- Develop an evaluation protocol that will include determining baseline pharmacy vaccination practices, determining rate of adoption (the number of pharmacies approached, the number interested, the number that implemented), determining the impact of the intervention among those not previously vaccinated (number/percent of high-risk clients assessed and vaccinated), determining barriers to adoption and to effective implementation, and pharmacist and customer attitudes.
- Quantifying resources needed to achieve program implementation.
- Identify key staff available to develop project.
- Collaboratively disseminate research findings in peer-reviewed publications and for use in determining national policy.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Provide CDC investigator(s) to monitor the cooperative agreement as project officer(s).
- Participate as active project team members in the development, implementation and conduct of the research project and as coauthors of all scientific publications that result from the project.
- Provide technical assistance on the selection and evaluation of data collection and data collection instruments.
- Assist in the development of research protocols for Institutional Review Boards (IRB) review. The CDC IRB will review and approve the project protocol initially and on at least an annual basis until the research project is completed.
- Contribute subject matter expertise in the areas of epidemiologic methods and statistical analysis, and survey research consultation.
- Participate in the analysis and dissemination of information, data and findings from the project, facilitating dissemination of results.
- Serve as liaisons between the recipients of the project award and other administrative units within the CDC.
- Facilitate an annual meeting between awardee and CDC to coordinate planned efforts and review progress.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Mechanism of Support: U01.

Fiscal Year Funds: 2005.

Approximate Total Funding: $150,000 (Includes direct and indirect costs. This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: $150,000 (Includes direct and indirect costs. This amount is for the first 12-month budget period.)

Floor of Award Range: None.

Ceiling of Award Range: $150,000 (Includes direct and indirect costs. This ceiling is for the first 12-month budget period.)

Anticipated Award Date: August 31, 2005.

Budget Period Length: 12 months.

Project Period Length: 2 years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible applicants

Applications are limited to public and private nonprofit organizations and by governments and their agencies, such as: (For profit organizations are not eligible under Section 317(k)(1) [42 U.S.C. 247b(k)(1) of the Public Health Service Act, as amended.)

- Public nonprofit organizations
- Private nonprofit organizations
- Small, minority, women-owned businesses
- Universities
- Colleges
- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

Individuals Eligible To Become Principal Investigators

Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 9/2004). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: 2
- Font size: 12-point unreduced
- Double Single spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain the following information:

- Descriptive title of the proposed research
- Name, address, e-mail address, telephone number, and FAX number of the Principal Investigator
- Names of other key personnel
- Participating institutions
- Number and title of this Announcement

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone (301)435–0714, e-mail: *GrantsInfo@nih.gov.*

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt1.htm.*

This announcement uses the non-modular budgeting format.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

LOI Deadline Date: June 9, 2005.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application,

the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: June 24, 2005.

Explanation of Deadlines: LOIs must be received in the CDC Office of Public Health Research (OPHR) and applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you submit your LOI or application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question concerning your LOI, contact the OPHR staff at 404–371–5277. If you still have a question concerning your application, contact the PGO-TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html*.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds relating to the conduct of research will not be released until the appropriate assurances and IRB approvals are in place.
- Reimbursement of pre-award costs is not allowed.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D–72, Telephone: 404–371–5277, Fax: 404–371–5215, E-mail: *MLerchen@cdc.gov*.

Application Submission Address: Submit the original and one hard copy of your application by mail or express delivery service to: Technical Information Management Section'' RFA IP05–092, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, four additional copies of the application, and all appendices must be sent to: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D–72, Telephone: 404–371–5277, Fax: 404–371–5215, E-mail: *MLerchen@cdc.gov*.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria equally in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The review criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Are letters of support included, if applicable?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

Preference will be given to applicants with a demonstrated relationship with pharmacies as evidenced by letters of support and/or previous demonstrated successful collaboration. Place this

documentation behind the first page of your application form.

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 Part 46 for the protection of human subjects? The involvement of human subjects and protections from research risk relating to their participation in the proposed research will be assessed.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research. The priority score should not be affected by the evaluation of the budget.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness by the OPHR. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section, a Special Emphasis Panel (SEP), convened by the OPHR in accordance with the review criteria listed above. As part of the initial merit review, all applications will:

- Undergo a process in which only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second programmatic level review by the Office of Science, National Immunization Program.
- Undergo a peer review by a Special Emphasis Panel (SEP). The SEP will be selected from the NIH pool of scientists or recommendations from the NIP to serve as reviewers on SEPs.

Applications will be ranked for the secondary review according to scores submitted by the SEP. Only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic priorities

V.3. Anticipated Announcement and Award Dates

Award Date: August 31, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail from the Scientific Review Administrator, NIP.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–7 Executive Order 12372
- AR–8 Public Health System Reporting Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–15 Proof of Non-Profit Status
- AR–22 Research Integrity
- AR–24 Health Insurance Portability and Accountability Act Requirements
- AR–25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 9/2004 as posted on the CDC Web site) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Progress Toward Measures of Effectiveness.

b. Additional Information Requested by Program.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For scientific/research issues, contact: Susan Chu, PhD, MSPH, Extramural Program Official, Centers for Disease Control and Prevention, National Immunization Program, MS E–05, 1600 Clifton Road NE., Atlanta, GA 30333, Telephone: (404) 639–8727, E-mail: *SChu@cdc.gov.*

For questions about peer review, contact: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D–72, Telephone: 404–371–5277, Fax: 404–371–5215, E-mail: *MLerchen@cdc.gov.*

For financial, grants management, or budget assistance, contact: Ann Cole, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, MS K–14, Atlanta, GA 30341, Telephone: 770–488–2686, E-mail: *ZLR5@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Dated: May 4, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–9273 Filed 5–9–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0012]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Allergen Labeling of Food Products Consumer Preference Survey and Experimental Study on Allergen Labeling of Food Products

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 June 9, 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 written 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.

Allergen Labeling of Food Products Consumer Preference Survey

Under section 903(b)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 393(b)(2)), FDA is authorized to conduct research relating to foods and to conduct educational and public information programs relating to the safety of the Nation's food supply. FDA is planning to conduct a consumer survey about allergen labeling of food products under this authority. The Allergen Labeling of Food Products Consumer Preference Survey will collect information (see table 1 of this document) to gauge the impact of certain changes to the food label with respect to information about allergenic ingredients. This data collection is needed to satisfy some of the requirements of the Food Allergen Labeling and Consumer Protection Act (FALCPA) (Public Law 108–282, title II, section 204.4), including the requirement that FDA provide data on consumer preferences in a report to Congress. In particular, section 204.4 of the FALCPA asks FDA to describe in the report ''* * *how consumers with food allergies or the caretakers of consumers would prefer that information about the risk of cross-contact be communicated on food labels as determined by using appropriate survey mechanisms.'' In addition, the survey will address other issues pertinent to allergen labeling changes mandated by the FALCPA. The data will be collected by means of a pool of people who will be screened (through self-report) for food allergy, and food allergy caregiver status. A balanced sample of 1,000 will be selected. Participation in the survey is voluntary.

Experimental Study on Allergen Labeling of Food Products

As previously stated, under section 903(b)(2) of the act, FDA is authorized to conduct research relating to foods and to conduct educational and public information programs relating to the safety of the Nation's food supply. FDA is planning to conduct an experimental study about allergen labeling of food products under this authority. The Experimental Study on Allergen Labeling of Food Products will collect information (see table 2 of this document) to gauge the impact of certain changes to the food label with respect to information about allergenic ingredients. This data collection is needed to satisfy some of the requirements of the FALCPA, including the requirement that FDA provide data on consumer preferences with regard to allergen labeling in a report to Congress. In particular, section 204.4 of the FALCPA asks FDA to describe in the report ''* * *how consumers with food allergies or the caretakers of consumers would prefer that information about the risk of cross-contact be communicated on food labels as determined by using appropriate survey mechanisms.'' The allergen labeling experiment will supplement data collected by the Allergen Labeling of Food Products Consumer Preference Survey. In addition, the experiment will address other issues pertinent to allergen labeling changes mandated by the FALCPA. The experimental study data will be collected using an Internet panel of people who will be screened (through self-report) for food allergy, and food allergy caregiver status. Participation in the allergen experimental study is voluntary.

In the **Federal Register** of January 26, 2005 (70 FR 3711), FDA published a 60-day notice requesting public comment on the information collection provisions. FDA received two comments, both from the same consortium of food allergy interested organizations: The American Academy of Allergy, Asthma & Immunology (AAAAI); the American College of Allergy, Asthma & Immunology (ACAAI); and The Food Allergy & Anaphylaxis Network (FAAN). The comments were identical and are addressed in the following paragraphs.

The comments applauded FDA's goals for the research. The comments suggested that to improve the quality of the study and analysis, the agency should do the following: (1) Consider using FAAN's membership rolls to draw the samples, (2) screen the sampling frame to maximize the likelihood of recruiting truly food allergic individuals, (3) acknowledge that some households have multiple individuals who are food allergic, (4) recognize that some individuals do not have Internet access, (5) consider using advisory labeling that is currently found in the marketplace, and (6) collaborate closely with appropriate representatives from their organizations.

The agency has considered the offer to use FAAN's membership rolls to draw the study samples and has determined that the high likelihood of bias would render results not generalizable. The agency does not agree that using FAAN's membership rolls will yield a better sample than can be acquired by using established Internet panels.

FDA will utilize two consumer Internet panels to collect data for this research. One of the advantages to using Internet panels is the small ratio between the cost of the research and the

quality of the data collected. Another advantage is the minimal amount of field time needed to collect the information. This is an important consideration because of the FALCPA requirements for providing the informational report to Congress. A potential disadvantage of using Internet panels for data collection is the risk that the Internet panels' constituency may not adequately represent the general population, lessening its potential to provide generalizable data. A description of each panel follows.

The Allergen Labeling of Food Products Consumer Preference Survey will utilize Knowledge Network's (a private research firm) Web-enabled panel. Knowledge Network's panel consists of 40,000 households who have agreed to participate in research studies conducted through the Internet. Knowledge Network's Web-enabled panel was constructed using random digit dialing procedures rendering samples drawn from them generalizable to the general population. Both Internet and Noninternet users were recruited. Both groups received equipment that allows them to participate in research via the Internet.

The sample for the Experimental Study on Allergen Labeling of Food Products is Synovate, Inc.'s (a private research firm) Internet panel. Synovate's panel consists of 500,000 households who have agreed to participate in research studies conducted through the Internet. This panel was not constructed using random digit dialing procedures but rather by recruiting through multiple media. The panel was designed to closely match the general population on major demographic characteristics.

The agency agrees that it is important to implement rigorous screening requirements in order to obtain samples of truly food allergic individuals. Many people believe that they have a food allergy when, in fact, they have an intolerance to a particular food or they have celiac disease. While these two conditions can produce symptoms that are similar to those sometimes seen with food allergies, the physiological mechanisms producing the reactions are entirely different. The agency has designed a screener that all panel members will receive in which they would be asked first whether or not they have a food allergy or if they regularly prepare food for someone with a food allergy, and then whether or not they have been medically diagnosed as food allergic. Then they are asked to state which diagnosis method was used.

The agency agrees that some households have multiple members who are food allergic. As described previously in the discussion on the screener, Internet panel members are asked whether or not they, or someone for whom they regularly prepare food, has a food allergy. The reason we made the ''prepare food for someone with a food allergy'' distinction is to be able to categorize the respondent as a caregiver to someone with a food allergy. It is important to point out that the study will also recruit individuals who do not meet the criteria for food-allergic individual or caregiver. The nonfood allergic group will be analyzed separately from the food allergic group. The agency believes it is important to acknowledge that the population of food allergic individuals is not static and that at any time someone can become a member. These individuals must be able to immediately use the food label to determine whether or not it is safe for them to consume the food.

The agency agrees that some individuals do not have access to the Internet. As discussed in the previous paragraphs, the Internet panel that will be used to draw the survey sample was constructed using random digit dialing procedures, and those without Internet access were supplied with equipment which allows them to access the Internet and to participate in consumer research.

The agency agrees that it is important to use advisory labeling that is currently found in the marketplace. The agency has used the FAAN list of advisory statements and another list created by an informal market survey, and has classified the statements into groupings of similar statements. The statements that appear most often in each of the groupings were chosen for analysis in the study.

The agency agrees that for the research to be of the highest quality and utility, collaboration with appropriate representatives from AAAAI, ACAAI, and FAAN is important and has already implemented this collaboration.

FDA estimates the burden of the Allergen Labeling of Food Products Consumer Preference Survey collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Screener	500,000	1	500,000	0.0055	2,750
Pretest	30	1	30	0.167	5
Survey	1,000	1	1,000	0.167	167
Total					2,922

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's burden estimate is based on prior experience with consumer surveys very similar to this proposed study.

FDA estimates the burden of the Experimental Study on Allergen Labeling of Food Products collection of information as follows:

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Screener	40,000	1	40,000	0.0055	220

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

Activity	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Pretest	30	1	30	0.167	5
Experiment	4,000	1	4,000	0.167	668
Total					893

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's burden estimate is based on prior experience with Internet panel experiments similar to the study proposed here.

Dated: May 4, 2005.

Jeffery Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–9328 Filed 5–9–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Neurological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Neurological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 17, 2005, from 8:30 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512513. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will hear a presentation on the FDA Critical Path Initiative and a presentation by the Office of Surveillance and Biometrics in the Center for Devices and Radiological Health outlining their responsibility for the review of postmarket study design. The committee will also hear an update on the status of recent devices brought before the committee. Subsequently, the committee will discuss, make recommendations, and vote on a premarket approval application for a selective head cooling system intended for use in infants 36 weeks of gestation or older at risk for moderate to severe hypoxic-ischemic encephalopathy (HIE) to prevent or reduce the severity of HIE. Background information for the topic, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 3, 2005. Oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of committee deliberations and for approximately 30 minutes near the end of the deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by June 3, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams at 240–276–0450, ext. 113 at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 3, 2005.

Lester M. Crawford,

Acting Commissioner of Food and Drugs.

[FR Doc. 05–9296 Filed 5–9–05; 8:45am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pulmonary-Allergy Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 13 and 14, 2005, from 8 a.m. to 5:30 p.m.

Location: Hilton Washington DC North/Gaithersburg, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Teresa A. Watkins, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: *watkinst@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512545. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 13, 2005, the committee will discuss the implications

of recently available data related to the safety of long-acting beta-agonist bronchodilators. On July 14, 2005, the committee will discuss the continued need for the essential use designations of prescription drugs for the treatment of asthma and chronic obstructive pulmonary disease under 21 CFR 2.125.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 1, 2005. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on July 13, 2005, and between approximately 11 a.m. and 12 noon on July 14, 2005. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 1, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact La'Nise Giles at 301–827–7001 at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 29, 2005.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–9229 Filed 5–9–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0062]

Draft Guidance for Industry on the Food and Drug Administration's ''Drug Watch'' for Emerging Drug Safety Information; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''FDA's 'Drug Watch' for Emerging Drug Safety Information.'' This document provides guidance about how FDA intends to develop and disseminate important emerging drug safety information concerning marketed drug products to healthcare professionals and patients. This information will appear on an FDA Web page to be called the ''Drug Watch.''

DATES: Submit written or electronic comments on the draft guidance by August 8, 2005. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Deborah J. Henderson, Center for Drug Evaluation and Research (HFD–6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20855, 301–594–5400.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''FDA's 'Drug Watch' for Emerging Drug Safety Information.'' This document provides guidance about how FDA intends to develop and disseminate important emerging drug safety information concerning marketed drug products to healthcare professionals and patients.

In the last several months, members of patient groups, the medical community, and Congress have raised concerns regarding the way in which FDA has handled certain drug safety issues, most recently in connection with the withdrawal of Vioxx from the market and with the management of the risks of suicide associated with pediatric use of antidepressants. As a result, FDA is carefully evaluating its institutional approach to drug safety issues, focusing especially on the ways in which the agency responds to new safety concerns and resolves scientific disagreements about product safety between agency components. As part of this process, FDA is also reexamining its risk communication program, including how and when we communicate significant emerging safety information to healthcare professionals and patients.[1]

FDA has long provided information on drug risks and benefits to healthcare professionals and patients. In the past, we provided that information when we were certain of its significance or it prompted a regulatory action, such as a labeling change. We have now decided to make important drug safety information available to healthcare professionals and patients in a new format and earlier than we have in the past. This information will appear on an FDA Web page called the ''Drug Watch.''

II. The Drug Watch Program

The goal of the Drug Watch program is to ensure that patients and healthcare professionals have quick access to the most up-to-date and accurate product information available in an easily accessible form. The Drug Watch Web page will post significant emerging safety information that FDA has received about certain drugs (or classes of drugs) while the agency continues to actively evaluate the information. The Drug Watch page is not intended to be a list of drugs that are particularly risky or dangerous for use; listing of a drug on the Drug Watch should not be construed as a statement by FDA that the drug is dangerous or that it is inappropriate for use. All drugs have risks, and prescribers must balance the risks and benefits of a drug when making judgments about an individual patient's therapy. However, sometimes after a drug is approved, rare but serious new side effects emerge as the drug is more widely used or is prescribed for off-label uses. Sometimes these emerging risks appear to be life-threatening, while in other cases they may appear to be less serious. In most instances, however, there is a period of uncertainty while FDA and the drug's sponsor evaluate new, emerging safety information to determine whether the safety concern in fact relates to the drug, and whether regulatory or other action is appropriate. The purpose of the Drug Watch is to provide a forum from which FDA can communicate emerging safety information to the public while we

[1] For information about the other steps FDA is taking see *http://www.fda.gov/bbs/topics/news/2004/NEW01131.html*.

continue to evaluate that information. We intend to work as quickly as possible to assess and address the safety issues identified on the Drug Watch, and we will continue to communicate important information about drug risks that are known with greater certainty using traditional means, such as public health advisories. Our goal with the Drug Watch is to share emerging safety information before we have fully determined its significance or taken final regulatory action so that patients and healthcare professionals will have the most current information concerning the potential risks and benefits of marketed drug products.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on FDA's Drug Watch for emerging drug safety information. 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.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: May 4, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–9297 Filed 5–5–05; 3:42 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD 17–05–005]

Prince William Sound Regional Citizens' Advisory Committee Charter Renewal

AGENCY: Coast Guard, DHS.

ACTION: Notice of recertification.

SUMMARY: The purpose of this notice is to inform the public that the Coast Guard has recertified the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) as an alternative voluntary advisory group for Prince William Sound, Alaska. This certification allows the PWSRCAC to monitor the activities of terminal facilities and crude oil tankers under the Prince William Sound Program established by statute.

DATES: This recertification is effective for the period from March 1, 2005, through February 28, 2006.

FOR FURTHER INFORMATION CONTACT: Commander, Seventeenth Coast Guard District, Marine Safety Division, Response Branch by phone at (907) 463–2804, or by mail at P.O. Box 25517; Juneau, Alaska 99802.

SUPPLEMENTARY INFORMATION:

Background and Purpose

As part of the Oil Pollution Act of 1990, Congress passed the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), 33 U.S.C. 2732, to foster a long-term partnership among industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals and oil tankers.

On October 18, 1991, the President delegated his authority under 33 U.S.C 2732 (o) to the Secretary of Transportation in Executive Order 12777, section 8(g) (*see* 56 FR 54757; October 22, 1991) for purposes of certifying advisory councils, or groups, subject to the Act. On March 3, 1992, the Secretary redelegated that authority to the Commandant of the USCG (*see* 57 FR 8582; March 11, 1992). The Commandant redelegated that authority to the Chief, Office of Marine Safety, Security and Environmental Protection (G–M) on March 19, 1992 (letter #5402).

On July 7, 1993, the USCG published a policy statement, 58 FR 36504, to clarify the factors that shall be considered in making the determination as to whether advisory councils, or groups, should be certified in accordance with the Act.

The Assistant Commandant for Marine Safety and Environmental Protection (G–M), redelegated recertification authority for advisory councils, or groups, to the Commander, Seventeenth Coast Guard District on February 26, 1999 (letter #16450).

On September 16, 2002, the USCG published a policy statement, 67 FR 58440, that changed the recertification procedures such that applicants are required to provide the USCG with comprehensive information every three years (triennially). For each of the two years between the triennial application procedure, applicants submit a letter requesting recertification that includes a description of any substantive changes to the information provided at the previous triennial recertification.

Discussion of Comments

The January 12, 2005, the USCG published a Notice of Application Submission Deadline; Request for Comments for Recertification of Prince William Sound Regional Citizens' Advisory Council in the **Federal Register** (70 FR 2181). We received 17 letters commenting on the proposed action. No public meeting was requested, and none was held. Of the 17 comments received, 16 were positive. These letters in support of the recertification consistently cited PWSRCAC's broad representation of the respective community's interests, appropriate actions to keep the public informed, improvements to both spill response preparation and spill prevention, and oil spill industry monitoring efforts that combat complacency—as intended by the Act.

The USCG received one comment in opposition to PWSRCAC's recertification. The Native Village of Eyak (NVE) recommended the Coast Guard de-certify the PWSRCAC because it neither represents the NVE, nor can it afford representation to the NVE through membership on the PWSRCAC Board of Directors. The NVE stated that a separate Tribal oversight group should be created. They further stated that advisory group funding should be directed to this Tribal oversight group, and that this group would exist in addition to, not in place of, the PWSRCAC. NVE has twice before voiced this opposition in letters of comment on PWSRCAC's 2001 and 2002 recertification. Commandant, Seventeenth Coast District answered NVE's opposition, with direct responses dated September 7, 2001, and July 11, 2002. For the purpose of public record, those responses are provided here:

The September 7, 2001, U.S. Coast Guard response to the Native Village of Eyak letter dated July 24, 2001, states ''[I] have received and reviewed your letter that does not support the recertification of the PWSRCAC. Thank you for you input. Although I understand your position and concerns that the Native Village of Eyak has never been represented by the PWSRCAC and therefore the Native Village of Eyak does not feel the PWSRCAC is broadly representative of the interests and communities in the area, after careful consideration, I do not feel this single issue would justify the U.S. Coast Guard not recertifying the PWSRCAC. In light of your concerns, I have requested, in writing, that the PWSRCAC board contact your Tribal Council and open a dialogue with you to ensure your concerns are reflected in the PWSRCAC's Activities. Additionally, I recommend that you open a dialog, if you desire, with the PWSRCAC Board of Directors concerning membership on the Board, as membership native villages is consistent with Section 2732(d)(A)(iii) of OPA 90. To respond to your question regarding an investigation into the finances of the RCAC, the Coast Guard is currently conducting a ''best practices'' audit to assist the PWSRCAC in decreasing their administrative overhead. This audit is still ongoing, and it would be premature for me to further comment on the potential outcome prior to its completion. My staff and I look forward to working with you on our common goal of improving the safe and environmentally sound transport of oil in PWS and surrounding communities.''

The July 11, 2002, U.S. Coast Guard response to the Native Village of Eyak letter dated July 29, 2002, states ''I have received and reviewed your letter concerning the recertification of the Regional Citizens' Advisory Council (RCAC) for Prince William Sound (PWS). The Coast Guard greatly values the important role the Native Village of Eyak Traditional Council (NVETC) plays in the PWS community. Thank you for your input and for this opportunity to consult with you about the PWS RCAC and The Oil Pollution Act of 1990 (OPA 90).''

The history, background, and legal character of the PWS RCAC, along with its funding and responsibilities are unique and worthy of more discussion. The PWS RCAC is an independent, non-profit organization founded in 1989. Though it received Federal oversight like many independent, non-profit organizations, it is not a Federal agency. The PWS RCAC is a local organization that predates the passage of OPA 90. The existence of the PWS RCAC was specifically recognized in OPA 90 where it is defined as an ''alternate voluntary advisory group.''

The Alyeska Pipeline Service Company pays the PWS RCAC $2 million annually in the form of a long-term contract. In return for this funding, the PWS RCAC must annually show that it ''fosters the goals and purposes'' of OPA 90 and is ''broadly representative of the communities and interests in the vicinity of the terminal facilities and Prince William Sound.'' In March 1991, then-President Bush initially certified the PWS RCRC as meeting these broad goals. That certification responsibility was delegated to the Coast Guard in 1991, and for the last ten years the Coast Guard has unconditionally recertified the PWS RCAC annually.

Alyeska funds the PWS RCAC, and the Coast Guard makes sure the PWS RCRC operates in a fashion that is broadly consistent with OPA 90. For example, the PWS RCAC's responsibilities under OPA 90 are limited to monitoring crude oil terminal and tanker operation in PWS. As such, the PWS RCAC had no role in the response to the F/V WINDY BAY oil spill, which was a diesel fuel oil spill. In such cases, however, the PWS RCAC can and does offer advice based on it local knowledge and in fact facilitated our close cooperation in response to that spill.

In your letter, you made three specific requests. The first was the ''the PWS RCAC be decertified on the basis of not broadly representing interests and communities in the area.'' I have the authority to grant that request, but cannot grant it. I find that the PWS RCAC does broadly represent the PWS community. The PWS RCAC board includes a broad spectrum of the native and non-native community, the fishing and oil industry, and environmental and recreational organizations as prescribed by OPA 90. Last year after you made similar critical recertification comment, the PWS RCAC invited the NVETC to seek a seat on the board of the RCAC. You decided not to act on that offer. I cannot find your decision not to join the PWS RCAC to be basis for decertification.

Your second request was the ''a new group following strict letter of the law in OPA 90 be formed.'' Unfortunately, I have neither the authority to grant this request nor the expertise to help you achieve it on your own. The Coast Guard did not create the PWS RCAC and cannot act to create a competing alternative.

Your third request was that ''a Tribal oversight group with equal status to the U.S. government and State of Alaska be created.'' Again I have neither the authority nor the expertise to create such an organization. I do encourage you to reconsider your decision not to seek a seat on the PWS RCAC. Though the PWS RCAC is an independent, non-federal, non-profit organization over which I have limited influence, I would ask the PWS RCAC seriously consider a renewed request by you for a seat on the board.

In your letter, you suggested the formation of a Tribal Council of the Native Tribes and Villages in PWS that would exist in addition to PWS RCAC. I appreciate that such a network would facilitate the discussion of mutual issues and concerns. Though the Coast Guard is not empowered to sponsor such an enterprise, I would welcome the information and advice such a group could offer. You may wish to approach the PWS RCAC about such a tribal group.

I would also like to assure you that the Coast Guard recognizes its government-to-government consultative relationship with the Native Village of Eyak. I am grateful for this opportunity to consult with you. I hope to continue to work you on emergent cases like the F/V WINDY BAY case and on any other matters of mutual concern.''

NVE has voiced no new opposition for 2005. The USCG, standing by its direct responses above, likewise offers no new response to NVE's running opposition.

Recertification: By letter dated March 2, 2005, the Commander, Seventeenth Coast Guard certified that the PWSRCAC qualifies as an alternative voluntary advisory group under 33 U.S.C. 2732(o). This recertification terminates on February 28, 2006.

Dated: March 4, 2005.

James C. Olson,

Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc. 05–9301 Filed 5–9–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD08–05–020]

Houston/Galveston Navigation Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings; change of meeting date and location.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee

(HOGANSAC) and its working groups will meet to discuss waterway improvements, aids to navigation, area projects impacting safety on the Houston Ship Channel, and various other navigation safety matters in the Galveston Bay area. This notice announces a change of location and date for the meeting.

DATES: The next meeting of HOGANSAC will be held on Wednesday, May 25, 2005 at 9 a.m. The meeting of the Committee's working groups will be held on Tuesday, May 10, 2005 at 9 a.m. The meetings may adjourn early if all business is finished. Members of the public may present written or oral statements at either meeting. Requests to make oral presentations or distribute written materials should reach the Coast Guard five (5) working days before the meeting at which the presentation will be made. Requests to have written materials distributed to each member of the committee in advance of the meeting should reach the Coast Guard at least ten (10) working days before the meeting at which the presentation will be made.

ADDRESSES: The full Committee meeting will be held at the Houston Pilots Office, 8150 South Loop East, Houston, TX 77017 (713–645–9620). The working group meetings will be held at the Houston Pilots Office, 8150 South Loop East, Houston, TX 77017 (713–645–9620).

FOR FURTHER INFORMATION CONTACT: Captain Richard Kaser, Executive Director of HOGANSAC, telephone (713) 671–5199, Commander Tom Marian, Executive Secretary of HOGANSAC, telephone (713) 671–5164, or Lieutenant Junior Grade Brandon Finley, Assistant to the Executive Secretary of HOGANSAC, telephone (713) 671–5103, e-mail *mailto:rfinley@vtshouston.uscg.mil*. Written materials and requests to make presentations should be sent to Commanding Officer, VTS Houston/Galveston, Attn: LTJG Finley, 9640 Clinton Drive, Floor 2, Houston, TX 77029.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2. The initial notice of meeting was published in the **Federal Register** on April 18, 2005 (70 FR 20158). In order to accommodate a schedule change of the Committee Sponsor, the meeting date was changed to May 25, 2005. This also prompted a change in meeting location to the Houston Pilots Office located in Houston, Texas. No changes to the agenda, workgroup meetings or procedure have been made as a result of this change.

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda includes the following:

(1) Opening remarks by the Committee Sponsor (RADM Duncan) or the Committee Sponsor's representative, Executive Director (CAPT Kaser) and Chairperson.

(2) Approval of the February 10, 2005 minutes.

(3) Old Business:

(a) Dredging projects.

(b) AtoN Knockdown Working Group.

(c) Navigation Operations subcommittee report.

(d) Area Maritime Security Committee Liaison's report.

(e) Technology subcommittee report.

(f) Deepdraft Entry Facilitation Working Group.

(4) New Business.

(a) Adoption of 2005–07 Charter.

(b) Hurricane Brief.

(c) Bayport Container Port Update.

(d) LNG Advisory Subcommittee Formation.

(e) Limited Visibility Subcommittee Formation.

Working Group Meetings. The tentative agenda for the working groups meeting includes the following:

(1) Presentation by each working group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each working group.

Procedural

Working groups have been formed to examine the following issues: dredging and related issues, electronic navigation systems, AtoN knockdowns, impact of passing vessels on moored ships, boater education issues, facilitating deep draft movements and mooring infrastructure. Not all working groups will provide a report at this session. Further, working group reports may not necessarily include discussions on all issues within the particular working group's area of responsibility. All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. Members of the public may make presentations, oral or written, at either meeting. Requests to make oral or written presentations should reach the Coast Guard five (5) working days before the meeting at which the presentation will be made. If you would like to have written materials distributed to each member of the committee in advance of the meeting, you should send your request along with fifteen (15) copies of the materials to the Coast Guard at least ten (10) working days before the meeting at which the presentation will be made.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director, Executive Secretary, or Assistant to the Executive Secretary as soon as possible.

Dated: May 3, 2005.

Kevin L. Marshall,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 05–9335 Filed 5–9–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4950–C–20]

Notice of HUD's Fiscal Year (FY) 2005 Notice of Funding Availability, Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD Discretionary Grant Programs; correction.

SUMMARY: On March 21, 2005, HUD published its Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA), Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs. This document makes corrections to the Section 811 Supportive Housing for Persons with Disabilities Program (Section 811 Program). This notice also extends the application submission date for the Section 811 Program. These changes affect the Section 811 program NOFA but do not affect the application packages on Grants.gov.

DATES: The application submission date for Section 811 Program is June 10, 2005. The application submission dates for all other program sections of the SuperNOFA remain as published in the **Federal Register** on March 21, 2005.

FOR FURTHER INFORMATION CONTACT: Please contact Frank Tolliver, Project Manager, at 202–708–3000 (this is not a toll-free number), or access the Internet at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* Persons with hearing or speech impairments may access the above number through TTY

by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

On March 21, 2005 (70 FR 13575), HUD published its Notice of HUD's Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA), Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs. The FY2005 SuperNOFA announced the availability of approximately $2.26 billion in HUD assistance. This notice published in today's **Federal Register** makes technical corrections to the Section 811 Program.

Summary of Technical Correction

A summary of the technical corrections made by this document follows. The page number shown in brackets identifies where the Section 811 Program NOFA that is being corrected can be found in the March 21, 2005, SuperNOFA. The technical correction described in today's **Federal Register** will also be reflected in the application instructions located on Grants.gov/Apply. Applicants are encouraged to read the instructions located on Grants.gov/Apply prior to submitting their application.

Section 811 Program of Supportive Housing for Persons With Disabilities [Page 14227]

On page 14228, Overview Information, section F., first column, consistent with Section 102 of the HUD Reform Act of 1989 (42 U.S.C. 3545), the application submission date is extended to June 10, 2005.

On page 14229, section II.A., third column, HUD is clarifying the reference to ''each local HUD office'' in the description of the process for allocating Section 811 funds by adding language to clarify that the Washington, DC Office is excluded from references to ''each local HUD office.''

On page 14236, section IV.A., first column, HUD is clarifying the application and submission information by adding a note at the end of the first paragraph explaining the procedures for the electronic filing of Section 811 applications for those cases involving a single application from multiple applicants.

On page 14243, section IV.B.2.d.(3), third column, HUD is adding a new paragraph (m) that will explain the use of Form HUD–96011, Facsimile Transmittal, which is to be used for faxing third party letters and other documents with the electronic application in accordance with the instructions in the General Section.

On page 14255, section IV.E.5., middle column, HUD misstated the requirements of the Consolidated Appropriations Act, 2005. As a result, HUD is correcting this paragraph.

On page 14256, section V.A.1.c., first column, HUD is correcting a typo. The words ''36 points'' should have read, ''36 months.''

On page 14256, section V.A.2., middle and third columns, HUD is deleting the third paragraph that begins at the bottom of the middle column and continues to the third column. HUD is also revising section V.A.2.(a) which begins in the third column. The revised paragraph explains that if a determination has been made that there is sufficient sustainable long-term demand for additional supportive housing for persons with disabilities in the area to be served, the project is to be awarded 10 points. If not, the project is to be awarded 0 points. No other point values are allowed.

On page 14262, Appendix A, Local HUD Offices, paragraph 2.c., is amended to make it clear that HUD will accept applications for proposals to be located in Washington, DC and that if an applicant receives a waiver of the electronic application submission requirement for a proposal to be located in Washington, DC, the application must be submitted to the HUD Baltimore, Maryland Office.

On page 14267, Appendix A, Local HUD Offices, HUD is updating the telephone and TTY telephone numbers for the San Francisco Office.

Accordingly, in the Notice of HUD's Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA), Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs, beginning at 70 FR 13575, published in the **Federal Register** on March 21, 2005, the following corrections are made.

Section 811 Program of Supportive Housing for Persons with Disabilities, beginning at page 14227:

On page 14228, Overview Information, section F., first column, is revised to read as follows:

F. Dates: Application Submission Date. The application submission date is June 10, 2005. Please refer to section IV of this NOFA and to the General Section for application submission requirements.

On page 14229, section II.A., third column, the first full paragraph is revised to read as follows:

Under the Section 811 Program, each local HUD Office jurisdiction receives sufficient capital advance funds for a minimum of 10 units with the exception of the Washington, DC Office, which has no separate allocation of Section 811 capital advance funds this fiscal year. Accordingly, the references to ''each local HUD office'' exclude the Washington, DC Office. (For those applicants that have received a waiver of the electronic application submission requirement, refer to Appendix A, Local HUD Offices, of this program NOFA for instructions on the submission of applications for proposals within the Washington, DC Office jurisdiction as well as the other local HUD offices.) The total amount of capital advance funds to support this minimum set-aside is then subtracted from the total capital advance available. The remainder is fair shared to each local HUD office jurisdiction whose fair share would exceed the set-aside based on the allocation formula fair share factors described below.

On page 14236, section IV.A., first column, add the following ''note'' at the end of the first paragraph to read as follows:

Note: For Section 811 applications that will have more than one applicant, *i.e.*, Co-Sponsors, the applicants must designate a single individual to act as the authorized representative for all Co-Sponsors of the application. The designated authorized representative of the organization submitting the application must be registered with Grants.gov, the Federal Central Contractor Registry and with the credential provider for E-Authentication. Information on the Grants.gov registration process is found at *http://www.grants.gov/GetStarted*. When the application is submitted through Grants.gov, the name of the designated authorized representative will be inserted into the signature line of the application. Please note that the designated authorized representative must be able to make legally binding commitments for each Co-Sponsor to the application.

Each Co-Sponsor must complete the documents required of all co-sponsoring organizations to permit HUD to make a determination on the eligibility of the Co-Sponsor(s) and the acceptability of the application based on the assistance and commitments the Co-Sponsor(s) has pledged to the project. Therefore, each co-sponsor must submit the following information using the scanning and/or faxing method described in Section IV. of the General Section: Standard Form 424, Application for Federal Assistance; Standard Form 424 Supplement, Survey on Ensuring Equal Opportunity for Applicants; Standard Form LLL, Disclosure of Lobbying Activities (if applicable); Form HUD–92016-CA, Section 811 Application for Capital Advance, Summary Information; Form HUD–2530, Previous Participation Certification; Form HUD–92041, Sponsor's Conflict of Interest Resolution; Form HUD–92042, and Sponsor's Resolution for Commitment to Project. The forms identified above are available in the Program instructions package that can be downloaded from Grants.gov as well as HUD's Web site

at *http://www.hud.gov/offices/adm/grants/nofa05/snofaforms.cfm.* The downloaded and completed forms should be saved as separate electronic files and attached to the electronic application submission following the requirements of Section IV.

As stated in the General Section, Section IV, forms and other documents from Co-Sponsors that will be scanned to create an electronic file and submitted as an attachment to the application should be labeled and numbered so the HUD reviewer can identify the file and its contents. If the applicant is creating an electronic file, the file should contain a header that identifies the name of the sponsor submitting the electronic application, that sponsor's DUNS number, and the unique ID that is found at the top of the Facsimile Transmission form found in the electronic application package. The naming convention for each electronic file should correspond to the labeling convention used in the application Table of Contents found on page 14236, column 3, of the Section 811 program NOFA. For example, the organizational documents of a Co-Sponsor would be included under Part II, Exhibit 2(a) of the Section 811 application. Electronic files can be attached to the electronic application using the Attachment Form contained in the electronic application package.

If the applicant cannot create an electronic file or does not have access to a scanner, the required signed documents may be submitted to accompany the electronic application by completing the required information and submitting it via facsimile, using Form HUD–96011, Facsimile Transmittal found in the electronic application package. Co-Sponsors should use the form HUD–96011 provided by the sponsor that is submitting the electronic application. The submitting sponsor should fill in the SF 424 form prior to giving the Form 96011 form to the Co-sponsors. By following these directions, the form HUD 96011 will be pre-populated with the submitting sponsor's organizational information exactly as the submitting sponsor has provided it on the electronic application. In addition, HUD will be using the unique identifier associated to the downloaded application package as a means of matching the faxing submitted with the applications received via Grants.gov. The Facsimile Transmittal form also has space to provide the number of pages being faxed and information on the type of document. Co-Sponsors or the submitting applicant can insert the document name in the space provided labeled Program Component.

Co-Sponsor's documents sent by facsimile as part of an electronic application submission, must use Form HUD–96011, Facsimile Transmittal that was downloaded with the application as the cover page. Do not insert any additional or other cover pages as it will cause problems in electronically matching the pieces of the application.

On page 14243, following section IV.B.2.d.(3), third column, add a new paragraph a to read as follows:

(m) Form HUD–96011, Facsimile Transmittal to be used for faxing third party letters and other documents for your electronic application in accordance with the instructions in the General Section.

On page 14255, section IV.E.5., middle column, paragraph 5 is revised to read as follows:

5. Expiration of Section 811 Funds. The Consolidated Appropriations Act, 2005, requires HUD to obligate all Section 811 funds appropriated for FY2005 by September 30, 2005. Under 31 U.S.C. 1551, no funds can be disbursed from this account after September 30, 2010. Under Section 811, obligation of funds occurs for both capital advances and project rental assistance upon fund reservation and acceptance. If all funds are not disbursed by HUD and expended by the project Owner by September 30, 2010, the funds, even though obligated, will expire and no further disbursements can be made from this account. In submitting an application, you need to carefully consider whether your proposed project can be completed through final capital advance closing no later than September 30, 2010. Furthermore, all unexpended balances, including any remaining balance on PRAC contracts, will be cancelled as of October 1, 2010. Amounts needed to maintain PRAC payments for any remaining term on the affected contracts beyond that date will have to be funded from other current appropriations.

On page 14256, section V.A.1.c., first column, remove from the first sentence the words ''36 points'' and add in its place the following: ''36 months.''

On page 14256, section V.A.2., delete the third paragraph that begins in the middle column and continues to the third column. In addition, revise section V.A.2(a) which begins in the third column to read as follows:

(a) (10 Points) If a determination has been made that there is sufficient sustainable long-term demand for additional supportive housing for persons with disabilities in the area to be served, the project is to be awarded 10 points. If not, the project is to be awarded 0 points. No other point values are allowed.

On page 14262, Appendix A, Local HUD Offices, paragraph 2.c., is revised to read as follows:

c. Applications for projects proposed to be located in Washington, DC and Maryland must be submitted to the Baltimore, Maryland Office.

On page 14267, Appendix A, Local HUD Offices, the telephone and TTY telephone numbers for the San Francisco Office are revised to read as follows: telephone, (415) 489–6676; TTY, (415) 489–6564.

Dated: May 6, 2005.

Frank L. Davis,

General Deputy Assistant Secretary, Office of Housing.

[FR Doc. 05–9419 Filed 5–9–05; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by June 9, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Daryl L. Sittig, Jr., Crystal Lake, IL, PRT–101798.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Scott A. Benson, Bennington, WA, PRT–101963.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Steven L. Evers, Omaha, NE, PRT–101964.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (Damaliscus pygargus pygargus) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Ferdinand Hantig and Anton Fercos, Las Vegas, Nevada, PRT–101024.

The applicant requests permits to export a female captive born tiger (*Panthera tigris*) to worldwide locations for the purpose of enhancement of the species through conservation education. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Dated: April 22, 2005.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–9243 Filed 5–9–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–920–04–1310–FI–P; (MTM 89466)]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease MTM 89466

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Per 30 U.S.C. 188(d), the lessee, Omimex Canada, Ltd. timely filed a petition for reinstatement of oil and gas lease MTM 89466, Blaine County, Montana. The lessee paid the required rental accruing from the date of termination.

No leases were issued that affect these lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre and 16⅔ percent or 4 percentages above the existing competitive royalty rate. The lessee paid the $500 administration fee for the reinstatement of the lease and $155 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the lease per Sec. 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate the lease, effective November 1, 2004 subject to:

- the original terms and conditions of the lease;
- the increased rental of $10 per acre;
- the increased royalty of 16⅔ percent or 4 percentages above the existing competitive royalty rate; and
- the $155 cost of publishing this Notice.

FOR FURTHER INFORMATION CONTACT: Karen L. Johnson, Chief, Fluids Adjudication Section, BLM Montana State Office, PO Box 36800, Billings, Montana 59107, 406–896–5098.

Dated: April 6, 2005.

Karen L. Johnson,

Chief, Fluids Adjudication Section.

[FR Doc. 05–9255 Filed 5–9–05; 8:45 am]

BILLING CODE 4310–$$–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1092–1093 (Preliminary)]

Diamond Sawblades and Parts Thereof From China and Korea

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–1092–1093 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China and Korea of diamond circular sawblades and parts thereof, provided for in subheading 8202.39.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''),[1] that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by June 17, 2005. The Commission's views are due at Commerce within five business days thereafter, or by June 24, 2005.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: Effective May 3, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on May 3, 2005, by the Diamond Sawblade Manufacturers' Coalition and its individual members: Blackhawk Diamond, Inc., Fullerton, CA; Diamond B, Inc., Santa Fe Springs, CA; Diamond Products, Elyria, OH; Dixie Diamond, Lilburn, GA; Hoffman Diamond, Punxsutawney, PA; Hyde Manufacturing, Southbridge, MA; Sanders Saws, Honey Brook, PA; Terra Diamond, Salt Lake City, UT; and Western Saw, Inc., Oxnard, CA.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations

[1] When packaged together and put up as a set for retail sale with an item that is separately classified under headings 8202 and 8205 of the HTSUS, diamond circular sawblades or parts thereof may be imported under heading 8206.00.00 of the HTSUS.

have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on May 24, 2005, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Elizabeth Haines (202–205–3200) not later than May 19, 2005, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 27, 2005, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: May 5, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–9308 Filed 5–9–05; 8:45 am]

BILLING CODE 7020–01–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–385–386 (Review)]

Granular Polytetrafluoroethylene Resin From Italy and Japan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on granular polytetrafluoroethylene resin from Italy and Japan.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on granular polytetrafluoroethylene resin from Italy and Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* May 4, 2005.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187 or *fruggles@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 1, 2004, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (69 FR 69954, December 1, 2004). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the

Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in these reviews will be placed in the nonpublic record on August 17, 2005, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on September 9, 2005, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 30, 2005. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 1, 2005, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is August 26, 2005. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is September 16, 2005; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before September 16, 2005. On September 29, 2005, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 3, 2005, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: May 5, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–9310 Filed 5–9–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Jay D. Angeluzzi, M.D.; Revocation of Registration

On August 23, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jay D. Angeluzzi, M.D. (Dr. Angeluzzi) who was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AA2504151, pursuant to 21 U.S.C. 824(a)(3) and deny any pending applications under 21 U.S.C. 823(f), on the ground that he lacked state authority to handle controlled substances in the State of Connecticut. The Order to Show Cause also notified Dr. Angeluzzi that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Angeluzzi at his registered address of 9 Mott Avenue, Suite 106, Norwalk, Connecticut 06850. According to the return receipt of the Order, it was accepted on Dr. Angeluzzi's behalf on August 30, 2004. DEA has not received a request for hearing or any other reply from Dr. Angeluzzi or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause to the registrant's address of record and (2) no request for hearing having been received, concludes that Dr. Angeluzzi is deemed to have waived his hearing right. See David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Angeluzzi is currently registered with DEA as a practitioner authorized to handle controlled substances in Schedules II through V under Certificate of Registration AA2504151, expiring on June 30, 2006. According to information in the investigative file, on February 6, 2004, the Connecticut Department of Public Health, Department of Healthcare Systems (Connecticut Department), filed a Statement of Charges and Motion for Summary Suspension against Dr. Angeluzzi.

The Statement of Charges alleged that Dr. Angeluzzi, an anesthesiologist, suffers from a psychiatric or neurological illness that disables him from practicing medicine and that on July 8, 2003, he failed to meet the applicable standard of care during a caesarian section delivery of a baby. As a consequence of Dr. Angeluzzi's errors, the patient is in a permanent vegetative state. The day after this incident, Dr. Angeluzzi informed his medical partners that he had become completely disabled from the practice of medicine by reason of psychiatric and/or substance abuse conditions. On April 16, 2004, in settlement of the allegations, the Connecticut Department accepted a voluntary surrender of Dr. Angeluzzi's state medicine license. In his accompanying affidavit, Dr. Angeluzzi agreed that if he were to seek reinstatement of his license or applied for a new license, the allegations in the Statement of Charges woud be deemed to be true.

There is no evidence before the Deputy Administrator to rebut a finding that Dr. Angeluzzi's Connecticut

medical license has been surrendered. Therefore, the Deputy Administrator finds that Dr. Angeluzzi is currently not authorized to practice medicine in the State of Connecticut. As a result, it is reasonable to infer that he is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Richard J. Clement, M.D., 68 FR 12,103 (2003); Dominick A. Ricci, M.D., 58 FR 51,104 (1993); Bobby Watts, M.D., 53 FR 11,919 (1988).

Here, it is clear that Dr. Angeluzzi's state medical license was surrendered after disciplinary proceedings were initiated against him and there is no information before the Deputy Administrator indicating that his license has been reinstated or a new license issued. As a result, Dr. Angeluzzi is not authorized to practice medicine or handle controlled substances in Connecticut, where he is registered with DEA. Therefore, he is not entitled to maintain that registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AA2504151, issued to Jay D. Angeluzzi, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of the aforementioned registration be, and hereby are, denied. This order is effective June 9, 2005.

Dated: May 2, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–9247 Filed 5–9–05; 8:45 am]

BILLING CODE 4410–09M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 03–25]

ELK International, Inc., d.b.a. Tri-City Wholesale; Denial of Application

On April 11, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to ELK International, Inc., d/b/a Tri-City Wholesale (Respondent/Elk) proposing to deny its application for a DEA Certification of Registration as a distributor of list I chemicals. The Order to Show Cause alleged, in sum that granting the application to distribute list I chemicals to what DEA has identified as the ''gray market,'' would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(h) and 824(a).

Respondent, proceeding pro se, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Gail A. Randall. Respondent subsequently retained counsel and following pre-hearing procedures, a hearing was held in Memphis, Tennessee, on March 9, 2004. At the hearing, both parties called witnesses to testify and introduced documentary evidence. Subsequently, both parties filed Proposed Findings of Fact, Conclusions of Law, and Argument.

On October 7, 2004, Judge Randall issued her Recommended Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (Opinion and Recommended Ruling), recommending that Respondent's application to distribute pseudoephedrine and ephedrine chemical products be granted, subject to ''close monitoring'' by DEA. She did recommend denying ELK registration to distribute phenylpropanolamine. The Government filed exceptions to the Opinion and Recommended Ruling and on November 16, 2004, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law hereinafter set forth. Except as otherwise set forth in this final order, the Deputy Administrator adopts the findings of fact and conclusions of law of the Administrative Law Judge. The Deputy Administrator agrees with recommendation that Respondent be denied registration to distribute phenylpropanolamine. However, she disagrees with the recommendation that Respondent be approved to distribute ephedrine and pseudoephedrine, even under monitored conditions.

On May 9, 2002, Respondent, a Tennessee corporation owned by Mr. and Mrs. Nafez Elkhayyat, located in Memphis, submitted its application for registration as a distributor of list I chemicals, seeking approval to distribute pseudoephedrine, ephedrine and phenylpropanolamine.

Prior to moving to Memphis, the Elkhayyats had owned Tri-State Wholesale, Elk International, Inc. (Tri-State), located in East Ridge, Tennessee, a suburb of Chattanooga. In May 2001, Tri-State applied for DEA registration to distribute list I chemicals in an application signed by Mrs. Elkhayyat. During a pre-registration inspection by a Diversion Investigator from DEA's Nashville Office, Mr. Elkhayyat was interviewed and stated he intended to carry whatever products his customers wanted.

Despite having operating a retail grocery store for 27 years, Mr. Elkhayyat had little or no knowledge of listed chemicals, was unaware that they were used in illicit methamphetamine manufacturing and could not identify the names of products containing listed chemicals.

While Tri-State was not registered with DEA, the Diversion Investigator found numerous name-brand products at its facility containing listed chemicals. These included Dayquil, Nyquil, Advil Cold and Sinus, Tylenol Cold and Sinus, Anacin Cough and Cold, Alka Seltzer Plus and Robitussin. Mr. Elkhayyat advised he had purchased these items from a grocery store in Texas and readily agreed to box them up and return them to the supplier, which he did while the Diversion Investigator was still on the premises. He was also provided materials and a briefing regarding the dangers of diversion and the record keeping/reporting requirements for registrants.

An Order to Show Cause proposing to deny Tri-State's application was issued by DEA on May 21, 2002, and sent to the company's address in East Ridge. However, by then the Elkhayyats had moved to Memphis and sold Tri-State's assets to H & R Corporation, d.b.a. Tri-State Wholesale (H & R). At the time, H & R was not seeking to distribute listed chemicals and the Elkhayyats had not retained any ownership or control over H & R. Accordingly, DEA's Office of Chief Counsel directed that Tri-State's application be administratively withdrawn, as the entity submitting it no longer existed.[1]

In June 2002, a different Diversion Investigator than the one who interviewed Mr. Elkhayyat in East Ridge a year earlier, conducted the pre-

[1] It is noted that H & R Corporation's owners subsequently applied for DEA registration to distribute list I chemicals. An Order to Show Cause proposing to deny H & R registration was issued and the matter is currently pending final agency action.

registration investigation on Elk's application. He met Mr. Elkhayyat and his brother at the company's Memphis facility and they discussed the problem of diversion and record keeping requirements. Despite the information having been provided him during the first pre-registration investigation, Mr. Elkhayyat did not indicate that he had any familiarity with reporting requirements. He also failed to disclose that his former company had previously applied for a DEA registration.

In general, the Diversion Investigator was satisfied with Elk's physical security and intended policies for verifying the legitimacy of prospective customers. While the Elkhayyats did not yet have a customer list, they indicated they intended to sell listed chemicals on a wholesale basis, primarily to ''convenience stores, service stations, gasoline stations, [and] small grocery stores.''

After returning to his office, the Diversion Investigator learned the Elkhayyats had applied for registration under the Tri-State name and he prepared a recommendation that an Order to Show Cause be issued to Elk based primarily on its intent to distribute list I chemicals to what DEA has termed the ''grey market.''

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals which are legitimately manufactured and distributed in single entity and combination forms as decongestants and bronchodilators, respectively. Both are used as precursor chemicals in the illicit manufacture of methamphetamine and amphetamine.

Phenylpropanolamine, also a list I chemical, is a legitimately manufactured and distributed product used to provide relief of the symptoms resulting from inflammation of the sinus, nasal and upper respiratory tract tissues and for weight control. Phenylpropanolamine is also used as a precursor in the illicit manufacture of methamphetamine and amphetamine. In November 2000, the United States Food and Drug Administration issued a public health advisory requestion drug companies to discontinue marketing products containing phenylpropanolamine, due to risk of hemorrhagic stroke. As a result, many pharmaceutical companies have stopped using phenylpropanolamine as an active ingredient. *See*, Gazaly Trading, 69 FR 22561 (2004).

As testified to by government witnesses and as addressed in previous DEA final orders, methamphetamine is an extremely potent central nervous system stimulant and its abuse is a persistent and growing problem in the United States. *See, e.g.*, Direct Wholesale, 69 FR 11654 (2004); Branex, Inc., 69 FR 8,682 (2004); Denver Wholesale, 67 FR 99986 (2002); Yemen Wholesale Tobacco and Candy Supply, Inc., 67 FR 9997 (2002).

A Diversion Control Group Supervisor and Special Agent testified at the hearing regarding the rapid proliferation of clandestine methamphetamine laboratories in Tennessee and its adjoining states and described the local methods of production. They recounted the multiple health hazards and social costs stemming from the production and abuse of methamphetamine and testified to a dramatic increase in local clandestine laboratories. As discussed in several recently published final orders, Tennessee now leads the DEA Atlanta Region in the number of clandestine laboratories seized. *See, e.g.*, Prachi Enterprise, Inc., 69 FR 69407 (2004); CWK Enterprises, Inc., 69 FR 69400 (2004). Further, DEA has found that local ''[d]istributors or retailers serving the illicit methamphetamine trade observe no borders and trade across state lines.'' *Id.*, 69 FR at 69401.

The Special Agent credibly testified that local manufacturers typically acquired their pseudoephedrine and ephedrine precursors from area convenience stores and small ''mom and pop'' stores and would patronize multiple stores, in order to deflect attention from their buying patterns. In his experience, the precursor most often found in area laboratories was Max Brand, followed by other ''off name'' brands, such as Mini-Thins, Pseudo-60's and Two-Ways. The preferred pseudoephedrine strength of illicit manufacturers is 60 mg. The Special Agent further testified that he had never personally encountered nationally known brand names at illicit sites, such as Advil Cold and Sinus, Tylenol Allergy and Sinus, Tylenol Sinus, Tylenol Cold, Nyquil, Dayquil, Theraflu, BC Allergy Sinus Cold or Alka Seltzer.

By written declaration, a DEA Diversion Investigator contrasted the ''traditional'' market for list I chemicals with what DEA has termed the ''gray market'' for these products. The traditional market, characterized by a short distribution chain from manufacturer to distributor to retailer, typically includes large chain grocery stores, chain pharmacies, large convenience stores and large discount stores. The gray market is characterized by additional layers of distribution and includes such non-traditional retailers as small convenience stores, gas stations and other retail establishments where customers do not usually purchase over-the-counter medications. These non-traditional retailers typically sell higher-strength products in larger package sizes, such as 100 or 120 count bottles of 60 mg. pseudoephedrine. The Diversion Investigator also identified the off-name brands found in disproportionate numbers during clandestine laboratory seizures. These included Max Brand, Mini Two Way, MiniThin and Action-Pseudo products.

Max Brand Pseudo 60s has previously been identified by DEA as the ''precursor product predominantly encountered and seized at clandestine methamphetamine laboratories'' and convenience stores are the ''primary source'' for the purchase of ''Max Brand products, which are the preferred brand for use by illicit methamphetamine producers * * *'' See, Express Wholesale, 69 FR 62086, 62087 (2004); see also, RAM, Inc. d/b/a American Wholesale Distribution Corp., 70 FR 11693 (2005).

A Group Supervisor from DEA's Nashville office testified that, in his view, the area's demand for pseudoephedrine and ephedrine for legitimate medical purposes, did not justify the supply.

Mr. Elkhayyat testified at the hearing that he and his wife were Elk's sole shareholders and the company sold candy, tobacco and other sundry items on a wholesale basis to area convenience stores, service stations and small restaurants. Judge Randall found Mr. Elkhayyat credibly testified that, prior to Tri-State's application, he had been a retail grocer and was unaware that a license was needed to distribute ephedrine and pseudoephedrine products on a wholesale basis.

After selling Tri-State to H & R in 2001, the Elkhayyats moved to Memphis and began their wholesale distribution business under Elk International's corporate charter. Mr. Elkhayyat testified that he had no interest in selling ''Max Brand or Mini Thins'' and would abide by DEA regulations. He testified the company would sell only name brand products such as Advil Cold and Sinus, Tylenol Cold and Sinus, Nyquil, Dayquil, Theraflu, Alka Seltzer, Benadryl and Vick's Cough Medicine, which the Special Agent had testified were rarely, if ever, found at clandestine laboratories.

By declaration, the Government introduced evidence regarding ephedrine and pseudoephedrine sales and the convenience store market from Mr. Jonathan Robbin, a consultant in marketing information systems and

databases, who is an expert in statistical analysis and quantitative marketing research.

Using the 1997 United States Economic Census of Retail Trade, Mr. Robbin tabulated data indicating that over 97% of all sales of non-prescription drug products, including non-prescription cough, cold and nasal congestion remedies, occur in drug stores and pharmacies, supermarkets, large discount merchandisers, mail-order houses and through electronic shopping. He characterized these five retail industries as the traditional marketplace where such goods are purchased by ordinary customers.

Analyzing national sales data specific to over-the-counter, non-prescription drugs containing pseudoephedrine, Mr. Robbin's research and analysis showed that a very small percentage of the sales of such goods occur in convenience stores; only about 2.6% of the Health and Beauty Care category of merchandise or 0.05% of total in-store (non-gasoline) sales. He determined that the normal expected retail sales of pseudoephedrine tablets in a convenience store would range between $10.00 and $30.00 per month, with an average monthly sales figure of about $20.00 and that sales of more than $100.00 in a month would be expected to occur in a random sampling about once in one million to the tenth power.

According to Mr. Robbin, ''[h]alf of the Tennessee stores analyzed showed implied sales over ten times expectation, with ten of them over twenty times expectation.'' These differences were extremely significant statistically and in his expert opinion, small Tennessee convenience stores were not selling pseudoephedrine and ephedrine products ''for their intended purpose as non-prescription drugs'' and the assumption that they were supplying the gray market was statistically supported ''many times over* * *''

Pursuant to 21 U.S.C. 823(h), the Deputy Administrator may deny an application for a Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest, as determined under that section. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety;

As with the public interest analysis for practitioners nad pharmacies pursuant to subsection (f) of section 823, these factors are considered in the disjunctive, the Deputy Administrator may rely on any one or combination of factors, and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See*, *e.g.,* Direct Wholesale, 69 FR 11654 (2004); Energy Outlet, 64 FR 14269 (1999); Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

As to factor one, maintenance by the applicant of effective controls against diversion, the Deputy Administrator agrees with Judge Randall that Elk's proposed physical security is adequate. With regard to Elk's proposed monitoring and business practices, Judge Randall noted the company's proposed practices ''seemed adequate'' and that, while the company had yet to prove the viability of these practices, she concluded ''such a lack would support close scrutiny by DEA, but not* * * outright denial.'' Judge Randall therefore concluded that factor one weighed in favor of registration.

The Deputy Administrator disagrees with that condition. As noted by the Government in its Objections, even if Respondent was able to monitor sales to gray market customers for excessive amonts, DEA has previously found that grey market retailers supplying chemicals for illicit use regularly acquire their product from multiple distributors in order to mask their acquisition of large amounts of listed chemicals. See, Titan Wholesale, Inc., 70 FR 12,727 92005). Thus, so long as Elk was distributing wholesale to this suspect market, even sincere efforts by Respondent to self-regulate its customers would not thwart gray market retailers from obtaining precursor chemicals from other distributors, as well as from Elk, and then reselling them for illicit purposes.

Further, a policy of DEA Headquarters directing field offices to provide individual registrants extraordinary scrutiny and monitoring, simply to justify an otherwise unwarranted registration, would ultimately have an adverse cumulative impact on the execution of DEA's mission, given the limited assets and extraordinary demands placed upon its personnel in the field.

In sum, the Deputy Administrator concludes that factor one weighs against granting Respondent's application, primarily because of its intent to participate in the gray market, See, Titan Wholesale, Inc., *supra,* 70 FR 12727; TNT Distributors, Inc., 70 FR 12729 (2005).

With regard to factor two, Respondent's compliance with applicable Federal, state and local law, Judge Randall concluded this factor weights in favor of registration. In doing so, she rejected the Government's argument that Respondent's owners, while doing business as Tri-State, had distributed brand name listed chemical products without a registration, thus violating law and regulations. Because the products were only found by the Diversion Investigator stocked on Tri-State's shelves and no direct evidence was introduced showing they had been resold, Judge Randall concluded there was insufficient evidence to show the Elkhayyat's had, in fact, distributed the listed chemicals products, thus triggering a registration requirement.

The Government objected to that conclusion, arguing Tri-State was actively in business as a wholesale at the time of the pre-registration inspection and that all of the products at its unregistered facility, including listed chemicals, were there for distribution to retail customers, not merely for storage. The Deputy Administrator agrees with the Government that, under the facts of this case, it is appropriate to infer the Elkhayyats, while operating Tri-State, distributed, attempted to distribute or possessed with the intent to distribute, list I chemicals without a requisite registration. However, the Deputy Administrator considers this apparent non-compliance mitigated by Mr. Elkhayyat's then-lack of knowledge as to what products actually contained listed chemicals and his cooperation in immediately returning the items to his out of state supplier.

More significant for factor two and factor five as well, the Deputy Administrator notes that state legislatures throughout the United States are actively considering legislation designed to impede the ready availability of precursor chemicals. Many of these proposals are similar to legislation enacted by the State of Oklahoma, titled the ''Oklahoma Methamphetamine Reduction Act of 2004.'' Under that measure, as of April 6, 2004, pseudoephedrine tablets were designated as Schedule V controlled

substances and may be sold only from licensed pharmacies within that state.

As a result, it is prohibited in Oklahoma to sell these products from gray market establishments, such as independent convenience stores, which have contributed so much to the scourage of methamphetamine abuse, See, e.g., Express Wholesale, *supra,* 69 FR at 62809 [denying DEA registration to an Oklahoma gray market distributor, in part, because of new state restrictions].

A review of data for 2004 reveals the Oklahoma law has resulted in an apparent reduction in the number of seizures involving clandestine methamphetamine laboratories in the state. These developments are encouraging and represent an important step in the ongoing battle to curb methamphetamine abuse in the United States. State legislation, such as Oklahoma's, reflects a positive trend and growing recognition that the diversion of precursor chemicals through the gray market insidiously impacts public health and safety. See, e.g., Tysa Management, d/b/a Osmani Lucky Wholesale, 70 FR 12732, 12734 (2005) [denying registration to intended Oklahoma distributor, in part, on basis of enactment of recent state legislation]; Express Wholesale, *supra,* 69 FR at 62089.

Of particular consequence to Elk and similarly situated Tennessee applicants and registrants, after Judge Randall signed her Opinion and Recommended Ruling, legislation was enacted by the State of Tennessee that is patterned after the Oklahoma initiative. That legislation (Senate Bill 2318/House Bill 2334), collectively known as the ''Meth-Free Tennessee Act of 2005,'' was signed into law by Governor Phil Bredeson on March 31, 2005, and makes it unlawful for establishments, other than licensed pharmacies, to sell tableted pseudoephedrine products in Tennessee after April 1, 2005. This includes both name brand and off-name brand products.

Accordingly, Respondent's entire intended customer base is now prohibited by state law from selling the pseudoephedrine products Elk seeks DEA registration to distribute. Thus, factor two weighs heavily against registration. See, Tysa Management, d/b/a Osmani Lucky Wholesale, *supra*, 70 FR at 12734; Express Wholesale, *supra*, 69 FR at 62089.

As to factor three, any prior conviction record relating to listed chemicals or controlled substances, the Deputy Administrator concurs with Judge Randall that there is no evidence or any prior convictions of Respondent or its owners related to listed chemicals or controlled substances. Accordingly, this factor weighs in favor of registration.

With regard to factor four, the applicant's past experience in distributing listed chemicals, Judge Randall found that while Elk's owners had no prior experience in manufacturing or distributing these products, Mr. Elkhyyat had extensive retail grocery experience and had taken steps to improve his knowledge in this area. However, recognizing that lack of experience in handling list I chemicals has been a factor in prior DEA final orders denying registration, Judge Randall found this factor weighted against registration in a ''close call.'' The Deputy Administrator agrees. See, e.g., Direct Wholesale, *supra,* 69 FR 11654; ANM Wholesale, 69 FR 116522 (2004); Xtreme Enterprises, Inc., 67 FR 76195 (2002).

With regard to factor five, other factors relevant to public health and safety, Judge Randall acknowledged DEA precedent denying registration to grey market distributors under that factor, in particular, Xtreme Enterprises, Inc., *supra,* 67 FR 76195. In that case there was no evidence the applicant's owner had failed to comply with Federal, State or local law or had any prior convictions relating to controlled substance or chemicals. Further, she was willing to provide adequate security for the listed chemicals.

However, the Deputy Administrator found Xtreme's owner had only a rudimentary knowledge of what would constitute a suspicious order and no experience in the manufacture or distribution of listed chemicals. Most significant for this and similar cases, the Deputy Administrator also found that ''[v]irtually all of the Respondent's customers, consisting of gas station and convenience stores, are considered part of the grey market, in which large amounts of listed chemicals are diverted to the illicit manufacture of amphetamine and methamphetamine.'' Xtreme Enterprises, Inc., *supra,* 67 FR at 76197.

However, in her Opinion and Recommended Ruling, Judge Randall distinguished the facts of Xtreme Enterprises from this matter. In Xtreme, the respondent's supplier had received two warning letters from DEA that its product had been found in situations indicating their use in illicit methamphetamine manufacturing. Additionally, the applicant had received requests for list I chemicals in packaging forms that were not normally seen in traditional retail establishments.

In contrast, Judge Randall found Respondent in this case only intended to distribute name brand products and did not intend to distribute Max Brand, the precursor product most favored by illicit manufacturers. Based on these distinctions, Judge Randall concluded Elk's intent to distribute listed chemicals to the gray market did not ''weigh as heavily'' under factor five as it did against Xtreme Enterprises.

DEA has expansively applied the analysis of Xtreme Enterprises to a multitude of applicants seeking to do business in the gray market. *See e.g.,* Express Wholesale, *supra,* 69 FR 624086; Value Wholesale, 69 FR 58548 (2004); K & Z Enterprises, Inc., 69 FR 5175 (2004); William E. ''Bill'' Smith d/b/a B & B Wholesale, 69 FR 2259 (2004); Branex Incorporated, *supra,* 69 FR 8682; Shop It for Profit. 69 FR 1311 (2003); Shani Distributors, 68 FR 62324 (2003).

As in those cases, the Elkhayyats' lack of criminal records, previous general compliance with the law and regulations and their professed willingness to comply with regulations and guard against diversion, are far outweighed by their intent to sell ephedrine and pseudoephedrine, almost exclusively, in the gray market.

This reasoning has also been consistently applied by the Deputy Administrator in a series of final orders published after Judge Randall issued her Opinion and Recommended Ruling in this matter. *See,* TNT Distributors, Inc., *supra,* 70 FR 12729; Titan Wholesale, Inc., *supra,* 70 FR 1227; RAM, Inc. d/b/a American Wholesale Distribution Corp., *supra,* 70 FR 11693; Al-Alousi, Inc., 70 FR 3561 (2005); Volusia Wholesale, *supra,* 69 FR 69409; Prachi Enterprises, Inc., *supra,* 69 FR 69407; CWK Enterprises, Inc., 69 FR 69400 (2004); J & S Distributors, 69 FR 62089 (2004); Express Wholesale, *supra,* 69 FR 62086; Absolute Distributing, Inc., 69 FR 62078 (2004).

In any event, Judge Randall's reason for not giving Xtreme Enterprises more weight in this matter, i.e., Respondent's intent to carry only brand name products, has been mooted by Tennessee's new requirement that all pill and tablet pseudoephedrine products, including those marketed under traditional brand names, be sold only through registered pharmacies. As this statute, addressed more fully under factor two, effectively bars distribution of these products though Tennessee's gray market establishments, it is also relevant under factor five and weighs heavily against Respondent's registration.

The Deputy Administrator also notes with concern Mr. Elkhayyat's initially

professed willingness to sell his customers whatever products they wanted and his apparent lack of candidness with investigators, when he failed to reveal that his former company had applied for registration to distribute listed chemicals.

Finally, as recommended by Judge Randall, due to the apparent lack of safety associated with the use of phenylpropanolamine, factor five is also relevant to Elk's proposal to distribute that product. DEA has previously determined that such a request constitutes a ground under factor five for denial of an application for registration. *See* J & S Distributors, *supra,* 69 FR 62089; Gazaly Trading, *supra,* 69 FR 22561; William E. ''Bill'' Smith d/b/a B & B Wholesale, *supra,* 69 FR 22559; Shani Distributors, *supra,* 68 FR 62324.

Based on the foregoing, the Deputy Administrator concludes that granting Respondent's pending application would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that the pending application for a DEA Certificate of Registration, previously submitted by Elk International, Inc., d.b.a. Tri-City Wholesale, be, and it hereby is, denied. This order is effective June 9, 2005.

Dated: May 2, 2005.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 05–5]

James Marvin Goodrich, M.D. Revocation of Registration

On October 24, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to James Marvin Goodrich, M.D. (Dr. Goodrich) of Springfield, Illinois, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BG0644244, as a practitioner, pursuant to 21 U.S.C. 824(a)(3) and (a)(4) and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f). As a basis for revocation, the Order to Show Cause alleged, in part, that Dr. Goodrich's Illinois state license to handle controlled substances had expired and accordingly, he was not authorized to handle controlled substances in Illinois, the state in which he is registered.

On November 8, 2004, Dr. Goodrich, through counsel, timely requested a hearing in this matter. On November 15, 2004, Administrative Law Judge Gail A. Randall (Judge Randall) issued the Government, as well as Dr. Goodrich, an Order for Prehearing Statements.

In lieu of filing a prehearing statement, the Government filed a Motion for Summary Disposition, asserting that Dr. Goodrich's Illinois controlled substance license had expired without being renewed and he was without authorization to handle controlled substances in that State. As a result, the Government argued that further proceedings in the matter were not required. Attached to the Government's motion was a copy of a Certification of Licensure, issued on November 18, 2004, by the Illinois Department of Financial and Professional Regulation, Division of Professional Regulation. That document showed Dr. Goodrich's Licensed Physician Controlled Substances, License No. 336054605, had expired on July 31, 2002, without being renewed.

On November 30, 2004, Judge Randall issue an Order and Notice providing Dr. Goodrich an opportunity to respond to the Government's motion. On December 21, 2004, counsel for Dr. Goodrich filed a response in which he acknowledged Respondent was without authority to handle controlled substances in Illinois as a result of the failure to renew his state controlled sustance license. Counsel further stated they would not object to disposition based on that ground.

December 29, 2004, Judge Randall issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Randall granted the Government's Motion for Summary Disposition, finding Dr. Goodrich lacked authorization to handle controlled substances in Illinois, the jurisdiction in which he is registered. Judge Randall recommended that Dr. Goodrich's DEA registration be revoked on the basis that he lacks state authority to handle controlled substances.

No exceptions were filed by either party to the Opinion and Recommended Decision and on February 2, 2005, the record of these proceedings was transmitted to the Office of the DEA Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that Dr. Goodrich holds DEA Certificate of Registration, BG0644244, as a practitioner. The Deputy Administrator further finds that Dr. Goodrich's Illinois controlled substance license expired on July 31, 2002, and there is no evidence in the record indicating it has been renewed or reinstated. Therefore, the Deputy Administrator finds Dr. Goodrich is currently not licensed to handle controlled substances in that State.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Kanwaljit S. Serai, M.D., 68 FR 48,943 (2003); Dominick a Ricci, M.D., 58 FR 51,104 (1993); Bobby Watts, M.D., 53 FR 11,919 (1988).

Here, it is clear Dr. Goodrich is not currently licensed to handle controlled substances in Illinois, where he is registered with DEA. Therefore, he is not entitled to maintain that registration. Because Dr. Goodrich is not entitled to a DEA registration in Illinois due to lack of state authorization to handle controlled substances, the Deputy Administrator concludes it is unnecessary to address whether Dr. Goodrich's registration should be revoked based upon the remaining public interest grounds asserted in the Order to Show Cause. *See* Fereida Walker-Graham, M.D., 68 FR 24,761 (2003); Nathaniel-Aikens-Afful, M.D., 62 FR 16,871 (1997); Sam F. Moore, D.V.M., 58 FR 14,428 (1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificte of Registration, BG0644244, issued to James Marvin Goodrich, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective June 9, 2005.

Dated: May 2, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–9250 Filed 5–9–05; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Jay Enterprises of Spartanburg, Inc.; Denial of Registration

On September 28, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jay Enterprises of Spartanburg, Inc. (Jay Enterprises/Respondent) proposing to deny its January 15, 2004, application for DEA Certificate of Registration as a distributor of list I chemicals. The Order to Show Cause alleged that granting Respondent's application would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(h). The Order also notified Jay Enterprises that should no request for a hearing be filed within 30 days, it hearing right would be deemed waived.

According to the DEA investigative file, the Order to Show Cause was sent by certified mail to Respondent at its address of record at 136 Belvedere Drive, Spartanburg, South Carolina 29301. A notice of receipt was signed on behalf of Jay Enterprises and returned to DEA on October 26, 2004. DEA has not received a request for a hearing or any other reply from Jay Enterprises or anyone purporting to represent the company in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days have passed since delivery of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Jay Enterprises has waived its hearing right. See Aqui Enterprises, 67 FR 12,576 (2002). After considering relevant material from the investigative file, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1309.53(c) and (d) and 1316.67. The Deputy Administrator finds as follows.

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals which are legitimately manufactured and distributed in single entity and combination forms as decongestants and bronchodilators, respectively. Both are used as precursor chemicals in the illicit manufacture of methamphetamine and amphetamine.

Phenylpropanolamine, also a list I chemical, is a legitimately manufactured and distributed product used to provide relief of symptoms from inflammation of the sinus, nasal and upper respiratory tract tissues and for weight control. Phenylpropanolamine is also used as a precursor in the illicit manufacture of methamphetamine and amphetamine. In November 2000, the United States Food and Drug Administration (FDA) issued a public health advisory requesting that drug companies discontinue marketing products containing phenylpropanolamine and that consumers not use them, due to risk of hemorrhagic stroke. As a result, many pharmaceutical companies have stopped using phenylpropanolamine as an active ingredient and, based on FDA's findings, DEA has determined that a request to distribute phenylpropanolamine constitutes a basis for denial of an application for DEA registration. See, e.g., Gazaly Trading, 69 FR 22561 (2004); Shani Distributors, 68 FR 62234 (2003).

As noted in previous DEA final orders, methamphetamine is an extremely potent central nervous system stimulant and its abuse is a persistent and growing problem in the United States. *See, e.g.*, Direct Wholesale, 69 FR 11654 (2004); Branex, Inc., 69 FR 8682 (2004); Denver Wholesale, 67 FR 99986 (2002); Yemen Wholesale Tobacco and Candy Supply, Inc., 67 Fr 9997 (2002).

The Deputy Administrator's review of the investigative file reveals that on or about January 15, 2004, an application was submitted by the President and sole employee of Jay Enterprises, Mr. Desai S. Devangkumar, seeking registration to distribute ephedrine, pseudoephedrine and phenylpropanolamine listed chemical products. In connection with the pending application, an on-site pre-registration investigation was conducted by DEA Diversion Investigators at the proposed registered location, which turned out to be Mr. Devangkumar's residence. There were no security measures in place there and he stated he would store the listed chemicals in a rental unit at a nearby storage facility. Neither location afforded adequate physical security for storage of listed chemicals, as required by 21 CFR 1309.71.

Mr. Devangkumar advised investigators his company distributed sundries to retailers and that customers had requested that it carry list I chemical products. Other than the two brands which were specifically requested by customers, ''Max Brand'' and ''Mini-Thins,'' he was unable to identify any other products he intended to carry if registered. Mr. Devangkamur also had no prior experience with list I chemical and was unaware they were used as precursors in illicitly manufacturing methamphetamine. While unable to provide a list of specific customers, Mr. Devangkumar advised he planned to sell list I chemical products to area convenience stores and truck stops.

DEA is aware that small illicit laboratories operate with listed chemical products often procured, legally or illegally, from non-traditional retailers of over-the-counter drug products, such as gas stations and convenience stores. Some retailers acquire product from multiple distributors to mask their acquisition of large amounts of listed chemicals. In addition, some individuals utilize sham corporations or fraudulent records to establish a commercial identity in order to acquire listed chemicals.

Throughout the Southeastern United States, there has been a consistent increase in the number of illicit laboratories and enforcement teams continue to note a trend toward smaller capacity laboratories. This is likely due to the ease of concealment associated with small laboratories, which continue to dominate seizures and cleanup responses.

DEA knows by experience that there exists a ''gray market'' in which certain high strength, high quantity pseudoephedrine and ephedrine products are distributed only to convenience stores and gas stations, from where they have a high incidence of diversion. These grey market products are rarely sold in large discount stores, retail pharmacies or grocery stores, where sales of therapeutic over-the-counter drugs predominate.

Max Brand has previously been identified by DEA as the ''precursor product predominantly encountered and seized at clandestine methamphetamine laboratories'' and that ''[c]onvenience stores are the primary source for the purchase of the Max Brand products, which are the preferred brand for use by illicit methamphetamine producers, and users.'' Express Wholesale, 69 FR 62086, 62087 (2004); *see also,* RAM, Inc. d/b/a American Wholesale Distribution Corp., 70 FR 11693, 11694 (2005). Similarly, Mini-Thins has been identified by DEA as a ''prime product'' in this gray market industry. *See, e.g.*, Prachi Enterprises, Inc., 69 FR 69407, 69408 (2004).

As addressed in previous final orders, DEA knows from industry data, market

studies and statistical analysis that over 90% of over-the-counter drug remedies are sold in drug stores, supermarket chains and ''big box'' discount retailers. Less than one percent of cough and cold remedies are sold in gas stations or convenience stores. Studies have indicated that most convenience stores could not be expected to sell more than $20.00 to $40.00 worth of products containing pseudoephedrine per month. The expected sales of ephedrine products are known to be even smaller. Furthermore, convenience stores handling gray market products often order more product than what is required for the legitimate market and obtain chemical products from multiple distributors. See, e.g., RAM, Inc. d/b/a American Wholesale Distribution Corp., supra, 70 FR 11693; Volusia Wholesale, 69 FR 69409 (2004).

Pursuant to 21 U.S.C. 823(h), the Deputy Administrator may deny an application for a Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires that the following factors be considered in determining the public interest;

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. See, e.g., Energy Outlet, 64 FR 14269 (1999). See also, Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

The Deputy Administrator finds factor one, four and five relevant to the pending application for registration.

As to factor one, maintenance of effective controls against diversion of listed chemicals into other than legitimate channels, the DEA pre-registration inspection documented inadequate security at the proposed registered location, a personal residence. See, e.g., John E. McRae d/b/a J & H Wholesale, 69 FR 51480 (2004). Mr. Devangkumar then proposed storing listed chemical products in a rental unit at a storage facility; which investigators reported as also having little to no security. Accordingly, this factor weights against granting Respondent's application.

With regard to factor four, the applicant's past experience in the distribution of chemicals, the Deputy Administrator finds this factor relevant based on Mr. Devangkumar's lack of knowledge and experience regarding the laws and regulations governing handling of list I chemical products. In prior DEA decisions, this lack of experience in handling list I chemical products has been a factor in denying pending applications for registration. See, e.g., Direct Wholesale, supra, 69 FR 11654; ANM Wholesale, 69 FR 11652 (2004); Xtreme Enterprises, Inc., 67 FR 76195 (2002).

With regard to factor five, other factors relevant to and consistent with the public safety, the Deputy Administrator finds this factor weighs heavily against granting the application. Unlawful methamphetamine use is a growing public health and safety concern throughout the United States and the Southeast in particular. Ephedrine and pseudoephedrine are precursor products needed to manufacture methamphetamine and operators of illicit methamphetamine laboratories regularly acquire the precursor products needed to manufacture the drug from convenience stores and gas stations, which have been identified as constituting the gray market for list I chemical products. It is apparent that Jay Enterprises intends on being a participant in this market.

While there are no specific prohibitions under the Controlled Substances Act regarding the sale of listed chemical products to these entities, DEA has nevertheless found these establishments serve as sources for the diversion of large amounts of listed chemical products, See, e.g., ANM Wholesale, 69 FR 11,652 (2004); Xtreme Enterprises, Inc., supra, 67 FR 76195; K.V.M. Enterprises, 67 FR 70968 (2002); Sinbad Distributing, 67 FR 10232 (2002).

The Deputy Administrator has previously found that many considerations weighed heavily against registering a distributor of list I chemicals because, ''[v]irtually all of the Respondent's customers, consisting of gas station and convenience stores, are considered part of the gray market, in which large amounts of listed chemicals are diverted to the illicit manufacture of amphetamine and methamphetamine.'' Xtreme Enterprises, Inc., supra, 67 FR at 76197. As in Xtreme Enterprises, Inc., Mr. Devangkumar's lack of a criminal record and any intent to comply with the law and regulations are far outweighed by his lack of experience and the company's intent to sell ephedrine and pseudoephedrine exclusively to the gray market. Because Respondent's customers have also requested it provide them specific products identified as the preferred precursors for illicit manufacturing, the heightened risk of diversion should Respondent's application be granted is both obvious and unacceptable.

The reasoning of Xtreme Enterprises has been consistently applied by the Deputy Administrator in a series of final orders denying applications for registration. See, TNT Distributors, Inc., 70 FR 12729 (2005); Titan Wholesale, Inc., supra, 70 FR 12,727; RAM, Inc. d/b/a American Wholesale Distribution Corp., supra, 70 FR 11693; Al-Alousi, Inc., 70 FR 3561 (2005); Volusia Wholesale, supra, 69 FR 69409; Prachi Enterprises, Inc., supra, 69 FR 69407; CWK Enterprises, Inc., 69 FR 69400 (2004); J & S Distributors, 69 FR 62089 (2004); Express Wholesale, supra, 69 FR 62086; Absolute Distributing, Inc., 69 FR 62078 (2004).

Finally, due to the apparent lack of safety associated with the use of phenylpropanolamine, factor five is also relevant to Respondent's proposal to distribute that product. DEA has previously determined such a request constitutes a ground under factor five for denial of an application for registration. See J & S Distributors, supra, 69 FR 62089; Gazaly Trading, supra, 69 FR 22561; William E. ''Bill'' Smith d/b/a B & B Wholesale, 69 FR 22559 (2004); Shani Distributors, supra, 68 FR 62324.

Based on the foregoing, the Deputy Administrator concludes that granting the pending application would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders the pending application for DEA Certificate of Registration, previously submitted by Jay Enterprises of Spartanburg, Inc., be, and it hereby is denied. This order is effective June 9, 2005.

Dated: May 2, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–9252 Filed 5–9–05; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Stephen K. Jones, M.D.; Denial of Registration

On November 10, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Stephen K. Jones, M.D. (Dr. Jones) who was notified of an opportunity to show cause as to why DEA should not deny his application for DEA Certificate Registration as a practitioner to handle controlled substances, pursuant to 21 U.S.C. 823 and 824.

The Order to Show Cause alleged in relevant part, that Dr. Jones was not licensed to practice medicine or handle controlled substances in Utah, the state in which he was applying for registration and intended to practice. Secondarily, the Order alleged Dr. Jones had previously been disciplined in Iowa, where he currently lives and practices, for personal drug abuse, signing a fraudulent prescription and diverting controlled substances. The Order to Show Cause also notified Dr. Jones that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Jones Residence at 3525 Mayfield Road, Iowa City, Iowa and to his proposed registered location in Salt Lake City, Utah. According to certified mail receipt records, the Order to Show Cause sent to his residence was received by Dr. Jones on December 10, 2004. DEA has not received a request for hearing or any other reply from Dr. Jones or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause to the applicant's home and address of record, and (2) no request for hearing having been received, concludes that Dr. Jones is deemed to have waived his wearing right. See David W. Linder, 67 FR 12,579 (2002). After considering material from the investigate file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that on July 2, 2004, Dr. Jones applied for DEA registration to handle Schedule II through IV controlled substances. His proposed registered address was at the LDS Hospital, 8th Avenue & C Street, Salt Lake City, Utah 84143. The application indicated Dr. Jones was previously disciplined by the Iowa Board of Medical Examiners which, in April 2004, had suspended his Iowa license to practice medicine for 30 days and placed it in a probationary status upon his completion of a two month residential treatment program for opioid dependency.

According to information in the investigative file, on July 27, 2004, a Diversion Investigator conducting an inquiry into Dr. Jones application was advised by the Utah Department of Commerce, Division of Occupational and Professional Licensing, that he did not hold a Utah Physician and Surgeon License or state Controlled Substance License. Further, there is no evidence before the Deputy Administrator showing that Dr. Jones has since been granted a license to practice medicine or handle controlled substance in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Rory Patrick Doyle, M.D., 69 FR 11,655 (2004); Dominick A. Ricci, M.D., 58 FR 51,104 (1993); Bobby Watts, M.D., 53 FR 11,919 (1988).

Here, it is clear Dr. Jones is not licensed to practice medicine in Utah, his state of applied-for-registration and practice, and he is not authorized to handle controlled substances in that jurisdiction. Therefore, is not entitled to a DEA registration in that state. As a result of the finding that Dr. Jones lacks state authorization to handle controlled substances in his state of applied-for-registration, the Deputy Administrator concludes it is unnecessary to address further whether his application should be denied based upon the public interest grounds asserted in the Order to Show Cause. See Samuel Silas Jackson, D.D.S., 67 FR 67,145 (2002); Nathaniel-Aikens-Afful, M.D., 62 FR 16,871 (1997); Sam F. Moore, D.V.M., 58 FR 14,428 (1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for DEA Certificate of Registration submitted by Stephen K. Jones, M.D., be, and it hereby is, denied. This order is effective June 9, 2005.

Dated: May 2, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–9246 Filed 5–9–05; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 04–56]

Michael J. Millette, M.D.; Revocation of Registration

On May 17, 2004, the Deputy Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause and Immediate Suspension of Registration to Michael J. Millette, M.D. (Dr. Millette) of Crystal Lake, Illinois and Elizabethtown, Kentucky. Dr. Millette was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificates of Registration, BM2349012 and BM8086236, as a practitioner, and deny any pending applications for renewal or modification of such registrations pursuant to 21 U.S.C. 823(f) and 824(a)(4) for reason that his continued registration would be inconsistent with the public interest. Dr. Millette was further notified that his DEA registrations were immediately suspended as an imminent danger to the public health and safety pursuant to 21 U.S.C. 824(d).

The Order to Show Cause and Immediate Suspension alleged in sum, that Dr. Millette was engaged in illegally prescribing controlled substances as part of a scheme in which controlled substances were dispensed by pharmacies, based on Internet prescriptions issued by Dr. Millette and associated physicians, based solely on their review of Internet questionnaires and without personal contact, examination or bona fide physician/patient relationships. Such prescriptions were not issued ''in the usual course of professional treatment'' and violated 21 CFR 1306.04 and 21 U.S.C. 841(a). This action was part of a nationwide enforcement operation by DEA titled Operation Pharmnet, which targeted online suppliers of prescription drugs, including owners, operators, pharmacists and doctors, who have illegally and unethically been marketing controlled substances via the Internet.

According to the investigative file, the Order to Show Cause and Immediate Suspension of Registration was personally served upon Dr. Millette by DEA Diversion Investigators on May 19, 2004. Through counsel, Dr. Millette filed a timely request for a hearing and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On June 22, 2004, Judge Bittner issued an Order for Prehearing Statements directing Dr. Millette to file a prehearing statement no later than August 4, 2004.

On August 18, 2004, as a result of Dr. Millette's failure to file a prehearing statement, Judge Bittner issued an Order Terminating Proceeding. In that Order, Judge Bittner concluded that by his inactivity, Dr. Millette had waived his right to a hearing and she ordered the proceeding terminated so it could be presented to the Deputy Administrator for issuance of a final order. On February 17, 2005, the investigative file was forwarded by the DEA Office of Chief Counsel to the Deputy Administrator for final agency action.

Accordingly, the Deputy Administrator finds that Dr. Millette is deemed to have waived his right to a hearing and after considering material from the investigative file in this matter, now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

While some consumers use Internet pharmacies for convenience, privacy and cost savings, others, including minor children, use the anonymity of the Internet to procure controlled substances illegally. The role of a legitimate online pharmacist is to dispense prescription medications and to counsel patients about the proper use of these medications, not to write or originate prescriptions. Internet profiteers are online suppliers of prescription drugs, be they owners, operators, pharmacists, or doctors, who illegally and unethically market controlled substances via the Internet for quick profit. Operation PHARMNET, which this Order to Show Cause and Immediate Suspension of Registration is a part of, is a nationwide action by the DEA to disrupt and dismantle this illegal and dangerous cyberspace threat to the public health and safety.

The Controlled Substances Act (CSA) establishes a ''closed system'' of distribution regulating the movement of controlled medications from their importation or manufacture, through delivery to the ultimate user patient, pursuant to a lawful order of a practitioner. The regulations implementing the CSA explicitly describe the parameters of a lawful prescription as follows: ''A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a).

Prescriptions issued not in the ''usual course of professional treatment'' are not ''prescriptions'' for purposes of the CSA and individuals issuing and filing such purported prescriptions are subject to the penalties for violating the CSA's controlled substances provisions.

In *United States* v. *Moore,* 423 U.S. 122 (1975), the Supreme Court held that, ''Implicit in the registration of a physician is the understanding that he is authorized only to act 'as a physician.' '' *Id.*, at 141. In Moore the court implicitly approved a jury instruction that acting ''as a physician'' is acting ''in the usual course of a professional practice and in accordance with a standard of medical practice generally recognized and accepted in the United States.'' *Id.,* at 138–139; see, *United States* v. *Norris,* 780 F.2d 1207, 1209 (5th Cir. 1986).

Responsible professional organizations have issued guidance in this area. The American Medical Association's guidance for physicians on the appropriate use of the Internet in prescribing medication (H–120.949 Guidance for Physicians on Internet Prescribing) states:

> Physicians who prescribe medications via the Internet shall establish, or have established, a valid patient-physician relationship, including, but not limited to, the following components. The physician shall:
>
> i. Obtain a reliable medical history and perform a physical examination of the patient, adequate to establish the diagnosis for which the drug is being prescribed and to identify underlying conditions and/or contraindications to the treatment recommended/provided;
>
> ii. have sufficient dialogue with the patient regarding treatment options and the risks and benefits of treatment(s);
>
> iii. as appropriate, follow up with the patient to assess the therapeutic outcome;
>
> iv. maintain a contemporaneous medical record that is readily available to the patient and, subject to the patient's consent, to his or her other health care professionals; and
>
> v. include the electronic prescription information as part of the patient medical record.

In April 2000, the Federation of State Medical Boards adopted Model Guidelines for the Appropriate Use of the Internet in Medical Practice, which state, in pertinent part, that:

> Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional (face-to-face) settings. Treatment, including issuing a prescription, based solely on an online questionnaire or consultation does not constitute an acceptable standard of care.

The CSA regulations establish certain responsibilities not only on individual practitioners who issue prescriptions for controlled substances, but also on pharmacists who fill them. A pharmacist's ''corresponding responsibility'' regarding the proper dispensing of controlled substances is explicitly described in 21 CFR 1306.04(a). It provides:

> A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacists who fills the prescription.

In an April 21, 2001, policy statement, entitled, Dispensing and Purchasing Controlled Substances Over the Internet, 66 FR 21,181 (2001), DEA delineated certain circumstances in which prescribing over the Internet is unlawful. The policy provides, inter alia, that a controlled substance should not be issued or dispensed unless there was a bona fide doctor/patient relationship. Such a relationship requires that the patient have a medical complaint, a medical history taken, a physical examination performed and some logical connection between the medical complaint, the medical history, the physical examination and the drug prescribed. The policy statement specifically explains that the completion of ''a questionnaire that is then reviewed by a doctor hired by the Internet pharmacy could not be considered the basis for a doctor/patient relationship * * *'' Id., at 21,182–83.

Rogue Internet pharmacies bypass a legitimate doctor-patient relationship, usually by use of a cursory and incomplete online questionnaire or perfunctory telephone ''consult'' with a doctor, who usually has a contractual arrangement with the online pharmacy and is often paid on the basis of prescription issued. The Food and Drug Administration (FDA) considers the questionnaire, in lieu of face-to-face interaction, to be a practice that undermines safeguards of direct medical supervision and amounts to substandard medical care. See U.S. Food and Drug Administration, Buying Medicines and Medical Products Online, General

FAQ's (*http://fda.gov/oc/buyonline/default.htm*).

The National Association of Boards of Pharmacy considers Internet pharmacies to be suspect if:

> They dispense prescription medications without requiring the consumer to mail in a prescription, and if they dispense prescription medications and do not contact the patient's prescriber to obtain a valid verbal prescription. Further, online pharmacies are suspect if they dispense prescription medications solely based upon the consumer completing an online questionnaire without the consumer having a pre-existing relationship with a prescriber and the benefit of an in-person physical examination. State boards of pharmacy, boards of medicine, the FDA, as well as the AMA, condemn this practice and consider it to be unprofessional.

See, National Association of Boards of Pharmacy, VIIPS Program, Most Frequently Asked Questions (*http://www.nabp.net/vipps/consumer/faq.asp*).

Rogue Internet pharmacies often use persons with limited or no knowledge of medications and standard pharmacy practices to fill prescriptions, do not advertise the availability of pharmacists for medication consultation, and focus on select medications, usually lifestyle, obesity and pain medications. Rogue Internet pharmacies generally do not protect the integrity of original faxed prescriptions by requiring that they be received directly from the prescriber (not the patient) and do not verify the authenticity of suspect prescriptions.

When the established safeguards of an authentic doctor-patient relationship are lacking, controlled substance prescription drugs can not only be misused, but also present potentially serious health risks to patients. Rogue Internet pharmacies facilitate the easy circumvention of legitimate medical practice. The FDA has stated:

> We know that adverse events are under-reported and we know from history that tolerating the sale of unproven, fraudulent, or adulterated drugs results in harm to the public health. It is reasonable to expect that the illegal sales of drugs over the Internet and the number of resulting injuries will increase as sales on the Internet grow. Without clear and effective law enforcement, violators will have not reason to stop their illegal practices. Unless we begin to act now, unlawful conduct and the resulting harm to consumers most likely will increase.

See U.S. Food and Drug Administration, Buying Medicines and Medical Products Online, General FAQs *(http://fda.gov/oc/buyonline/default.htm)*.

The Deputy Administrator finds Dr. Millette is currently registered with DEA as a practitioner under DEA Registrations BM2349012 and BM8086236 for Schedule II through V Controlled Substances. Their respective registered addresses are in Crystal Lake, Illinois and Elizabethtown, Kentucky and they expire on January 31, 2005 and January 31, 2006.

While Dr. Millette had a medical office, his main occupation was issuing controlled substance prescriptions to patients (hereinafter ''customers'') through the Internet company E.V.A. Global, Inc., and others doing business under a number of names. Customers accessing Web sites owned by these companies would complete cursory questionnaires and indicate what drugs were wanted and a method of payment. The questionnaires would be electronically forwarded to Dr. Millette and, based solely on the answers, he would issue prescriptions for controlled substance. These prescriptions would then be dispensed by participating pharmacies and sent to customers by such means as FedEx and the U.S. Postal Service.

On six different occasions between March 2003 and April 2004, DEA investigators acting in an undercover capacity went online to order controlled substances from five Internet company Web sites: Clickhererx.com, Activeliferx.com, Dietdrugs.com, IntegraRX.com and RX-MAX.com In each instance, investigators filled out online questionnaires and ordered drugs such as Bontril and Phentermine which are, respectively, Schedule III and IV controlled substances. These controlled substances were then shipped to the addresses provided and were received by investigators. Each of the labels on the bottles identified Dr. Millette as the prescribing physician. Other than initially filling out e-mail questionnaires, the investigators had no communications with Dr. Millette or the pharmacies before the prescriptions were issued or dispensed.

On March 9, 2004 Dr. Millette was interviewed by DEA Diversion Investigators. He admitted prescribing controlled substances over the Internet for several companies since October or November 2002 and estimated that on an average day, he issued a ''couple hundred'' prescriptions without any personal contact with the customers. Dr. Millette admitted being compensated based on the number of questionnaires he reviewed and records seized from E.V.A. Global, Inc. covering an eight month period during 2004, indicated Dr. Millette was paid over $175,000.00 for assisting in this scheme.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal of such registration, if she determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See* Henry J. Schwartz, Jr., M.D., 54 FR 16,422 (1989).

In this case, the Deputy Administrator finds factors two, four and five relevant to the determination of whether Dr. Millette's continued registration remains consistent with the public interest.

With regards to factor one, the recommendation of the appropriate state licensing board or professional disciplinary authority, there is no evidence in the investigative file that Dr. Millette has yet been the subject of a state disciplinary proceeding, nor is there evidence demonstrating that his state medical licenses or state controlled substance authorities are currently restricted in any form. Nevertheless, state licensure is a necessary, but not sufficient condition for registration, and therefore, this factor is not dispositive. *See e.g.,* Mario Avello, M.D., 70 FR 11,695 (2005); Wesley G. Harline, M.D., 65 FR 5,665–01 (2000); James C. LaJevic, D.M.D., 64 FR 55,962 (1999).

With regard to factors two and four, the Deputy Administrator finds the primary conduct at issue in this proceeding (*i.e.,* the unlawful prescribing and dispensing of controlled substance prescriptions for use by Internet customers) relates to Dr. Millette's experience in prescribing controlled substances, as well as his compliance with applicable state, federal, or local laws relating to controlled substances.

A DEA registration authorizes a physician to prescribe or dispense controlled substances only within the usual course of his or her professional practice. For a prescription to have been issued within the course of a practitioner's professional practice, it must have been written for a legitimate medical purpose within the context of a valid physician-patient relationship. *See* Mario Avello, M.D., *supra,* 70 FR 11,695; Mark Wade, M.D., 69 FR 7,018 (2004). Legally, there is absolutely no difference between the sale of an illicit drug on the street and the illicit dispensing of a licit drug by means of a physician's prescription. *See* Floyd A. Santner, M.D., 55 FR 37,581 (1990).

The Deputy Administrator concludes from a review of the record that Dr. Millette did not establish valid physician-patient relationships with the Internet customers to whom he prescribed controlled substances. DEA has previously found that prescriptions issued through Internet Web sites under these circumstances are not considered as having been issued in the usual course of medical practice, in violation of 21 CFR 1306.04 and has revoked DEA registrations of several physicians for participating in Internet prescribing schemes similar to or identical to that of Dr. Millette. *See,* Mario Avello, M.D., *supra,* 70 FR 11,695; Marvin L. Gibbs, Jr., M.D., 69 FR 11,658 (2004); Mark Wade, M.D., *supra,* 69 FR 7,018; Ernesto A. Cantu, M.D., 69 FR 7,014–02 (2004); Rick Joe Nelson, M.D., 66 FR 30,752 (2001).

Similarly, DEA has issued orders to show cause and subsequently revoked DEA registrations of pharmacies which have failed to fulfill their corresponding responsibilities in Internet prescribing operations similar to, or identical to that of Dr. Millette. *See,* EZRX, L.L.C. (EZRX), 69 FR 63,178 (2004); Prescriptiononline.com, 69 FR 5,583 (2004).

In the instant case, Dr. Millette and other practitioners associated with this Internet scheme, authorized prescriptions for controlled substances without the benefit of face-to-face physician-patient contact, physical exam or medical tests. Beyond a couple of rare direct e-mail contacts with customers, there is no information in the investigative file demonstrating that Dr. Millette and other issuing physicians even took time to corroborate responses to the questionnaires submitted by the customers. Here, it is clear the issuance of controlled substance prescriptions to persons whom Dr. Millette had not established a valid physician-patient relationship is a radical departure from the normal course of professional practice and he knowingly participated in this scheme.

With regard to factor three, Dr. Millette's conviction record under federal or state laws relating to the dispensing of controlled substances, the record does not reflect that he has yet been convicted of a crime related to controlled substances.

Regarding factor five, such other conduct which may threaten the public health or safety, the Deputy Administrator finds this factor particularly relevant.

The Deputy Administrator has previously expressed her deep concern about the increased risk of diversion which accompanies Internet controlled substance transactions. Given the nascent practice of cyber-distribution of controlled drugs to faceless individuals, where interaction between individuals is limited to information on a computer screen or credit card, it is virtually impossible to insure that these highly addictive, and sometimes dangerous products will reach the intended recipient, and if so, whether the person purchasing these products has an actual need for them. The ramifications of obtaining dangerous and highly addictive drugs with the ease of logging on to a computer and the use of a credit card are disturbing and immense, particularly when one considers the growing problem of the abuse of prescription drugs in the United States. *See,* Mario Avello, M.D., *supra,* 70 FR 11,695; EZRX, *supra,* 60 FR at 63,181; Mark Wade, M.D., *supra,* 69 FR 7,018.

The Deputy Administrator has also previously found that in a 2001 report, the National Clearinghouse for Alcohol and Drug Information estimated that 4 million Americans ages 12 and older had acknowledged misusing prescription drugs. That accounts for 2% to 4% of the population—a rate of abuse that has quadrupled since 1980. Prescription drug abuse—typically of painkillers, sedatives and mood-altering drugs—accounts for one-third of all illicit drug use in the United States. *See,* Mario Avello, M.D., *supra,* 70 FR 11,695; EZRX, *supra,* 69 FR at 63,181–82; Mark Wade, M.D., *supra,* 69 FR 7,018.

The Deputy Administrator finds that with respect to Internet transactions involving controlled substances, the horrific untold stories of drug abuse, addiction and treatment are the unintended, but foreseeable consequence of providing highly addictive drugs to the public without oversight. The closed system of distribution, brought about by the enactment of the Controlled Substances Act, is completely compromised when individuals can easily acquire controlled substances without regard to age or health status. Such lack of oversight describes Dr. Millette's practice of issuing prescriptions for controlled substances to indistinct Internet customers which were then filled by pharmacies participating in the scheme. Such conduct contributes to the abuse of controlled substances by Dr. Millette's customers and is relevant under factor five, further supporting revocation of his DEA Certificates of Registration.

Dr. Millette also continued prescribing to Internet customers after issuance of policy statements designed to assist licensed practitioners and pharmacists in the proper prescribing and dispensing of dangerous controlled drugs. Apparently motivated purely by financial gain, Dr. Millette has demonstrated a cavalier disregard for controlled substance laws and regulations and a disturbing indifference to the health and safety of individuals purchasing dangerous drugs through the Internet. Such lack of character and flaunting of the responsibilities inherent with a DEA registration show, in no uncertain terms, that Dr. Millette's continued registration would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificates of Registration BM2349012 and BM8086236, issued to Michael J. Millette, M.D., be, and hereby are, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registrations be, and they hereby are, denied. This order is effective June 9, 2005.

Dated: May 2, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–9249 Filed 5–9–05; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Thomas J. Mulhearn, III, M.D.; Revocation of Registration

On August 20, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Thomas J. Mulhearn, III, M.D. (Dr. Mulhearn) of Monroe,

Louisiana, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BM7570636 under 21 U.S.C. 824(a)(3) and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f). As a basis for revocation, the Order to Show Cause alleged that Dr. Mulhearn is not currently authorized to practice medicine or handle controlled substances in Louisiana, his state of registration and practice. The Order to Show Cause also notified Dr. Mulhearn that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Mulhearn at his registered address at 1207 Royal Avenue, Monroe, Louisiana 71201. However, that letter was unclaimed. It was then forwarded by the United States Postal Service to 91 Sidney Street, Apt. 315, Cambridge, Massachusetts 02139–4286, an address Dr. Mulhearn apparently provided postal authorities as a forwarding address. However, the forwarded letter was also unclaimed and postal authorities returned it to DEA. Additional efforts by DEA investigators to locate Dr. Mulhearn's whereabouts have also been unsuccessful. DEA has not received a request for hearing or any other reply from Dr. Mulhearn or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that: (1) Thirty days having passed since the attempted deliveries of the Order to Show Cause to the registrant's address of record and his forwarding address; (2) reasonable and good faith efforts to locate him have been unsuccessful; and (3) no request for hearing having been received, concludes that Dr. Mulhearn is deemed to have waived his hearing right. See James E. Thomas, M.D., 70 FR 3,564 (2005); Steven A. Barnes, M.D., 69 FR 51,474 (2004); David W. Linder, 67 FR 12,579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds Dr. Mulhearn currently possesses DEA Certificate of Registration BM7570636, as a practitioner, authorized to handle Schedule V controlled substances. The Deputy Administrator further finds that on November 29, 2003, the Louisiana State Board of Medical Examiners (Louisiana Board) issued an Order revoking Dr. Mulhearn's license to practice medicine in Louisiana. The revocation was based upon the Board's findings that Dr. Mulhearn committed professional misconduct due to personal substance abuse, failed to adhere to the conditions of a previous suspension and treatment program and was ''unable to practice medicine with reasonable skill and safety to patients because of mental illness or deficiency, and/or excessive use or abuse of drugs, including alcohol.''

The investigative file contains no evidence the Louisiana Board's Order has been stayed, modified or terminated or that Dr. Mulhearn's medical license has been reinstated. Therefore, the Deputy Administrator finds Dr. Mulhearn is not currently authorized to practice medicine in the State of Louisiana. As a result, it is reasonable to infer he is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Stephen J. Graham, M.D., 69 FR 11,661 (2004); Dominick A. Ricci, M.D., 58 FR 51,104 (1993); Bobby Watts, M.D., 53 FR 11,919 (1988).

Here, it is clear Dr. Mulhearn's medical license has been revoked and he is not currently licensed to handle controlled substances in Louisiana, where he is registered with DEA. Therefore, he is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BM7570636, issued to Thomas J. Mulhearn, III, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective June 9, 2005.

Dated: May 2, 2005.

Michele M. Leonart,

Deputy Administrator.

[FR Doc. 05–9245 Filed 5–9–05; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Net Wholesale; Revocation of Registration

On September 16, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Net Wholesale (Net) proposing to revoke its DEA Certificate of Registration 002918NOY as a distributor of List I chemicals pursuant to 21 U.S.C. 824(a)(4), on the ground that Net's continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(h). The order also notified Net that should no request for a hearing be filed within 30 days, its hearing right would be deemed waived.

According to the DEA investigative file, the Order to Show Cause was sent by certified mail to Net at its registered location at 3415 9th Avenue, Huntsville, Alabama 35805. That correspondence was returned to DEA as ''Unclaimed,'' indicating the addressee had twice failed to respond to postal service notices to pick up the letter. On November 4, 2004, the Order to Show Cause was re-mailed to Net at its registered address by regular first class mail. That correspondence has not been returned to DEA and is presumed to have been received. DEA has not received a request for a hearing or any other reply from Net or anyone purporting to represent the company in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days have passed since delivery of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Net has waived its hearing right. See Aqui Enterprises, 67 FR 12,576 (2002). After considering relevant material from the investigative file, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1309.53(c) and (d) and 1316.67. The Deputy Administrator finds as follows.

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are List I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Phenhylpropanolamine, also a List I chemical, is presently a legitimately manufactured and distributed product used to provide relief of the symptoms

resulting from irritation of the sinus, nasal and upper respiratory tract tissues, and is also used for weight control. Phenylpropanolamine is also a precursor chemical used in the illicit manufacture of methamphetamine and amphetamine.

As noted in previous DEA final orders, methamphetamine is an extremely potent central nervous system stimulant and its abuse is a persistent and growing problem in the United States. See e.g., Direct Wholesale, 69 FR 11,654 (2004); Branex, Inc., 69 FR 8,682 (2004); Yemen Wholesale Tobacco and Candy Supply, Inc., 67 FR 9,997 (2002); Denver Wholesale, 67 FR 99,986 (2002).

The Deputy Administrator's review of the investigative file reveals that on May 6, 1998, Net was initially granted DEA registration to distribute ephedrine, pseudoephedrine and phyenylpropanolamine List I chemical products. The company's registered location was 3415 9th Avenue, Huntsville, Alabama 35805 and its registration was last renewed on October 29, 2002. On October 17, 2003, prior to expiration of the current registration, the company's owner, Mr. Valiollah Geholamkhas, submitted an application for renewal. On October 20, 2003, he filed an application for modification of Net's registered location to 7000 North Parkway, Huntsville, Alabama 35810.

At the time of initial DEA registration, Net held a permit issued by the Alabama Board of Pharmacy (Alabama Board) as a distributor of List I chemicals. Despite a state requirement to maintain the permit, Net did not apply for renewal and its permit lapsed on December 31, 2001. Nevertheless, the company continued to operate and distribute List I chemicals within Alabama for approximately two more years.

On Net's current application for renewal of DEA registration, by checking ''N/A'' and failing to list a state license/permit number in response to Question 1(a), Mr. Geholamkhas represented that Alabama did not require a state license to distribute listed chemicals. This was a material falsification of an application in violation of 21 U.S.C. 843(a)(4)(A).

On January 22, 2004, when DEA Diversion Investigators conducted an inspection of Net's proposed new location at 7000 North Parkway, they discovered the company was already conducting business there, without notifying DEA and obtaining approval for the new and separate location, as required by 21 CFR 1309.23. A record review revealed that over a seven month period, during which Net lacked an Alabama permit and DEA authorization to conduct business at its new location, Net purchased over 45 million milligrams of combination ephedrine tablets. In subsequent correspondence with the Alabama Board, Mr. Geholamkhas admitted the company had distributed List I chemicals from its new location, without DEA approval.

In May 2004, the Alabama Board, issued its Order finding Net had sold and delivered List I chemical products during a period when it did not hold a current Alabama distributor permit. The Alabama Board imposed a $1000.00 fine and granted Net's application for a new state permit, but placed it on probationary status for three years.

Pursuant to 21 U.S.C. 824(a)(4) and 823(h), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications for renewal of such registration if she determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are considered in the disjunctive; the Deputy Administrator may on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. See, e.g., Energy Outlet, 64 FR 14,269 (1999); Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

The Deputy Administrator finds factors two and five relevant to Net's continued registration and its aplication for renewal.

As to factor two, compliance with Federal, State and local law, the record shows that for a two year period, Net distributed List I chemicals without a state permit that is required to engage in that activity. Further, for a period of at least seven months the company also violated Federal law and regulations by distributing List I chemicals from an unregistered location.

With regard to factor five, other factors relevant to and consistent with the public health and safety, the Deputy Adminstrator finds that in his application for renewal, Mr. Geholamkhas intentionally misrepresented the status of his authority to distribute List I chemicals under State law, when he falsely indicated that no state license or registration was required for his company to distribute those products in Alabama. This lack of candor, taken together with the registrant's disregard of law and regulations discussed above, makes questionable Net and its owner's commitment to the statutory and regulatory requirements designed to protect the public from diversion of listed chemicals. *See e.g.*, Seaside Pharmaceutical Co., 67 FR 35,459 (2001).

Finally, the Deputy Administrator also finds factor five relevant to the company's request to continue distributing phenylpropanolamine and the apparent lack of safety associated with the use of that product. DEA has previously determined that an applicant's request to distribute phenylpropanolamine constitutes a ground under factor five for denial of an application for registration. *See e.g.*, John E. McRae d/b/a J & H Wholesale, 69 FR 51,480 (2004); Direct Wholesale, 69 FR 11,654 (2004); ANM Wholesale, 69 FR 11,652 (2004); Shani Distributors, 68 FR 62,324 (2003).

Accordingly, the Deputy Administration of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration 002918NOY, previously issued to Net Wholesale, be, and it hereby is, revoked. The Deputy Administrator further orders that the pending applications for renewal and modification of the aforementioned registration be, and they hereby are, denied. This order is effective June 9, 2005.

Dated: May 2, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–9282 Filed 5–9–05; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

John S. Poulter, D.D.S; Revocation of Registration

On October 6, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John S. Poulter, D.D.S., (Dr. Poulter) notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certification of Registration BP7418177, pursuant to 21 U.S.C. 824(a)(2) and (4) and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f). The order alleged in relevant part that Dr. Poulter had been arrested and convicted of several offenses relating to the unlawful possession and use of controlled substances, including one felony county; that he had been subject to discplinary action by state licensing authorities and that he violated DEA record-keeping requirements. The order also notified Dr. Poulter that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Poulter at his registered location in North Salt Lake City, Utah. An undated, signed notice of receipt was returned to DEA on October 26, 2004, indicating the Order to Show Cause was received on his behalf. DEA has not received a request for hearing or any other reply from Dr. Poulter or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that: (1) 30 days having passed since the delivery of the Order to Show Cause at Dr. Poulter's registered address, and (2) no request for hearing having been received, concludes that Dr. Poulter is deemed to have waived his hearing right. *See* Samuel S. Jackson, D.D.S., 67 FR 65145 (2002); David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

Dr. Poulter is licensed under Utah law as a dentist and currently holds DEA Certificate of Registration BP7418177, as a practitioner, to handle schedule II through IV controlled substances. That registration, last renewed in March 2004, expires on March 31, 2007. He also holds a State of Utah Class IV Anesthesia Permit.

On October 29, 2001, Dr. Poulter was seen by witnesses parked in front of a 7-Eleven store in Woods Cross, Utah, apparently injecting himself in the arm with an unknown substance. Local law enforcement authorities were called and after failing a field sobriety test and lying about taking a non-controlled allergy medication, Dr. Poulter eventually admitted that a vial recovered from his car, labeled ''Lidocaine,'' actually contained Demerol, a schedule II narcotic controlled substance. He also admitted injecting himself with Demerol while seated in his automobile in front of the convenience store.

Dr. Poulter was charged inthe Second Judicial District Court of Davis County, Utah, Case No. 011701966, with Unlawful Possession or Use of a Controlled Substance, to wit: Demerol, a felony of the third degree. While that charge was pending trial, Dr. Poulter entered into a Diversion Agreement with the Utah Division of Occupational & Professional Licensing (DOPL). That agreement, which was to run for a period of five years, referred to ''several instances'' of improper personal use of Fentanyl (a schedule II narcotic controlled substance) and Demerol by Dr. Poulter. Among the agreement's terms, he was to abstain from personal use or possession of mood altering substances, including contolled substances or illicit drugs, and could not write, fill or otherwise order or unlawfully obtain controlled substances or mood altering substances for himself or his family.

On February 11, 2002, Dr. Poulter resolved the pending charge by entering into a Plea in Abeyance Agreement and Order with the prosecution. In exchange for a plea of guilty to the third degree felony of possession of a controlled substance, his plea would be held in abeyance by the court for up to 36 months. Dr. Poulter agreed not to violate any laws and to complete all requirements of a monitoring program for impaired professionals established by the state. Upon successful completion of all provisions of the Plea in Abeyance Agreement and Order, Dr. Poulter's guilty plea would be withdrawn and the charge dismissed. However, if he failed to successfully complete the terms of the agreement, the court would enter his plea of guilty and proceed to sentencing on the felony.

On September 30, 2003, while the terms of the Plea in Abeyance Agreement and Order were in effect, Dr. Poulter was involved in a single car traffic accident in Utah County, Utah. Responding officers and medical personnel found him ''incoherent and very confused'' and there were visible needle marks on this left arm and both hands. He was also wearing a fanny pack with a syringe protruding through it into his stomach area. A search of the pack and his car revealed a bloody used syringe and plastic container holding, among other items, quantities of Demerol and Fentanyl.

After injecting himself with drugs, Dr. Poulter had fallen asleep while driving, running his car off the road. He admitted buying Fentanyl over the Internet from a pharmacy in South Carolina and to obtaining the Demerol from a local hospital. A urine sample was taken and toxicology results corroborated the use of Demerol and Fentanyl.

On February 2, 2004, Dr. Poulter was charged in the Fourth Judicial District Court for Utah County, Utah, Case No. 031403926 FS, with two felony counts of possession or use of a controlled substance (Demerol and Fentanyl) and two misdemeanor counts of driving under the influence of alcohol and/or drugs and possession of drug paraphernalia.

Based on the conduct which was the basis for his September 2003 arrest, the Second Judicial District Court then found that Dr. Poulter has violated the terms of his Plea in Abeyance and Order and entered the guilty plea to the initial felony charge. On July 19, 2004, that court sentenced Dr. Poulter to an indeterminate term in state prison, not to exceed five years. However, it suspended that sentence on condition he serve four weekends in jail, perform 100 hours of community service and complete eighteen months of supervised probation.

On August 4, 2004, pursuant to a plea agreement, the Fourth Judicial District Court reduced the felony counts pending in that court to misdemeanors and sentenced him to 180 days in jail. However, the court suspended 136 days of that sentence and gave Dr. Poulter credit for 40 days spent in a rehabilitation clinic and one day of actual incarceration, essentially sentencing him to three days in jail, along with a year's probation.

On December 30, 2003, Dr. Poulter met with DOPL investigators to discuss his controlled substance record keeping practices. He admitted to multiple violations, including: Failure to maintain complete and accurate records of controlled substances received and dispensed, in violation of 21 U.S.C. 827(a)(3) and 21 CFR 1304.04 and 1304.21; failure to take initial and biennial inventories of controlled

substances, as required by 21 U.S.C. 827(a)(1) and 21 CFR 1304.11; and failure to preserve DEA order forms, as required by 21 CFR 1305.13.

Pursuant to an April 20, 2004, Stipulation and Order with DOPL, Dr. Poulter's state license to handle controlled substances and his dental license were revoked. However, the revocation orders were stayed as to both licenses and he was placed on probation for a term of five years. He was again ordered to abstain from personal use of controlled substances and his Anesthesia Permit was restricted to certain enumerated drugs.

Pursuant to 21 U.S.C. 824(a)(2), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications for such a certificate upon a finding that the registrant has been convicted of a felony related to controlled substances under state or Federal law. The Deputy Administrator finds Dr. Poulter has been convicted of a state felony relating to controlled substances and that revocation of his registration is appropriate under 21 U.S.C. 824(a)(2).

Additionally, the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications for such certificate if she determines that the issuance of such registration would be inconsistent with the public interest, as determined pursuant to 21 U.S.C. 823(a)(4) and 823(f). Section 823(f) requires the following factors be considered:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State law relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

As a threshold matter, it should be noted that the factors specified in section 823(f) are to be considered in the disjunctive: The Deputy Administrator may properly rely on any one or a combination of the factors, and give each factor the weight she deems appropriate, in determining whether a registration should be revoked or denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16,422 (1989).

With regard to the public interest factors of 21 U.S.C. 823(f), as to factor one, recommendation of the state licensing board/disciplinary authority, it is noted that the Utah DOPL took disciplinary action against Dr. Poulter. However, it allowed his state dental license and Anesthesia Permit to continue in a probationary status, with certain enumerated conditions. Accordingly, to the extent that Utah has allowed Dr. Poulter to continue practicing dentistry and handle some controlled substances, that weighs in favor of continued registration with DEA. However, ''inasmuch as State licensure is a necessary but not sufficient condition for a DEA registration * * * this factor is not dispositive.'' See Edson W. Redard, M.D., 65 FR 30616, 30619.

Regarding factors two, three, four and five, the conduct and actions discussed earlier which resulted in his felony and misdemeanor convictions are all relevant and adverse to Dr. Poulter. While the controlled substances were apparently being diverted for personal use and not for others, the record reflects that simple opportunities and leniency were extended Dr. Poulter by the state criminal justice system and Utah's licensing authorities. He had an excellent chance to address his substance abuse problems with minimal personal and professional impact. Nevertheless, despite crystal clear notice of the consequences of violating the Plea in Abeyance Agreement and the benefits of a rehabilitative and monitoring program for impaired professionals, Dr. Poulter threw away the opportunities afforded him.

Instead of getting his personal and professional life back on track, he chose to resume abusing controlled substances and whle doing so, endangered the public by operating a motor vehicle while under the influence of drugs. Through his inability to refrain from criminal and self-abusive behavior, Dr. Poulter has demonstrated poor judgment, questionable character and an inability to comply with the responsibilities of a DEA registrant.

In light of the foregoing, the Deputy Administrator finds that Dr. Poulter's registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BP7418177, previously issued to John S. Poulter, D.D.C., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective June 9, 2005.

Dated: May 2, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–9248 Filed 5–9–05; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Robert A. Smith, M.D.; Revocation of Registration

On September 29, 2004, the Deputy Administrator, Drug Enforcement Administration (DEA), issued an Order to Show Cause/Immediate Suspension of Registration to Robert A. Smith, M.D. (Dr. Smith) who was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AS2502284 under 21 U.S.C. 824(a)(4) and deny any pending applications for renewal or modification of that registration under 21 U.S.C. 823(f). Dr. Smith was further notified that his registration was being immediately suspended under 21 U.S.C. 824(d) as an imminent danger to the public health and safety.

The Order to Show Cause alleged in relevant part, that Dr. Smith diverted controlled substances for a substantial time by knowingly issuing fraudulent prescriptions to individuals, without a bona fide doctor-patient relationship or legitimate medical purpose. The Order to Show Cause also notified Dr. Smith that should not request for a hearing be filed within 30 days, his hearing right would be deemed waived.

On October 20, 2004, a DEA investigator personally served the Order to Show Cause/Immediate Suspension of Registration on Dr. Smith's attorney at Respondent's medical office in Philadelphia, Pennsylvania. Since that date, DEA has not received a request for a hearing or any other reply from Dr. Smith or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since personal delivery of the Order to Show Cause/Immediate Suspension of Registration to the registrant and (2) no request for hearing having been received, concludes that Dr. Smith is deemed to have waived his hearing right. See David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Smith is registered with DEA as a practitioner under Certificate of Registration AS2502284 with a registered location at 1420 Locust Street, Suite 200, Philadelphia, Pennsylvania. In May 2003, DEA began investigating Dr. Smith as a result of complaints from area pharmacies that were encountering large numbers of young, seemingly healthy individuals, filling prescriptions issued by Dr. Smith for OxyContin and Percocet, both schedule II controlled substances. These individuals paid cash for their prescriptions and appeared to be traveling long distances to have them prescribed and filled.

On June 27, 2003, Independence Blue Cross (IBC) insurance investigators interviewed IBC beneficiary ''H.B.'' regarding prescriptions for OcyContin, Percocet and Methadone which had been issued by Dr. Smith under her name and insurance data. H.B. had never seen or heard of Dr. Smith and had no medical conditions warranting the prescriptions. It was also established that H.B.'s son's father, ''M.P.,'' was a heroin addict and that M.P.'s sister, ''L.P.,'' who also had a history of narcotic's abuse, worked for Dr. Smith as his office assistant.

On July 9, 2003, IBC investigators interviewed ''C.P.,'' who was L.P.'s sister. IBC's records reflected that on May 10, 2003, Dr. Smith issued prescriptions for Percocet and Alprazolam (Xanax), a schedule IV controlled substance, using C.P.'s name and policy, which were then paid for by insurance company. Investigators determined C.P. had never met or been examined by Dr. Smith, that she did not receive the prescriptions written in her name and had no medical conditions warranting them.

On November 6, 2003, DEA Diversion Investigators responded to the Lombard Apothecary in Philadelphia to interview ''D.N.,'' who had attempted to fill a prescription for Oxycontin issued by Dr. Smith using D.N.'s mother's name and insurance. D.N. admitted that her mother had no knowledge of the prescription and was a patient of Dr. Smith. D.N. had asked Dr. Smith to issue her fraudulent prescriptions, as she had no medical insurance of her own. He also had written her a prescription for Oxycontin, using her brother's name and insurance data. D.N. then used the Oxycontin to feed her personal narcotics addiction.

On November 26, 2003, ''J.S.'' was interviewed by local law enforcement authorities, with DEA Division Investigators present. She admitted receiving seven to ten prescriptions for Oxycontin from Dr. Smith, per visit, on a weekly basis. These prescriptions would be written in J.S.'s name, as well as her father's and fiancee's names. She paid $65.00 per visit and an additional $100.00, each time, to ensure Dr. Smith would continue providing her fraudulent prescriptions. Additionally, Dr. Smith would ask J.S. for sexual favors during her office visits. While she personally declined to fulfill his requests, as a substitute, she paid another woman $100.00 to perform a sexual act upon Dr. Smith. J.S. also reported that Dr. Smith's office assistant, L.P., had provided her blank prescriptions in return for $40.00 and Oxycontin pills.

Dr. Smith also wrote prescriptions for ''A.D.,'' who had heard of Respondent's ''street'' reputation for providing controlled substance prescriptions. A.D. was first seen by Dr. Smith in February 2003 and the only examination involved measuring A.D.'s blood pressure. In March and April 2003, Dr. Smith issued prescriptions for Oxycontin and Percocet, using both A.D.'s and his wife's names. In February 2004, Dr. Smith also wrote ten prescriptions for A.D. using A.D.'s name, his wife's name and a friend's name.

On February 22, 2004, ''S.K.'' was found, apparently unresponsive, by her mother-in-law, who called 911. S.K. died of a drug overdose and few weeks later S K.'s mother-in-laws contacted DEA Diversion Investigators and advised that S.K. had been addicted to narcotics and Dr. Smith was the source of her prescriptions. The Philadelphia Medical Examiner's Office provided DEA investigors 31 prescription bottles recovered from S.K.'s residence. All of their labels indicated they were prescribed by Dr. Smith and the majority was for schedule II and IV controlled substances.

On May 20, 2004, a confidential Source (CS) was provided $400.00 to purchase fraudulent prescriptions written by Dr. Smith. The CS used that money to obtain twelve separate prescriptions from an individual who, inturn, had received them from Dr. Smith.

On May 27, 2004, Diversion Investigator's interviewed ''J.G.'' who, for six or eight months, had been seeing Dr. Smith on a weekly basis. J.G. would give Dr. Smith a list of fictitious names and types of controlled substances he desired and Dr. Smith would issue three prescriptions under each name, usually for Perocet, OxyContin and Xanax. Dr. Smith issued between nine and fifteen fraudulent prescriptions for controlled substances per visit and received $100.00 for each set of three prescriptions. J.G. then sold the prescriptions to a third party who, in turn, sold the drugs on the street. Dr. Smith was aware of and knowingly participated in this scheme.

On June 1, 17 and 19, 2004, a CS visited Dr. Smith's medical office. On each occasion, he obtained fraudulent prescriptions for Xanax, OxyContin and Percocet, paying Dr. Smith $500.00 for fiften prescriptions, written under five different fraudulent identities.

On June 29, 2004, Diversion Investigators were contacted by Family Meds, a mail order pharmacy in Connecticut. On June 22, 2004, the pharmacy received five prescriptions for controlled substances written by Dr. Smith for ''M. B.'' Family Meds had contacted Dr. Smith, who verified issuing the prescriptions. However, the pharmacy ultimately refused to fill them and verified that on June 6, 2004, M. B. had filled identical prescriptions issued by Dr. Smith at another pharmacy.

A review of reports from the Pennsylvania Attorney General's Office, Bureau of Narcotics Investigation and Drug Control showed that from January 14, 2002, to April 30, 2004, Dr. Smith issued over 6,500 prescriptions for schedule II narcotic controlled substances. These prescriptions constituted a significant portion of the total schedule II prescriptions filled in the Philadelphia and New Jersey area.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications for renewal of such registration, if she determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for

registration denied. See *Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989).

As to factor one, the recommendation of the appropriate state licensing board or professional disciplinary authority, there is no evidence in the investigative file that the State of Pennsylvania has yet taken adverse action against Dr. Smith's medical license. However, ''inasmuch as State licensure is a necessary but not sufficient condition for a DEA registration * * * this factor is not dispositive.'' See *Edson W. Redard, M.D.*, 65 FR 30616, 30619 (2000).

With regard to factors two and four, Respondent's experience in handling controlled substances and his compliance with applicable controlled substance laws, the investigative file contains overwhelming evidence that Dr. Smith unlawfully prescribed and diverted controlled substances over an extensive period of time. He knowingly prescribed controlled substances to individuals without bona fide doctor-patient relationships and issued fraudulent prescriptions destined to feed the recipient's personal addiction or to be sold on the street. He did so in a calculated manner, for financial gain, violating multiple state and federal laws and abysmally failing to meet the rudimentary responsibilities of a physician and registrant. Thus, factors two and four weigh in favor of a finding that continued registration would be inconsistent with the public interest.

Factor three, the applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances, is not relevant for consideration, as there is no evidence Dr. Smith has yet been convicted of nay crime related to controlled substances. However, it is noted the investigation has been provided to Federal authorities for possible initiation of criminal charges.

With respect to factor five, other conduct that may threaten the public health and safety, Respondent's actions discussed above are also relevant under this factor. The Deputy Administrator is particularly troubled by Dr. Smith's efforts to enrich himself at the expense of the public health and safety. Not only has a large quantity of controlled substances been diverted over an extensive period of time as a result of this illegal activities, at least one patient has died of a drug overdose after taking medications prescribed by Dr. Smith.

The exact degree of suffering and costs, both social and economic, stemming from Dr. Smith's activities will never be known. Suffice it to say, his unprofessional and criminal conduct has resulted in the diversion of large quantities of controlled substances in the Philadelphia area for a lengthy period of time, with correspondingly severe consequences for public health and safety.

In sum, Dr. Smith's cavalier disregard for the law and abandonment of his responsibilities as a physician and registrant cannot be tolerated. They weigh, irresistibly, in favor of a finding that continued registration would not be in the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration,pursuant to the authority vested in her by 21 U.S.C. and 28 CFR 0.100(b), and 0.104, hereby orders the DEA Certificate of Registration AS2502284, issued to Robert A. Smith, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective June 9, 2005.

Dated: May 2, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–9244 Filed 5–9–05; 8:45 am]

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DEPARTMENT OF LABOR

Office of the Secretary

Combating Exploitive Child Labor Through Education in Guyana

May 10, 2005.

AGENCY: Bureau of International Labor Affairs, Department of Labor.

Announcement Type: New. Notice of Availability of Funds and Solicitation for Cooperative Agreement Applications.

Funding Opportunity Number: SGA 05–02.

Catalog of Federal Domestic Assistance (CFDA) Number: Not applicable.

DATES: *Key Dates:* Deadline for Submission of Application is July 11, 2005.

SUMMARY: The U.S. Department of Labor, Bureau of International Labor Affairs, will award up to U.S. $2 million through one or more cooperative agreements to an organization or organizations to improve access to and quality of education programs as a means to combat exploitive child labor in Guyana. Projects funded under this solicitation will provide educational and training opportunities to children as a means of removing and/or preventing them from engaging in exploitive work or the worst forms of child labor. The activities funded will complement and expand upon existing projects and programs to improve basic education in the country. Applications must respond to the entire Statement of Work outlined in this solicitation. In Guyana, activities under these cooperative agreements will provide the direct delivery of quality basic education to working children and those at risk of entering work, and will result in their enrollment, persistence, and completion of an education or training program.

I. Funding Opportunity Description

The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be awarded by cooperative agreement to one or more qualifying organizations for the purpose of expanding access to and quality of basic education and strengthening government and civil society's capacity to address the education needs of working children and those at risk of entering in work in Guyana. The overall purpose of USDOL's Child Labor Education Initiative, as consistently enunciated in USDOL appropriations FY 2000 through FY 2005, is to work toward the elimination of the worst forms of child labor through the provision of basic education. Accordingly, entities applying under this solicitation must develop and implement strategies for the prevention and withdrawal of children from the worst forms of child labor, consistent with this purpose. ILAB is authorized to award and administer this program by the Consolidated Appropriations Act, 2005, Public Law 108–447, 118 Stat. 2809 (2004). The cooperative agreement or cooperative agreements awarded under this initiative will be managed by ILAB's International Child Labor Program (ICLP) to assure achievement of the stated goals. Applicants are encouraged to be creative in proposing cost-effective interventions that will have a demonstrable impact in promoting school attendance and completion in the geographical areas where children are engaged in or are most at risk of working in the worst forms of child labor.

1. Background and Program Scope

A. USDOL Support of Global Elimination of Exploitive Child Labor

The International Labor Organization (ILO) estimated that 211 million children ages 5 to 14 were working around the world in 2000. Full-time child workers are generally unable to

attend school, and part-time child laborers balance economic survival with schooling from an early age, often to the detriment of their education. Since 1995, USDOL has provided close to U.S. $400 million in technical assistance funding to combat exploitive child labor in approximately 70 countries around the world.

Programs funded by USDOL range from targeted action programs in specific sectors to more comprehensive efforts that target the worst forms of child labor as defined by ILO Convention 182. Convention 182 lists four categories of the worst forms of child labor, and calls for their immediate elimination:

♦ All forms of slavery or practices similar to slavery, such as the sale and trafficking of children; debt bondage and serfdom and forced or compulsory labor; including force or compulsory recruitment of children for use in armed conflict;

♦ The use, procurement or offering of a child for prostitution, production of pornography or pornographic performances;

♦ The use, procurement or offering of a child for illicit activities in particular for the production and trafficking of drugs as defined in the relevant international treaties;

♦ Work which by its nature or by the circumstances by which it is carried out, is likely to harm the health, safety, and morals of children.

In determining the types of work likely to harm the health, safety and morals of children, Recommendation 190 to Convention 182 considers the following: work which exposes a child to physical, psychological or sexual abuse; work underground, underwater, at dangerous heights or in confined workplaces; work with dangerous machinery, equipment and tools or handling or transporting heavy loads; work in an unhealthy environment including exposure to hazardous substances, agents or processes, or to temperatures, noise levels or vibrations damaging to the health; work for long hours or night work where the child is unreasonably confined to the premises.

From FY 2001 to FY 2005, the U.S. Congress has appropriated over U.S. $180 million to USDOL for a Child Labor Education Initiative to fund programs aimed at increasing access to quality, basic education in areas with a high incidence of abusive and exploitive child labor. The cooperative agreement(s) awarded under this solicitation will be funded through this initiative.

USDOL's Child Labor Education Initiative seeks to nurture the development, health, safety and enhanced future employability of children around the world by increasing access to and quality of basic education for working children and those at risk of entering work. The elimination of exploitive child labor depends, to a large extent, on improving access to, quality of, and relevance of education.

In addition to providing direct education and training opportunities to working children and those at risk of engaging in exploitive work, the Child Labor Education Initiative has four goals:

i. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;

ii. Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school;

iii. Strengthen national institutions and policies on education and child labor; and

iv. Ensure the long-term sustainability of these efforts.

B. Barriers to Education for Working Children, Country Background, and Focus of Solicitation

Throughout the world, there are complex causes of exploitive child labor as well as barriers to education for children engaged in or at risk of entering exploitive child labor. These include: poverty; education system barriers; infrastructure barriers; legal and policy barriers; resource gaps; institutional barriers; informational gaps; demographic characteristics of children and/or families; cultural and traditional practices; and weak labor markets and enforcement.

Although these elements and characteristics tend to exist throughout the world in areas with a high incidence of exploitive child labor, they manifest themselves in specific ways in Guyana. Therefore, specific, targeted interventions are required. In Guyana, this project must provide or facilitate the delivery of educational services to at risk or working children, support the collection of data on this target population, and build the capacity of national institutions to address child labor and education issues. For this project, applicants must be able to identify the specific barriers to education and the education needs of specific children targeted in their project (*e.g.*, children withdrawn from work, children at high risk of dropping out of school and joining the labor force, and/or children still working in a particular sector) and how direct education service delivery, capacity building and policy change can be used to address particular barriers and needs. Brief background information on education and exploitive child labor in Guyana is provided below.

For additional information on exploitive child labor in Guyana, applicants are strongly encouraged to refer to The Department of Labor's 2003 Findings on the Worst Forms of Child Labor, available at *http://www.dol.gov/ILAB/media/reports/iclp/tda2003/overview.htm* or in hard copy from Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number) or e-mail: *harvey.lisa@dol.gov.*

Barriers to Education for Working Children in Guyana

The minimum age for employment in Guyana is 14 years. UNICEF has estimated that 27 percent of children ages 5 to 14, or 1,201,500 children of a total child population of 4,450,000, were working in Guyana in 2000. There are reports that the prevalence of child labor has increased since then. The Ministry of Labor, Human Services and Social Security has participated in a rapid assessment carried out by the International Labor Organization's International Program on the Elimination of Child Labor (ILO–IPEC) that revealed the existence of the worst forms of child labor in Guyana. It is common to see children engaged in street trading. Children also work in sawmills and markets, and as porters, domestic servants. They engage in prostitution, agricultural work, mining, and the illicit drug trade. Girls in the Hinterland area in particular are hired to work as domestic servants and waitresses, and there are reported cases of girls as young as 11 being recruited to work as prostitutes in bars and restaurants. Children are also engaged in prostitution in ports, gold mining areas, and in the capital city of Georgetown. Young women and children are known to be trafficked for the purpose of sexual exploitation mostly within the country. Foreign child victims are also trafficked to Guyana from Brazil and Venezuela, and may be transited through Guyana to Suriname.

Primary education in Guyana is free and compulsory for children ages 5 to 15 years. In 1999, the gross primary enrollment rate was 120.2 percent (118.3 percent for girls and 122.2 percent for boys), and the net primary enrollment rate was 98.4 percent (97.1 percent for girls and 99.7 percent for boys). Although the government has made concerted efforts to increase enrollment rates and retention, dropout

rates, particularly among boys, remain high. ILO–IPEC found that most children drop out of school by age 12. Higher dropout rates in the Hinterland are related to disparities in the quality of education, and teacher availability and training.

The Government of Guyana has several programs to assist in the elimination of child labor and the improvement of access to and quality of basic education. The Minister of Labor leads an interagency task force on combating trafficking in persons in Guyana and a national child labor committee has been formed to formulate a national child labor action plan. The government is promoting pilot efforts to remove children from work and return them to the formal education system, apprenticeships, or vocational training. The government distributes textbooks and uniforms to those who cannot afford them to encourage school attendance. Also, from 2003 to 2015, Guyana will receive U.S. $52 million from various donors to support its Education for All (EFA) initiatives. The three major EFA initiatives in Guyana are: (1) improving the quality of the teaching force in the Hinterland; (2) enhancing the teaching/learning environment in primary schools; and (3) strengthening school community partnerships. The government is also implementing a Basic Education Access and Management Support Project to improve school performance through curricular and pedagogical reform, education management reform, and school infrastructure development. Three teachers' training centers carry out activities in the Hinterland as part of the Guyana Basic Education Teacher Training Program. In January 2004, the Ministry of Education launched the Basic Competency Certificate Program to provide affordable and high quality vocational education to older children.

Note to Applicants: All applicants must have country presence, or partner with an established and eligible organization within Guyana.

2. Statement of Work

Taking into account the challenges of educating working children in Guyana, the applicant must implement creative, innovative and targeted approaches to promote policies and services that will enhance the provision of educational opportunities for children involved in or at risk of entering exploitive child labor. Projects funded under this cooperative agreement solicitation must focus on direct education service(s) delivery to targeted children, including the provision of educational services that address the specific gaps/challenges that prevent working or at-risk children from attending or staying in school.

USDOL defines educational services and/or training opportunities as follows: (1) Non-formal or basic literacy education, as demonstrated by enrollment in educational classes provided by the program. These classes may include transitional, leveling, or literacy classes so that a child may either be mainstreamed into formal school and/or can participate in vocational training activities; (2) Vocational, pre-vocational, or skills training, as demonstrated by enrollment in training courses in order to develop a particular skill (*e.g.*, mechanics, sewing, etc.); (3) Mainstreaming/Transitioning into the formal education system, non-formal education, vocational, pre-vocational, or skills training after having received assistance from the project to enable them to enroll in such programs. The assistance provided by the project could include one or more of the following services: the provision of school meals, uniforms, books, school supplies and materials, tuition and transportation vouchers, or other types of incentives that enable the child to be enrolled in an education program; and (4) Formal school enrollment, by directly supporting a child's enrollment, retention, and completion in the formal school system. Similar to the assistance provided under mainstreaming, assistance provided by the project could include one or more of the following services: the provision of uniforms, books, school supplies and materials, tuition and transportation vouchers, or other types of incentives that enable the child to be enrolled and maintained in the formal school system.

Activities such as awareness raising and social mobilization campaigns, psychosocial services for children, improvements in curriculum, teacher training or improvements to school infrastructure are important for improving access to and quality of basic education. While grantees are encouraged to address the needs of working children in a comprehensive manner, these activities will not be considered as direct services for individual children. Rather direct services are those that meet the basic needs of individual children that are direct beneficiaries of the project.

Through improved policies and direct education service delivery, as applicable, the expected outcomes/results of the project are to: (1) Reduce the number of children engaged in or at risk of entering exploitive child labor, (2) increase educational opportunities and access (enrollment) for children who are engaging in or at risk of engaging in, and/or removed from exploitive child labor, particularly its worst forms; (3) encourage retention in and completion of educational programs; and (4) expand the successful transition of children from non-formal education programs into formal schools or vocational programs.

The applicant must identify a target number of urban and/or rural children engaging in or at risk of engaging in exploitive and/or worst forms of child labor in Guyana, who would be the direct beneficiaries of a Child Labor Education Initiative project, and the geographic areas of greatest need (*e.g.*, children working in farming communities, remote mining and logging communities and/or in commercial enterprises). Direct beneficiaries are children who are withdrawn or prevented from entering exploitive child labor, particularly its worst forms, by USDOL-funded projects. Children withdrawn from exploitive work are those children that were found working and no longer work as a result of a project intervention. This category also includes those children that were engaged in exploitive work and as a result of a project's intervention now work shorter hours under safer conditions. Children prevented from entering work are those children that are either siblings of (ex) working children or those children that are considered to be at high risk of engaging in exploitive work. In order to be considered withdrawn or prevented, the child must benefit from educational or training opportunities. This is measured by enrollment into school or training programs. The project's strategy must be to remove these children from child labor and to provide them with educational and other services to prevent them from returning to exploitive and/or worst forms of child labor.

In preparing the application, in order to identify gaps, unmet needs, and opportunities that could be addressed through a USDOL Child Labor Education Initiative project, applicants must conduct a needs assessment to make a preliminary identification of the current working and educational status of the children that the applicant proposes as beneficiaries. It is expected that the information gathered during this assessment will be refined after award. The assessment, with data sources, must include information on the incidence and nature of exploitive child labor, particularly the worst forms, among target children, hours of work, age and sex distribution of the proposed beneficiaries, educational performance relative to other children, if available,

and any research or other data that might indicate correlations between educational performance and hours of work. Applicants are also encouraged to propose strategies for collecting further data on exploitive child labor and children's participation in schooling in the early stages of the project's baseline data collection.

When developing their proposed strategy and writing the application, applicants must consult and make reference to relevant literature and documents relating to child labor and the education of target children in Guyana. Furthermore, the application must demonstrate familiarity with existing child labor, education and social welfare policies, plans and projects in Guyana, which the applicant is using to inform project design for target children.

Applicants will also be evaluated on their knowledge of other donors' programs as they pertain to the education of target children in Guyana. In identifying unmet needs, gaps and opportunities not being addressed by existing programs and current efforts, and in proposing their own strategy, applicants must show how their knowledge of the school calendar and the requirements of basic, non-formal, and vocational education systems are used to develop an approach that successfully enrolls children in educational programs in the shortest delay without missing an academic year or program cycle. The applicant must identify the direct cost per child of maintaining the child in the educational program, and of withdrawing the child from exploitive/hazardous or worst forms of child labor. These costs must be realistic, and based on existing costs of similar programs. Applicants must design and implement a project monitoring system that allows for the tracking of direct beneficiaries' work and school status. In addition, as child labor projects tend to be implemented in resource-poor environments where government education and labor inspection systems may be limited, applicants are encouraged to work with local stakeholders to develop sustainable child labor and education monitoring systems, including community based systems, that can complement government efforts to monitor children's working and educational status beyond the life of the project. The applicant must also identify organizations in Guyana, including organizations in the Hinterland, which could potentially implement or contribute to a future project. Applicants are encouraged to develop approaches that support youth participation within efforts to eliminate the worst forms of child labor.

The application must also take into account cross-cutting themes that could affect project results in Guyana, and meaningfully incorporate them into the proposed strategy, either to increase opportunities or reduce threats to successful implementation. In Guyana these include: (1) The extension and application of ongoing Education For All initiatives in Guyana to target children; (2) factors contributing to the dropout rate up to age 15; (3) educational relevance of proposed programs; (4) the role of teachers, parents, and community organizations; (5) strengths and weaknesses in the capacity of local organizations, and the possibilities of collaboration among rural organizations; and (6) non-education system barriers that could prevent the withdrawal of children from work, and their participation in education programs.

In the course of implementation, each project must promote the goals of USDOL's Child Labor Education Initiative listed above in Section I(1)(A). In addition, each project funded under this solicitation must provide educational and training opportunities to children as a means to remove and/or prevent them from engaging in exploitive work. Because of the limited resources available under this award, applicants are expected to implement programs that complement existing efforts and, where appropriate, replicate or enhance successful models to serve a greater number of children and communities. However, applicants must not duplicate the activities of existing efforts and/or projects and are expected to work within host government child labor and education frameworks. To avoid duplication, enhance collaboration, expand impact, and develop synergies, the cooperative agreement awardee (hereafter referred to as ''Grantee'') must work cooperatively with national stakeholders in developing project interventions. Applicants are expected to consider the economic and social contexts of Guyana when formulating project strategies and to recognize that approaches applicable in one country may not be relevant to others.

USDOL will notify host government ministry officials of the proposed project. During the preparation of an application for this cooperative agreement solicitation, applicants may discuss proposed interventions, strategies, and activities with host government officials and civil society organizations.

Partnerships between more than one organization are also eligible for award and are encouraged, in particular with qualified, target country based organizations in order to build local capacity; in such a case, however, a lead organization must be identified, and relationships with partner organizations receiving funds must be codified in an appropriate joint venture, partnership, or other contractual agreement. Copies of such agreements should be submitted as an attachment to the application, and will not count toward the page limit.

Applicants are strongly encouraged to enroll at least one-quarter of the children targeted by the proposed program in educational activities during the first year of project implementation. Under this cooperative agreement solicitation, vocational training for adolescents and income generating alternatives for parents are allowable activities. **Please note:** USDOL reserves the right to approve or disapprove alternative income-generating activities after award of the cooperative agreement. Permissible costs related to alternative income-generating activities for target families may include, but are not limited to, skills training, tools, equipment, guides, manuals, and market feasibility studies. However, as stated in Section IV(5)(B)(i), Grantees and sub-contractors may not provide direct cash transfers to communities, parents, or children.

Although USDOL is open to all proposals for innovative solutions to address the challenges of providing increased access to education for the children targeted, the applicant must, at a minimum, follow the outline of a preliminary project design document presented in Appendix A, and, within that format, address all criteria, factors, and required descriptions identified in Sections IV(2), V(1)(A), VI(3)(A) and VI(3)(D). This response will be the foundation for the final project document that must be approved within six months after award of the cooperative agreement.

If the application does not propose interventions aimed toward the target group or geographical area as identified, then the application will be considered unresponsive and will be rejected.

Note to All Applicants: Grantees are expected to consult with and work cooperatively with stakeholders in the country, including the Ministries of Education, Labor, and other relevant ministries, non-governmental organizations (NGOs), national steering/advisory committees on child labor, education, faith and community-based organizations, and working children and their families. Grantees should ensure

that their proposed activities and interventions are within those of Guyana's national child labor and education frameworks and priorities, as applicable. Grantees are strongly encouraged to collaborate with existing projects, particularly those funded by USDOL, including Timebound Programs and other projects implemented by ILO/IPEC. As discussed in Section V(1)(D), up to five (5) extra points will be given to applications that include committed non-Federal resources that significantly expand the project's scope. However, applicants are instructed that the project budget submitted with the application must include all necessary and sufficient funds, without reliance on other contracts, grants, or awards, to implement the applicant's proposed project activities and to achieve proposed project goals and objectives under this solicitation. If anticipated funding from another contract, grant, or award fails to materialize, USDOL will not provide additional funding to cover these costs.

II. Award Information

Type of assistance instrument: cooperative agreement. USDOL's involvement in project implementation and oversight is outlined in Section VI(2). The duration of the project(s) funded by this solicitation is four (4) years. The start date of program activities will be negotiated upon awarding of the cooperative agreement, but will be no later than September 30, 2005.

Up to US $2 million will be awarded under this solicitation. USDOL may award one or more cooperative agreements to one, several, or a partnership of more than one organization(s) that may apply to implement the program. A Grantee must obtain prior USDOL approval for any sub-contractor proposed in the application before award of the cooperative agreement. The Grantee may not sub-grant any of the funds obligated under this cooperative agreement. See Section VI(2)(B) for further information on sub-contracts.

III. Eligibility Information

1. Eligible Applicants

Any commercial, international, educational, or non-profit organization, including any faith-based, community-based, or public international organization capable of successfully developing and implementing education programs for working children or children at risk of entering exploitive work in Guyana is eligible to apply. Partnerships of more than one organization are also eligible, and applicants are strongly encouraged to work with organizations already undertaking projects in Guyana, particularly local NGOs, including faith-based and community-based organizations. In the case of partnership applications, a lead organization must be identified, and the relationship with any partner organizations receiving funds must be set forth in an appropriate joint venture, partnership, or other contractual agreement. An applicant must demonstrate a country presence, independently or through a relationship with another organization(s) with country presence, which gives it the ability to initiate program activities upon award of the cooperative agreement. See Section V(1)(B)(ii). **Please note:** Applications from foreign government and quasi-government agencies will not be considered.

Please note: All applicants are requested to complete the Survey on Ensuring Equal Opportunity for Applicants (OMB No. 1225–0083), which is available online at *http://www.dol.gov/ilab/grants/bkgrd.htm.*

The capability of an applicant or applicants to perform necessary aspects of this solicitation will be determined under the criteria outlined in the Application Review Information section of this solicitation (Section V(1)).

Please note that to be eligible, cooperative agreement applicants classified under the Internal Revenue Code as a 501(c)(4) entity (*see* 26 U.S.C. 501(c)(4)), may not engage in lobbying activities. According to the Lobbying Disclosure Act of 1995, as codified at 2 U.S.C. 1611, an organization, as described in Section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities directed toward the U.S. Government will not be eligible for the receipt of Federal funds constituting an award, grant, cooperative agreement, or loan.

2. Cost Sharing or Matching Funds

This solicitation does not require applicants to share costs or provide matching funds. However, the leveraging of resources and in-kind contributions is strongly encouraged and is a rating factor worth up to five (5) additional points.

3. Other Eligibility Criteria

In accordance with 29 CFR part 98, entities that are debarred or suspended from receiving Federal contracts or grants shall be excluded from Federal financial assistance and are ineligible to receive funding under this solicitation. In judging organizational capacity, USDOL will take into account not only information provided by an applicant, but also information from USDOL, other Federal agencies, and other organizations regarding past performance of organizations that have implemented or are implementing Child Labor Education Initiative projects, or other projects or activities for USDOL and other Federal agencies (see Section V(1)(B)). Past performance will be rated by such factors as the timeliness of deliverables, and the responsiveness of the organization and its staff to USDOL or grantor communications regarding deliverables and cooperative agreement or contractual requirements. In addition, USDOL will consider the performance of the organization's key personnel on existing projects with USDOL or other entities, the frequency of the organization's replacement of key personnel, and the quality and timeliness of such key personnel replacements. Lack of past experience with USDOL projects, cooperative agreements, grants, or contracts is not a bar to eligibility or selection under this solicitation.

Faith-based organizations may apply for Federal funds under this solicitation. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of cooperative agreement recipients. Similarly, neutral, non-religious criteria that neither favor nor disfavor religion must be employed by Grantees in the selection of project beneficiaries and sub-contractors.

In addition, per the provisions outlined in Section 2 of Executive Order 13279 and 29 CFR 2.33(b), the U.S. Government is generally prohibited from providing direct financial assistance for inherently religious activities. Funds awarded under this solicitation may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious activities.

IV. Application and Submission Information

1. Address To Request Application Package

This solicitation contains all of the necessary information and forms needed to apply for cooperative agreement funding. This solicitation is published as part of this **Federal Register** notice. Additional copies of the **Federal Register** may be obtained from your nearest U.S. Government office or public library or online at *http://www.archives.gov/federal_register/index.html.*

2. Content and Form of Application Submission

Applicants must submit one (1) blue ink-signed original, complete application in English, plus two (2) copies of the application.

The application must consist of two (2) separate parts, as well as a table of contents and an abstract summarizing the application in not more than two (2) pages. The table of contents and the abstract are *not* included in the 45-page limit for Part II. Applicants should number all pages of the application.

Part I of the application, the cost proposal, must contain the Standard Form (SF) 424, Application for Federal Assistance and Sections A–F of the Budget Information Form SF 424A, available from ILAB's Web site at *http://www.dol.gov/ilab/grants/bkgrd.htm.* Copies of these forms are also available online from the General Services Administration Web site at *http://contacts.gsa.gov/webforms.nsf/0/B835648D66D1B8F985256A72004C58C2/$file/sf424.pdf* and *http://contacts.gsa.gov/webforms.nsf/0/5AEB1FA6FB3B832385256A72004C8E77/$file/Sf424a.pdf.* The individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant. The budget/cost proposal and any other accompanying charts or graphs must be written in 10–12 pitch font size.

Part II, the technical proposal, must provide a technical application that identifies and explains the proposed program and demonstrates the applicant's capabilities to carry out that proposal. The technical application must identify how the applicant will carry out the Statement of Work (Section I(2) of this solicitation) and address each of the Application Evaluation Criteria found in Section V(1).

The Part II technical application must not exceed 45 single-sided (8½″ x 11″), double-spaced, 10 to 12 pitch typed pages, and must include responses to the application evaluation criteria outlined in Section V(1) of this solicitation. Part II must include a preliminary project design document submitted in the format shown in Appendix A and discussed further in Section VI(3)(A). The application must include the name, address, telephone and fax numbers, and e-mail address (if applicable) of a key contact person at the applicant's organization in case questions should arise.

Applications will only be accepted in English. To be considered responsive to this solicitation, the application must consist of the above-mentioned separate parts. *Any Applications that Do Not Conform To These Standards May Be Deemed Unresponsive To this Solicitation and May Be Rejected.* Standard forms and attachments are *not* included in the 45-page limit for Part II. However, any additional information not required under this solicitation will not be considered.

3. Submission Dates, Times, and Address

Applications must be delivered (by hand or mail) by 4:45 p.m., eastern time, July 11, 2005 to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210, Attention: Lisa Harvey, Reference: Solicitation 05–02. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by non-Postal Service delivery services, such as Federal Express or UPS, will be accepted; however, the applicant bears the responsibility for timely submission. The application package must be received at the designated place by the date and time specified or it will be considered unresponsive and will be rejected. Any application received at the Procurement Services Center after the deadline will not be considered unless it is received before the award is made and:

A. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at USDOL at the address indicated; and/or

B. It was sent by registered or certified mail not later than the fifth calendar day before the deadline; or

C. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 pm at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to the deadline.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmark on the envelope or wrapper on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at USDOL is the date/time stamp of the Procurement Service Center on the application wrapper or other documentary evidence of receipt maintained by that office.

Confirmation of receipt can be obtained from Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: *harvey.lisa@dol.gov.* All applicants are advised that U.S. mail delivery in the Washington DC area can be slow and erratic due to concerns involving contamination. All applicants must take this into consideration when preparing to meet the application deadline.

4. Intergovernmental Review

This funding opportunity is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

5. Funding Restrictions

A. In addition to those specified under OMB Circular A–122, the following costs are also unallowable:

i. Construction with funds under this cooperative agreement is subject to USDOL approval and ordinarily should not exceed 10 percent of the project budget's direct costs and is expected to be limited to improving existing school infrastructure and facilities in the project's targeted communities. USDOL encourages applicants to cost-share and/or leverage funds or in-kind contributions from local partners when proposing construction activities in order to ensure sustainability.

ii. Under these cooperative agreements, vocational training for adolescents and income-generating alternatives for parents are allowable activities. However, Federal funds under these cooperative agreements cannot be used to provide micro-credits,

revolving funds, or loan guarantees. **Please note:** USDOL reserves the right to negotiate the exact nature, form, or scope of alternative income-generating activities after award of the cooperative agreement. Permissible costs relating to alternative income-generating activities may include, but are not limited to, skills training, tools, equipment, guides, manuals, and market feasibility studies.

iii. Awards will not allow reimbursement of pre-award costs.

B. The following activities are also unallowable under this solicitation:

i. The Grantee may not sub-grant any of the funds obligated under this cooperative agreement. Sub-granting may not appear or be included in the budget as a line item. In addition, Grantees may not provide direct cash transfers to communities, parents, or children. The funding for this program does not include authority for sub-grants and, as a matter of policy, USDOL does not allow for direct cash transfers to target beneficiaries. USDOL, however, would support the purchase of incidental items in the nature of ''participant support costs'' under OMB Circular A–122, Attachment B, No. 34, which are necessary to ensure that target children have access to schooling. These participant support costs may include such items as uniforms and school supplies, and the provision of tuition and transportation costs in the form of vouchers to the provider of services. If an applicant proposes the provision of participant support costs, the applicant must specify: (1) Why these activities and interventions are necessary, and how they will contribute to the overall project goals; and (2) how will the disbursement of funds be administered in order to maximize efficiency and minimize the risk of misuse. The applicant must also address how participant support costs being funded by the project will be made sustainable once the project is completed.

If proposed participant support costs are approved by USDOL, these items must be purchased or paid for directly by the Grantee or its sub-contractor(s), as opposed to handing cash directly to children or other individuals.

ii. Under these cooperative agreements, awareness raising and advocacy activities cannot include fund-raising or lobbying of the U.S. Federal, State or local governments (see OMB Circular A–122).

iii. In accordance with OMB Circular A–122, funds awarded under this cooperative agreement may be used to cover the costs of meetings and conferences, as long as the primary purpose of such an event is the dissemination of technical information. These costs include meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conference.

iv. USDOL funds awarded under this solicitation are not intended to duplicate or substitute for host-country government efforts or resources intended for child labor or education programs. Thus, Grantees may not provide any of the funds awarded under this cooperative agreement to foreign government entities, ministries, officials, or political parties. However, sub-contracts with foreign government agencies may be awarded to provide direct services or undertake project activities subject to applicable laws and only after a competitive procurement process has been conducted and no other entity in the country is able to provide these services. The Grantee must receive prior USDOL approval before sub-contracting the provision of direct services to foreign government agencies.

v. Applicants are reminded that U.S. Executive Orders and U.S. law prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the Grantee to ensure compliance with these Executive Orders and laws. This provision must be included in all sub-contracts issued under the cooperative agreement.

vi. The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. U.S. non-governmental organizations, and their sub-contractors, cannot use U.S. Government funds to lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work. Foreign non-governmental organizations, and their sub-contractors, that receive U.S. Government funds to fight trafficking in persons cannot lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work. It is the responsibility of the Grantee to ensure its sub-contractors meet these criteria. (The U.S. Government is currently developing language to specifically address Public International Organizations' implementation of the above anti-prostitution prohibition. If a project under this solicitation is awarded to such an organization, appropriate substitute language for the above prohibition will be included in the project's cooperative agreement.)

FOR FURTHER INFORMATION CONTACT: Lisa Harvey. E-mail address: *harvey.lisa@dol.gov.* For a list of frequently asked questions on USDOL's Child Labor Education Initiative Solicitation for Cooperative Agreement, please visit *http://www.dol.gov/ILAB/faq/faq36.htm.*

V. Application Review Information

1. Application Evaluation Criteria

Technical panels will review applications written in the specified format (see Section I, Section IV(2) and Appendix A) against the various criteria on the basis of 100 points. Up to five additional points will be given for the inclusion of non-Federal leveraged resources as described below in Section V(1)(D). Applicants are requested to prepare their technical proposal (45 page maximum) organized in accordance with Appendix A, and address all of the following rating factors, which are presented in the order of emphasis that they will receive, and the maximum rating points for each factor.

Program Design/Budget-Cost Effectiveness.	45 points
Organizational Capacity	30 points
Management Plan/Key Personnel/Staffing.	25 points
Leveraging Resources	5 extra points

A. Project/Program Design/Budget-Cost Effectiveness (45 Points)

This part of the application constitutes the preliminary project design document described in Section VI(3)(A), and outlined in Appendix A. The applicant's proposal must describe in detail the proposed approach to comply with each requirement. Applicants will be rated based on their understanding of the child labor and education context in the host country, as well as on the clarity and quality of information provided in the project design document.

This component of the application must demonstrate the applicant's thorough knowledge and understanding of the issues, barriers, and challenges involved in providing education to children engaged in or at risk of engaging in exploitive child labor, particularly its worst forms; best-practice solutions to address their needs; and the policy and implementing environment in the selected country. When preparing the technical proposal, the applicant must follow the outline provided in Appendix A, and at minimum include a description of:

i. *Children Targeted*—The applicant must identify which and how many children are expected to receive direct and indirect services from the project,

including the sectors in which they work, geographical location, and other relevant characteristics. Please refer to Section I(2) for USDOL's definition of educational services and training opportunities for children targeted under this solicitation.

Children are defined as persons under the age of 18 who have been engaged or at risk of engaging in the worst forms of child labor as defined by ILO Convention 182, or those under the legal working age of the country and who are engaged or at risk of engaging in other hazardous and/or exploitive activities. Under this solicitation, at-risk children are defined as siblings of working children, or children living in areas with a high incidence of exploitive child labor.

ii. *Needs/Gaps/Barriers*—The applicant must describe the specific gaps/educational needs of the children targeted that the project will address.

Note: The number of children targeted by the project must be commensurate with the need in the geographical area or sector where the project will be implemented. In addition, the budget proposed should take into account the type of work in which the target children are currently engaged.

iii. *Proposed Strategy*—The applicant must discuss the proposed strategy to address gaps/needs/barriers of the children targeted and its rationale. Applicants will be rated based on the quality and pertinence of proposed strategies. Please refer to Section I(2) for USDOL's definition of educational services and training opportunities for children targeted under this solicitation.

iv. *Sustainability Plan*—The applicant must discuss a proposed plan for sustainability of project efforts. To USDOL, sustainability is linked to project impact and the ability of individuals, communities, and a nation to ensure that the activities or changes implemented by a project endure. A project's impact is manifested at the level of individuals, organizations, and systems. For individual children and their families this would mean a positive and enduring change in their life conditions as a result of project interventions. At the level of organizations and systems, sustained impact would involve continued commitment and ability (including financial commitment and policy change) by project partners to continue the actions generated by the project, including enforcement of existing policies that target child labor and school attendance. Applicants will be rated based on the pertinence and appropriateness of the proposed sustainability plan.

v. *Description of Activities*—The applicant must provide a detailed description of proposed activities that relate to the gaps/needs/barriers to be addressed, including training and technical assistance to be provided to project staff, host country nationals and community groups involved in the project. The proposed approach is expected to build upon existing activities, government policies, and plans, and avoid needless duplication. Please refer to Section I(2) for USDOL's definition of educational services and training opportunities for children targeted under this solicitation.

vi. *Work Plan*—The applicant must provide a detailed work plan and timeline for the proposed project, preferably with a visual such as a Gantt chart. Applicants will be rated based on the clarity and quality of the information provided in the work plan.

Note: Applicants are also encouraged to enroll one-quarter of the targeted children in educational activities during the first year of project implementation.

vii. *Program Management and Performance Assessment*—The applicant must describe: (1) How management will ensure that the goals and objectives will be met; (2) how information and data will be collected and used to demonstrate the impacts of the project; and (3) what systems will be put in place for self-assessment, evaluation, and continuous improvement. *Note to All Applicants:* USDOL has already developed common indicators (enrollment, retention, and completion) and a database system for monitoring children's educational progress that can be used and adapted by Grantees after award. However, Grantees will be responsible for entering information on each project beneficiary into this database system. Further guidance on common indicators will be provided after award, thus applicants should focus their program management and performance assessment responses toward the development of their project's monitoring strategy in support of the delivery of direct education and training opportunities to working children and those at risk of engaging in exploitive work, and the four goals of the Child Labor Education Initiative set out in Section I(1)(A). Because of the potentially significant links between hours worked, working conditions, and school performance, Grantees are encouraged to collect information to track this correlation among project beneficiaries. Applicants proposing innovative methodologies in this area will be rated more highly.

Please note: In addition to reporting on the common indicators, applicants will be expected to track the working status, conditions, and hours of targeted children, including the withdrawal of children from exploitive/hazardous working conditions. Applicants are also expected to explore cost-effective ways of assessing the impact of proposed services/interventions to indirect beneficiaries.

Applicants are expected to budget for costs associated with collecting and reporting on the common indicators (enrollment, retention, and completion), data management, tracking the working status children, and assessing the impact of services/interventions to indirect beneficiaries.

viii. *Budget/Cost Effectiveness*—The applicant must show how the budget reflects program goals and design in a cost-effective way to reflect budget/performance integration. The budget must be linked to the activities and outputs of the implementation plan listed above. The budget proposed should also take into account the type of work in which the target children are currently engaged.

This section of the application must explain the costs for performing all of the requirements presented in this solicitation, and for producing all required reports and other deliverables. Costs must include labor; equipment; travel; annual single audits or attestation engagements (as applicable); midterm and final evaluations; and other related costs. Applications are expected to allocate sufficient resources to proposed studies, assessments, surveys, and monitoring and evaluation activities, including costs associated with collecting information for and reporting on the common indicators. In addition, the budget should include a contingency provision, calculated at 5% of the project's total direct costs, for unexpected expenses essential to meeting project goals, such as host country currency devaluations, security costs, etc. USDOL will not provide additional funding to cover unanticipated costs. Grantees must obtain prior approval from USDOL before using contingency funds. If these funds have not been exhausted toward the end of the project period, USDOL and the Grantee will determine whether it is appropriate to reallocate the funds to direct educational or training services or return the funds to USDOL.

Grantees should also budget for a facilitator-led project launch meeting in the target country, which will allow key stakeholders to discuss issues of project design and monitoring.

When developing their applications, applicants are also expected to allocate the largest proportion of resources to educational activities aimed at targeted children, rather than direct and/or indirect administrative costs. Higher ratings may be given to applicants with low administrative costs and with a budget breakdown that provides a larger amount of resources to project activities. All projected costs should be reported, as they will become part of the cooperative agreement upon award. In their cost proposal (Part I of the application), applicants must reflect a breakdown of the total administrative costs into direct administrative costs and indirect administrative costs. This section will be evaluated in accordance with applicable Federal laws and regulations. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars). An example of an Outputs Based Budget has been provided as Annex B.

Applicants are encouraged to discuss the possibility of exemption from customs and Value Added Tax (VAT) with host government officials during the preparation of an application for this cooperative agreement. While USDOL encourages host governments to not apply custom or VAT taxes to USDOL-funded programs, some host governments may nevertheless choose to assess such taxes. USDOL may not be able to provide assistance in this regard. Applicants should take into account such costs in budget preparation. If major costs are omitted, a Grantee may not be allowed to include them later.

B. Organizational Capacity (30 Points)

Under this criterion, the applicant must present the qualifications of the organization(s) implementing the program/project. The evaluation criteria in this category are as follows:

i. International Experience—The organization applying for the award has international experience implementing basic, transitional, non-formal, or vocational education programs that address issues of access, quality, and policy reform for vulnerable children including children at risk of or engaging in or at risk of engaging in exploitive child labor, preferably in the country of interest.

ii. Country Presence—Given the need to provide children engaged in the worst forms of child labor with immediate assistance in accessing educational and training opportunities, applicants will be evaluated on their ability to start up project activities soon after signing a cooperative agreement. Having country presence, or partnering with in-country organizations, presents the best chance of expediting the delivery of services to children engaged or at risk of engaging in the worst forms of child labor. In their application, applicants must address country presence; outreach to government and non-governmental organizations, including local and community-based organizations; and the ability of the organization to start up project activities in a timely fashion. Applicants may submit supporting documentation with their application demonstrating country presence and/or outreach to host government ministries and non-governmental organizations in the country. These attachments will not count toward the page limit.

Within 60 days of award, an applicant, or its partners, must be formally recognized by the host government using the appropriate mechanism, *e.g.*, Memorandum of Understanding or local registration of the organization. An applicant must demonstrate, independently or through a relationship with another organization(s), the ability to initiate program activities upon award of the cooperative agreement, as well as the capability to work directly with government ministries, educators, civil society leaders, and other local faith-based or community organizations.

iii. Fiscal Oversight—The organization shows evidence of a sound financial system.

If the applicant is a U.S. based, non-profit organization already subject to the single audit requirements, the applicant's most recent single audit, as submitted to the Federal Audit Clearinghouse, must accompany the application as an attachment. In addition, applications must show that they have complied with report submission timeframes established in OMB Circular A–133. If an applicant is not in compliance with the requirements for completing their single audit, the application will be considered unresponsive and will be rejected.

If the applicant is a for-profit or foreign based organization, a copy of its most current independent financial audit must accompany the application as an attachment.

Applicants should also submit a copy of the most recent single audit report for all proposed U.S.-based, non-profit partners, and sub-contractors that are subject to the Single Audit Act. If the proposed partner(s) is a for-profit or foreign based organization, a copy of its most current independent financial audit should accompany the application as an attachment. Applicants may wish to review the audits of prospective organizations before deciding whether they want to partner with or sub-contract to them under an Education Initiative cooperative agreement.

Note to all applicants: In order to expedite the Procurement screening of applications, and to ensure that the appropriate audits are attached to the proposals, the applicant must provide a cover sheet to the audit attachments listing all proposed partners and sub-contractors. These attachments will not count toward the application page limit.

USDOL reserves the right to ask further questions on any audit report submitted as part of an application. USDOL also reserves the right to place special conditions on Grantees if concerns are raised in their audit reports.

Note to all applicants: If a copy of the most recent audit report is not submitted as part of the application, the application will be considered unresponsive and will be rejected. In addition, if the audit submitted by the applicant reflects any adverse opinions, the application will not be further considered by the technical review panel and will be rejected.

iv. Coordination—If two or more organizations are applying for the award in the form of a partnership or joint venture, they must demonstrate an approach to ensure the successful collaboration including clear delineation of respective roles and responsibilities. Although each partner will bear independent legal liability for the entire project, the applicants must identify a lead organization and must submit the joint venture, partnership, or other contractual agreement as an attachment (which will not count toward the page limit). If a partnership between two or more organizations is proposed, applicants are encouraged to outline the deliverables, activities, and corresponding timeline for which each organization will be responsible for completing.

v. Experience—The application must include information on previous and current grants, cooperative agreements, or contracts of the applicant with USDOL and other Federal agencies that are relevant to this solicitation, including:

(a) The organizations for which the work was done;

(b) A contact person in that organization with his/her current phone number;

(c) The dollar value of the grant, contract, or cooperative agreement for the project;

(d) The time frame and professional effort involved in the project;

(e) A brief summary of the work performed; and

(f) A brief summary of accomplishments.

This information on previous grants, cooperative agreements, and contracts held by the applicant must be provided in appendices and will not count against the maximum page requirement. USDOL reserves the right to contact the organizations listed and use the information provided in evaluating applications.

Note to All Applicants: In judging organizational capacity, USDOL will take into account not only information provided by an applicant, but also information from the Department and others regarding past performance of organizations already implementing Child Labor Education Initiative projects or activities for USDOL and others. Past performance will be rated by such factors as the timeliness of deliverables, and the responsiveness of the organization and its staff to USDOL or grantor communications regarding deliverables and cooperative agreement or contractual requirements. In addition, the performance of the organization's key personnel on existing projects with USDOL or other entities, whether the organization has a history of replacing key personnel with similarly qualified staff, and the timeliness of replacing key personnel, will also be taken into consideration when rating past performance. Lack of past experience with USDOL projects, cooperative agreements, grants, or contracts is not a bar to eligibility or selection under this solicitation.

C. Management Plan/Key Personnel/Staffing (25 Points)

Successful performance of the proposed work depends heavily on the management skills and qualifications of the individuals committed to the project. Accordingly, in its evaluation of each application, USDOL will place emphasis on the applicant's management approach and commitment of personnel qualified for the work involved in accomplishing the assigned tasks. This section of the application must include sufficient information to judge management and staffing plans, and the experience and competence of program staff proposed for the project to assure that they meet the required qualifications.

Note that management and professional technical staff members comprising the applicant's proposed team should be individuals who have prior experience with organizations working in similar efforts, and who are fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance are proposed, organizational lines of authority and responsibility should be clearly delineated to ensure responsiveness to the needs of USDOL.

Note to All Applicants: All key personnel must allocate 100 percent of their time to the project and be present within the target country. Key personnel positions must not be combined. Proposed key personnel candidates must sign letters of agreement to serve on the project, and indicate availability to commence work within 30 days of cooperative agreement award. Applicants must submit these letters as an attachment to the application. (These will not count toward the page limit). If key personnel letters of agreement to serve on the project are not submitted as part of the application, the application will be considered unresponsive and will be rejected.

i. Key personnel—The applicant must identify all key personnel candidates proposed to carry out the requirements of this solicitation. ''Key personnel'' are staff (Project Director, Education Specialist, and Monitoring and Evaluation Officer) who are essential to the successful operation of the project and completion of the proposed work and, therefore, as detailed in Section VI(2)(C), may not be replaced or have hours reduced without the approval of the Grant Officer. If key personnel candidates are not designated, the application will be considered unresponsive and will be rejected. **Note:** preference may be given to applicants who propose qualified key personnel that have extensive experience in the host country.

(a) A Project Director who will be responsible for overall project management, supervision, administration, and implementation of the requirements of the cooperative agreement. He/she will establish and maintain systems for project operations; ensure that all cooperative agreement deadlines are met and targets are achieved; maintain working relationships with project stakeholders and partners; and oversee the preparation and submission of progress and financial reports. The Project Director must have a minimum of three years of professional experience in a leadership role in implementation of complex basic education programs in developing countries in areas such as: education policy; improving educational quality and access; educational assessment of disadvantaged students; development of community participation in the improvement of basic education for disadvantaged children; and monitoring and evaluation of basic education projects. Consideration will be given to candidates with additional years of experience including experience working with officials of ministries of education and/or labor. Preferred candidates must also have knowledge of exploitive child labor issues, and experience in the development of transitional, formal, and vocational education of children removed from exploitive child labor and/or victims of the worst forms of child labor. Fluency in English is required and working knowledge of the official language of the target country, or at least one of the official languages if there is more than one, is preferred.

(b) An Education Specialist who will provide leadership in developing the technical aspects of this project in collaboration with the Project Director. This person must have at least three years experience in basic education projects in developing countries in areas including student assessment, teacher training, educational materials development, educational management, and educational monitoring and information systems. This person must have experience in working successfully with ministries of education, networks of educators, employers' organizations and trade union representatives or comparable entities. Additional experience with exploitive child labor/education policy and monitoring and evaluation is an asset. A working knowledge of English is preferred, as is a similar knowledge of the official language(s) spoken in the target country.

(c) A Monitoring and Evaluation Officer who will oversee the implementation of the project's monitoring and evaluation strategies and requirements. This person should have at least three years progressively responsible experience in the monitoring and evaluation of international development projects, preferably in education and training or a related field. Related experience can include strategic planning and performance measurement, indicator selection, quantitative and qualitative data collection and analysis methodologies, database management, and knowledge of the Government Performance and Results Act. Individuals with a demonstrated ability to build capacity of the project team and partners in these domains will be given special consideration.

Information provided on key personnel candidates must include the following:

- The educational background and experience of all key personnel to be assigned to the project.

• The special capabilities of key personnel that demonstrate prior experience in organizing, managing and performing similar efforts.

• The current employment status of key personnel and availability for this project. The applicant must also indicate whether the proposed work will be performed by persons currently employed by the applying organization or is dependent upon planned recruitment or sub-contracting.

ii. Other Professional Personnel—The applicant must identify other program personnel proposed to carry out the requirements of this solicitation. The applicant must also indicate whether the proposed work by other professional personnel will be performed by persons currently employed by the organization or is dependent upon planned recruitment or sub-contracting.

iii. Management Plan—The management plan must include the following:

(a) A description of the functional relationship between elements of the project's management structure; and

(b) The responsibilities of project staff and management and the lines of authority between project staff and other elements of the project.

Note: Applicants will be rated based on the clarity and quality of the information provided in the management plan.

iv. Staff Loading Plan—The staff loading plan must identify all key tasks and the person-days required to complete each task. Labor estimated for each task must be broken down by individuals assigned to the task, including sub-contractors and consultants. All key tasks should be charted to show time required to perform them by months or weeks.

v. Roles and Responsibilities—The applicant must include a resume, as well as a description of the roles and responsibilities of all key and professional personnel proposed. Resumes must be submitted as an attachment to the application and will not count toward the page limit. If resumes of key personnel candidates are not submitted as part of the application, the application will be considered unresponsive and will be rejected.

At a minimum, each resume must include: the individual's current employment status and previous work experience, including position title, duties, dates in position, employing organizations, and educational background. Duties must be clearly defined in terms of role performed, *e.g.*, manager, team leader, and/or consultant. The application must indicate whether the individual is currently employed by the applicant, and (if so) for how long.

D. Leveraging Resources (5 Points)

USDOL will give up to five (5) additional rating points to applications that include committed non-Federal resources that significantly expand the dollar amount, size and scope of the application. These programs or activities will not be financed by the project, but can complement and enhance project objectives. Applicants are also encouraged to leverage activities, such as micro-credit, revolving funds, or loan guarantees, which are not directly allowable under the cooperative agreement. To be eligible for the additional points, the applicant must list the source(s) of resources, the nature, and possible activities anticipated with these resources under this cooperative agreement and any partnerships, linkages or coordination of activities, cooperative funding, etc. Staff time of proposed key personnel may not be submitted as a leveraged resource.

2. Review and Selection Process

The Office of Procurement at USDOL will screen all applications to determine whether all required elements, as identified in section IV(2) above, are present and clearly identifiable. If an application does not include all of the required elements, including required attachments, it will be considered unresponsive and will be rejected. Once an application is deemed unresponsive, the Office of Procurement will send a letter to the applicant, which will state that the application was incomplete, indicate which document was missing from the application, and explain that the technical review panel will be unable to rate the application.

The following documents must be included in the application package in order for the application to be deemed complete and responsive:

i. A cost proposal.

ii. A technical proposal.

iii. The applicant's most recent audit report.

iv. Resumes of all key personnel candidates.

v. Signed letters of agreement to serve on the project from all key personnel candidates.

Each complete application will be objectively rated by a technical review panel against the criteria described in this announcement. Applicants are advised that panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select a Grantee on the basis of the initial application submission; or, the Grant Officer may establish a competitive or technically acceptable range from which qualified applicants will be selected. If deemed appropriate, the Grant Officer may call for the preparation and receipt of final revisions of applications, following which the evaluation process described above may be repeated, in whole or in part, to consider such revisions. The Grant Officer will make final selection determinations based on panel findings and consideration of factors that represent the greatest advantage to the government, such as cost, the availability of funds, and other factors. If USDOL does not receive technically acceptable applications in response to this solicitation, USDOL reserves the right to terminate the competition and not make any award. The Grant Officer's determinations for awards under this solicitation are final.

Note to All Applicants: Selection of an organization as a cooperative agreement recipient does not constitute approval of the cooperative agreement application as submitted. Before the actual cooperative agreement is awarded, USDOL may enter into best and final negotiations about such items as program components, funding levels, and administrative systems in place to support cooperative agreement implementation. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application. In addition, USDOL reserves the right to further negotiate program components after award, during the project design document submission and review process. See Section VI(3)(A).

Award of a cooperative agreement under this solicitation may also be contingent upon an exchange of project support letters between USDOL and the relevant ministries in the target country.

3. Anticipated Announcement and Award Dates

Designation decisions will be made, where possible, within 45 days after the deadline for submission of proposals. USDOL is not obligated to make any awards as a result of this solicitation, and only the Grant Officer can bind USDOL to the provision of funds under this solicitation. Unless specifically provided in the cooperative agreement, USDOL's acceptance of a proposal and/or award of Federal funds does not waive any cooperative agreement requirements and/or procedures.

VI. Award Administration Information

1. Award Notices

The Grant Officer will notify applicants of designation results as follows:

Designation Letter: The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The designation letter will be accompanied by a cooperative agreement and ICLP's Management Procedures and Guidelines (MPG).

Non-Designation Letter: Any organization not designated will be notified formally of the non-designation and given the basic reasons for the determination.

Notification by a person or entity other than the Grant Officer that an organization has or has not been designated is not valid.

2. Administrative and National Policy Requirements

A. General

Grantee organizations are subject to applicable U.S. Federal laws (including provisions of appropriations law) and regulations, Executive Orders, applicable Office of Management and Budget (OMB) Circulars, and USDOL policies. If during project implementation a Grantee is found in violation of U.S. Government laws and regulations, the terms of the cooperative agreement awarded under this solicitation may be modified by USDOL, costs may be disallowed and recovered, the cooperative agreement may be terminated, and USDOL may take other action permitted by law. Determinations of allowable costs will be made in accordance with the applicable U.S. Federal cost principles.

Grantees must also submit to an annual independent audit. Single audits conducted under the provisions of OMB Circular A–133 are to be submitted by U.S. based non-profit organizations to meet the annual independent audit requirement. For foreign-based and private for-profit Grantees, an attestation engagement, conducted in accordance with U.S. ''Government Auditing Standards,'' that includes an auditor's opinions on (1) compliance with the Department's regulations and the provisions of the cooperative agreement and (2) the reliability of the Grantee's financial and performance reports must be submitted to meet the annual audit requirement. Costs for these audits or attestation engagements should be included in direct or indirect costs, whichever is appropriate.

The cooperative agreements awarded under this solicitation are subject to the following administrative standards and provisions, and any other applicable standards that come into effect during the term of the cooperative agreement, if applicable to a particular Grantee:

i. 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.

ii. 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.

iii. 29 CFR Part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

iv. 29 CFR Part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor.

v. 29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

vi. 29 CFR Part 93—New Restrictions on Lobbying.

vii. 29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

viii. 29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

ix. 29 CFR Part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

x. 29 CFR Part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

Applicants are reminded to budget for compliance with the administrative requirements set forth. This includes the cost of performing administrative activities such as annual single audits or attestation engagements (as applicable); closeout; mid-term and final evaluations; project-related document preparation, including deliverables; as well as compliance with procurement and property standards. Copies of all regulations referenced in this solicitation are available at no cost, on-line, at *http://www.dol.gov*.

Grantees should be aware that terms outlined in this solicitation, the cooperative agreement, and the MPGs are all applicable to the implementation of projects awarded under this solicitation.

B. Sub-Contracts

The Grantee may not sub-grant any of the funds obligated under this cooperative agreement. Sub-granting may not appear or be included in the budget as a line item. However, sub-contracts may be included as a budget line item.

All relationships between the Grantee and partner organizations receiving funds under this solicitation must be set forth in an appropriate joint venture, partnership, or other contractual agreement. Copies of such agreements should be provided to USDOL as an attachment to the application; copies of such agreements will not count toward the page limit.

Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. Sub-contracts awarded after the cooperative agreement is signed, and not proposed in the application, must be awarded through a formal competitive bidding process, unless prior written approval is obtained from USDOL.

In compliance with Executive Orders 12876, as amended, 13230, 12928 and 13021, as amended, Grantees are strongly encouraged to provide sub-contracting opportunities to Historically Black Colleges and Universities, Hispanic-Serving Institutions and Tribal Colleges and Universities.

C. Key Personnel

As noted in Section V(1)(C), the applicant must list the individuals who have been designated as having primary responsibility for the conduct and completion of all project work. The applicant must submit written proof that key personnel (Project Director, Education Specialist, and Monitoring and Evaluation Officer) will be available to begin work on the project no later than 30 days after award.

After the cooperative agreement has been awarded and throughout the life of the project, Grantees agree to inform the Grant Officer's Technical Representative (GOTR) whenever it appears impossible for any key personnel to continue work on the project as planned. A Grantee may nominate substitute key personnel and submit the nominations to the GOTR. A Grantee may also propose reducing the hours of key personnel; however, a Grantee must obtain prior approval from the Grant Officer for all such changes to key personnel. If the Grant Officer is unable to approve the key personnel change, he/she reserves the right to terminate the cooperative

agreement or disallow costs. **Please note:** As stated in Section V(1)(B)(v), the performance of the organization's key personnel on existing projects with USDOL or other entities, and whether the organization has a history of replacing key personnel with equally qualified staff, will be taken into consideration when rating past performance.

D. Encumbrance of Cooperative Agreement Funds

Cooperative agreement funds may not be encumbered/obligated by a Grantee before or after the period of performance. Encumbrances/obligations outstanding as of the end of the cooperative agreement period may be liquidated (paid out) after the end of the cooperative agreement period. Such encumbrances/obligations may involve only specified commitments for which a need existed during the cooperative agreement period and that are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with a Grantee's purchasing procedures and incurred within the cooperative agreement period. All encumbrances/obligations incurred during the cooperative agreement period must be liquidated within 90 days after the end of the cooperative agreement period, unless a longer period of time is granted by USDOL.

All equipment purchased with project funds must be inventoried and secured throughout the life of the project. At the end of the project, USDOL and the Grantee is expected to determine how to best allocate equipment purchased with project funds in order to ensure sustainability of efforts in the projects' implementing areas.

E. Site Visits

USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of a Grantee or a sub-contractor(s) under this cooperative agreement, a Grantee shall provide and shall require its sub-contractors to provide all reasonable facilities and assistance for the safety and convenience of government representatives in the performance of their duties. All site visits and evaluations are expected to be performed in a manner that will not unduly delay the implementation of the project.

3. Reporting and Deliverables

In addition to meeting the above requirements, a Grantee is expected to monitor the implementation of the program; report to USDOL on a semi-annual basis or more frequently if deemed necessary by USDOL; and undergo evaluations of program results. Guidance on USDOL procedures and management requirements will be provided to Grantees in the MPGs with the cooperative agreement. The project budget must include funds to: plan, implement, monitor, report on, and evaluate programs and activities (including mid-term and final evaluations and annual single audits or attestation engagements, as applicable); conduct studies pertinent to project implementation; establish education baselines to measure program results; and finance travel by field staff and key personnel to meet annually with USDOL officials in Washington, DC or within the project's region (*e.g.* Africa, Asia, Latin America, Middle East and North Africa, and Europe). Applicants based both within and outside the United States should also budget for travel by field staff and other key personnel to Washington, DC at the beginning of the project for a post-award meeting with USDOL. Indicators of project performance must also be proposed by a Grantee and approved by USDOL in the Performance Monitoring Plan, as discussed in Section VI(3)(D) below. Unless otherwise indicated, a Grantee must submit copies of all required reports to USDOL by the specified due dates. Exact timeframes for completion of deliverables will be addressed in the cooperative agreement and the MPGs.

Specific deliverables are the following:

A. Project Design Document

As stated in Sections I(2) and IV(2), applications must include a preliminary project design document in the format described in Appendix A, with design elements linked to a logical framework matrix. (**Note:** The supporting logical framework matrix will not count in the 45-page limit but should be included as an annex to the project document. To guide applicants, a sample logical framework matrix for a hypothetical Child Labor Education Initiative project is available at *http://www.dol.gov/ilab/grants/bkgrd.htm*). The preliminary project document must include all sections identified in Appendix A, including a background/justification section, project strategy (goal, purpose, outputs, activities, indicators, means of verification, assumptions), project implementation timetable, and project budget. The narrative must address the criteria/themes described in the Program Design/Budget-Cost Effectiveness section (Section V(1)(A) above).

Within six months after the time of the award, the Grantee must deliver the final project design document, based on the application written in response to this solicitation, including the results of additional consultation with stakeholders, partners, and USDOL. The final project design document must also include sections that address coordination strategies, project management and sustainability.

B. Progress and Financial Reports

The format for the progress reports will be provided in the MPG distributed after the award. Grantees must furnish a typed technical progress report and a financial report (SF 269) to USDOL on a semi-annual basis by 31 March and 30 September of each year during the cooperative agreement period. However, USDOL reserves the right to require up to four reports a year, as necessary. Also, a copy of the Federal Cash Transactions Report (PSC 272) must be submitted to USDOL upon submission to the Health and Human Services—Payment Management System (HHS–PMS).

C. Annual Work Plan

Grantees must develop an annual work plan within six months of project award for approval by USDOL so as to ensure coordination with other relevant social actors throughout the country. Subsequent annual work plans must be delivered no later than one year after the previous one.

D. Performance Monitoring and Evaluation Plan

Grantees must develop a performance monitoring and evaluation plan in collaboration with USDOL, including beginning and ending dates for the project, indicators and methods and cost of data collection, planned and actual dates for mid-term review, and final end of project evaluations. The performance monitoring plan must be developed in conjunction with the logical framework project design and common indicators for reporting selected by USDOL. The plan must include a limited number of key indicators that can be realistically measured within the cost parameters allocated to project monitoring. Baseline data collection is expected to be tied to the indicators of the project design document and the performance monitoring plan. A draft monitoring and evaluation plan must be submitted to

USDOL within six months of project award.

E. Project Evaluations

Grantees and the GOTR will determine on a case-by-case basis whether mid-term evaluations will be conducted by an internal or external evaluation team. All final evaluations must be external and independent in nature. A Grantee must respond in writing to any comments and recommendations provided in the mid-term evaluation report. The budget must include the projected cost of mid-term and final evaluations.

VII. Agency Contacts

All inquiries regarding this solicitation should be directed to: Ms. Lisa Harvey, U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210; telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: *harvey.lisa@dol.gov*. For a list of frequently asked questions on USDOL's Child Labor Education Initiative Solicitation for Cooperative Agreement, please visit *http://www.dol.gov/ILAB/faq/faq36.htm*.

VIII. Other Information

1. Materials Prepared Under the Cooperative Agreement

Grantees must submit to USDOL, for approval, all media-related, awareness-raising, and educational materials developed by the Grantee or its sub-contractors before they are reproduced, published, or used. USDOL considers such materials to include brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the program. USDOL will review materials for technical accuracy and other issues.

In addition, USDOL reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use for Federal purposes, and authorize others to do so, all materials that are developed or for which ownership is purchased by the Grantee under an award.

2. Acknowledgment of USDOL Funding

USDOL has established procedures and guidelines regarding acknowledgement of funding. USDOL requires, in most circumstances, that the following be displayed on printed materials:

''Funding provided by the United States Department of Labor under Cooperative Agreement No. E–9–X–X–XXXX.''

With regard to press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part under this cooperative agreement, all Grantees are required to consult with USDOL on: acknowledgment of USDOL funding; general policy issues regarding international child labor; and informing USDOL, to the extent possible, of major press events and/or interviews. More detailed guidance on acknowledgement of USDOL funding will be provided upon award to the Grantee(s) in the cooperative agreement and the MPG. In consultation with USDOL, USDOL will be acknowledged in one of the following ways:

A. The USDOL logo may be applied to USDOL-funded material prepared for worldwide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of global interest. A Grantee must consult with USDOL on whether the logo may be used on any such items prior to final draft or final preparation for distribution. In no event will the USDOL logo be placed on any item until USDOL has given a Grantee written permission to use the logo on the item.

B. The following notice must appear on all documents: ''This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.''

3. Privacy and Freedom of Information

Any information submitted in response to this solicitation will be subject to the provisions of the Privacy Act and the Freedom of Information Act, as appropriate.

Signed at Washington, DC, this 4th day of May, 2005.

Valerie Veatch,

Grant Officer.

Appendix A: Project Document Format

Executive Summary

1. Background and Justification
2. Target Groups
3. Program Approach and Strategy
   - 3.1 Narrative of Approach and Strategy (linked to Logical Framework matrix in Annex A)
   - 3.2 Project Implementation Timeline (Gantt Chart of Activities linked to Logical Framework matrix in Annex A)
   - 3.3 Budget (with cost of Activities linked to Outputs for Budget Performance Integration in Annex B)
4. Project Monitoring and Evaluation
   - 4.1 Indicators and Means of Verification
   - 4.2 Baseline Data Collection Plan
5. Institutional and Management Framework
   - 5.1 Institutional Arrangements for Implementation
   - 5.2 Collaborating and Implementing Institutions (Partners) and Responsibilities
   - 5.3 Other Donor or International Organization Activity and Coordination
   - 5.4 Project Management Organizational Chart
6. Inputs
   - 6.1 Inputs provided by USDOL
   - 6.2 Inputs provided by the Grantee
   - 6.3 National and/or Other Contributions
7. Sustainability

Annex A: Full presentation of the Logical Framework matrix

Annex B: Outputs Based Budget example

(A worked example of a Logical Framework matrix, an Outputs Based Budget, and other background documentation for this solicitation are available from ILAB's Web site at *http://www.dol.gov/ilab/grants/bkgrd.htm*.)

[FR Doc. 05–9284 Filed 5–9–05; 8:45 am]

BILLING CODE 4510–28–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–086)]

NASA Advisory Committees; Renewal of NASA's Advisory Committee Charters

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of renewal and amendment of the charters of NASA's advisory committees.

SUMMARY: Pursuant to sections 14(b)(1)and 9(c) of the Federal Advisory Committee Act (Pub. L. 92–463), and after consultation with the Committee Management Secretariat, General Services Administration, the Administrator of the National Aeronautics and Space Administration has determined that a renewal of four Agency-established advisory committees is in the public interest in connection with the performance of duties imposed upon NASA by law. The structure and duties of these committees are unchanged. The four advisory committees are: NASA Advisory Council, Aerospace Medicine and Occupational Health Advisory Committee, Minority Business Resources Advisory Committee, and Planetary Protection Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Ms. P. Diane Rausch, Office of External Relations, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4510.

SUPPLEMENTARY INFORMATION: Information regarding the NASA

Advisory Council and its committees is available on the World Wide Web at: *http://www.hq.nasa.gov/office/codez/new/poladvisor.html*.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–9240 Filed 5–9–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, May 17, 2005.

PLACE: NTSB Board Room, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item Open to the Public.

MATTER TO BE CONSIDERED:

7632A Aircraft Accident Report—Hard landing, gear collapse, Federal Express Flight 647, Boeing MD–10–10F, N364FE, Memphis, Tennessee, December 18, 2003.

News Media Contact: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, May 13, 2005.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: May 6, 2005.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 05–9425 Filed 5–6–05; 2:12 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 15, 2005 to April 28, 2005. The last biweekly notice was published on April 26, 2005 (70 FR 21449).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the

Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station (OCNGS), Ocean County, New Jersey

Date of amendment request: March 28, 2005.

Description of amendment request: The licensee proposed to revise the licensing bases of OCNGS in the area of radiological dose analyses for the design-basis accidents (DBAs). Specifically, the licensee proposed to use the alternative source terms (AST) depicted in Regulatory Guide 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' instead of the source terms used in the current licensing basis and depicted in Technical Information Document 14844, ''Calculation of Distance Factors for Power and Test Reactor Sites.'' The acceptance criteria for the postulated consequences using AST are set forth in 10 CFR 50.67 and General Design Criterion 19, ''Control Room.'' The licensee has performed radiological consequence analysis for the most limiting DBAs that result in offsite and control room operator exposure to support a full-scope implementation of the AST. If approved, the amendment would: (1) Revise Section 3.2.A, ''Standby Liquid Control System,'' of the Technical Specifications (TSs) to add a specification to require that the subject system is operable when the reactor is at or greater than 212 degrees Fahrenheit; (2) revise various pages of the TS Bases to reflect use of the AST methodology. The issuance of the requested amendment would also signify the NRC staff's approval to revise the OCNGS Updated Final Safety Analysis Report to reflect implementation of the AST in the OCNGS licensing basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration. The NRC staff's analysis is presented below:

The first standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The AST is an input to calculations used to evaluate the consequences of an accident, and does not by itself affect the plant response, or the actual pathway of the radiation release. It does, however, better represent the physical characteristics of the release, so that appropriate mitigation techniques may be applied. The proposed amendment does not affect the design of plant systems, structures, or components (SSCs), or their operational characteristics or function. As a result, implementing the AST would not have any increase on the frequency of occurrence for previously analyzed accidents. It may be argued that the calculated radiological consequences are different because a different set of assumptions, with accompanying acceptance criteria, are used. However, since there is no design or operational change associated with the proposed amendment, the actual consequences of the same accident would not be changed regardless of what methodology was used before the accident to arrive at postulated consequences. As a result, implementing the AST would not increase the consequences of any previously evaluated accident.

The second standard requires that operation of the unit in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment does not alter the design, configuration, or method of operation of any SSC. Therefore, no new initiators or precursors of a new or different kind of accident are created that could result in a new or different kind of accident.

The third standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant reduction in a margin of safety. Margins of safety are established in the design of components, the configuration of components to meet certain performance parameters, and in the establishment of setpoints to initiate alarms or actions. These are principally documented in the OCNGS licensing basis documents such as the Updated Final Safety Analysis Report, and none of these would be changed by the amendment. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the NRC staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for licensee: Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LCC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Richard J. Laufer.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: March 4, 2005.

Description of amendments request: The proposed amendments would delete Section 2.F (2.G in Unit 3) of the Operating License which requires reporting violations of the requirements in Section 2.C of the Operating License. The amendments will also make administrative and editorial changes to the Technical Specifications (TSs). Changes to TS 1.4, ''Frequency,'' and TS 3.4.3, ''RCS Pressure and Temperature (P/T) Limits,'' will correct editorial errors. The changes to TS 2.1.1, ''Reactor Core SLs,'' and TS 3.3.1, ''Reactor Protective System (RPS) Instrumentation—Operating,'' will remove the reference to departure from nucleate boiling ratios (DNBR) based on operating cycle, since only one of the listed DNBR values is now valid. TS 3.1.10, ''Special Test Exceptions (STE)—MODES 1 and 2,'' will be changed to correct an inconsistency between the limiting condition for operation and the TS Bases. The changes to TS 3.7.2, ''Main Steam Isolation Valves (MSIVs)'' and TS 3.7.3, ''Main Feedwater Isolation Valves (MFIVs)'' will correct the applicability for these specifications. The change to TS 3.8.1, ''AC Sources—Operating'' will add a note to a surveillance requirement. Changes to TS 3.8.4, ''DC Sources—Operating'' and TS 3.8.6, ''Battery Cell Parameter'' will remove the reference to AT&T batteries. The changes to TS 5.5.9, ''Steam Generator (SG) Tube Surveillance Program'' will correct the reference for NRC notification.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated.

Response: No.

The proposed amendment includes [the] following changes that are considered to be administrative and/or editorial changes:

The reporting requirement in License Condition 2.F (2.G in Unit 3) is adequately addressed by the requirements identified in 10 CFR 50.72, ''Immediate notification requirements for operating nuclear power reactors'' and 10 CFR 50.73, ''Licensee event report system.'' Since Condition 2.F (2.G in Unit 3) is adequately addressed by the requirements in 10 CFR 50.72 and 10 CFR 50.73, the Condition is not required. Therefore, this is considered an administrative change that eliminates regulatory requirements that are adequately addressed by the requirements in 10 CFR 50.72 and 10 CFR 50.73.

The changes to Technical Specifications (TS) 1.4 and 3.4.3 are editorial changes only. These changes maintain the format of the Technical Specifications and correct editorial errors in the Technical Specifications.

The changes to Technical Specifications 2.1.1 and 3.3.1 remove requirements that are no longer applicable to the Palo Verde Nuclear Generating Station (PVNGS) units. As part of Amendment 133 to the PVNGS Operating License, the minimum DNBR was revised based on Unit operating cycle, ≥1.30 (through operating cycle 10)'' and ≥1.34 (operating cycle 11 and later).'' All three PVNGS units have completed operating cycle 10. Therefore, the reference to the minimum d[e]parture from nucleate boiling ratio (DNBR) through operating cycle 10 (≥1.30) is no longer required.

The changes to Technical Specification 3.1.10 correct an inconsistency between the Technical Specification limiting condition for operation (LCO) and Bases. The Bases for this specification states that ''Even if an accident occurs during PHYSICS TESTS with one or more LCOs suspended, fuel damage criteria are preserved because the limits on power distribution and shutdown capability are maintained during PHYSICS TESTS.'' The limits on power distribution are maintained by TSs 3.2.1, ''Linear Heat Rate (LHR)'' and 3.2.4 ''Departure from Nucleate Boiling Ratio (DNBR).'' These changes ensure that shutdown capability is maintained during physics tests.

The changes to Technical Specifications Section 3.7.2, ''Main Steam Isolation Valves (MSIVs)'' and Section 3.7.3, ''Main Feedwater Isolation Valves (MFIVs)'' correct an inconsistency between the applicability and the required actions. The changes are consistent with the guidance in NUREG–1432, ''Standard Technical Specifications, Combustion Engineering Plants.'' Therefore, this is considered an administrative change that corrects an inconsistency in the Technical Specifications.

The changes to Technical Specifications Section 3.8.1, ''AC Sources—Operating,'' correct an inconsistency in the surveillance requirements that were revised in Amendment 129 to the PVNGS Operating License. A note was not included with the change to one of the surveillance requirements. This change adds the note to

the surveillance requirement. Therefore, this is considered an administrative change that corrects an inconsistency in the Technical Specifications.

The changes to Technical Specifications Section 3.8.4, ''DC Sources—Operating'' and Section 3.8.6, ''Battery Cell Parameters'' removes the requirements and references to the AT&T batteries. APS has replaced the AT&T batteries with low specific gravity batteries in all three units. Therefore, this is considered an administrative change that removes unnecessary requirements and references.

The changes to Technical Specifications Section 5.5.9, ''Steam Generator (SG) Tube Surveillance Program,'' updates the requirement to notify the NRC based on the January 23, 2001 rule change to 10 CFR 50.72. Therefore, this change corrects NRC notification requirements in Technical Specifications, based on the January 23, 2001 rule change to 10 CFR 50.72 (65 FR 63786, 10/25/00).

As discussed above the proposed amendment involves administrative and/or editorial changes only. The proposed amendment does not impact any accident initiators, analyzed events, or assumed mitigation of accident or transient events. The proposed changes do not involve the addition or removal of any equipment or any design changes to the facility. The proposed changes do not affect plant operations, any design function or an analysis that verifies the capability of structures, systems, and components (SSCs) of the plant. The proposed changes do not change any of the previously evaluated accidents in the updated final safety analysis report (UFSAR). The proposed changes do not affect SSCs, operating procedures, and administrative controls that have the function of preventing or mitigating any of these accidents.

Therefore, the proposed changes do not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated.

Response: No.

As discussed in standard 1, the proposed amendment only involves administrative and/or editorial changes. No actual plant equipment or accident analysis will be affected by the proposed changes. The proposed changes will not change the design function or operation of any SSCs. The proposed changes will not result in any new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases. The proposed amendment does not impact any accident initiators, analyzed events, or assumed mitigation of accident or transient events.

Therefore, this proposed change does not create the possibility of an accident of a different kind than previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety.

Response: No.

As discussed in standard 1, the proposed amendment only involves administrative and/or editorial changes. Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel and fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. This request involves administrative and/or editorial changes only. No actual plant equipment or accident analysis will be affected by the proposed changes. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety system settings, or will not relax the bases for any limiting conditions for operation.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kenneth C. Manne, Senior Attorney, Arizona Public Service Company, P.O. Box 52034, Mail Station 7636, Phoenix, Arizona 85072–2034.

NRC Section Chief: Robert A. Gramm.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: January 27, 2005.

Description of amendments request: The proposed amendment would allow entry into a mode or other specified condition in the applicability of a Technical Specification (TS), while in a condition statement and the associated required actions of the TSs, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Section 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TSs would be eliminated, several notes or specific exceptions would be revised to reflect the related changes to LCO 3.0.4, and Surveillance Requirement (SR) 3.0.4 would be revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's TS Task Force (TSTF) and is designated TSTF–359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated January 27, 2005.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the

plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Carey Fleming, Esquire, Counsel, Constellation Energy Group, Inc., 750 East Pratt Street, 5th floor, Baltimore, MD 21202.

NRC Section Chief: Richard J. Laufer.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: March 14, 2005.

Description of amendment request: The proposed amendments would delete Technical Specification (TS) Section 5.5.4, ''Post Accident Sampling,'' requirements to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, Revision 3, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Access Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the NRC's lessons learned from the accident that occurred at TMI Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on March 3, 2003 (68 FR 10052) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in a license amendment application in the **Federal Register** on May 13, 2003 (68 FR 25664). The licensee affirmed the applicability of the following NSHC determination in its application dated March 14, 2005.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottingham, Winston and Strawn LPP, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: John A. Nakoski.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: September 23, 2004, as supplemented by letter dated April 19, 2005.

Description of amendment request: The amendment would revise the reactor operational limits, as specified in the River Bend Station Core Operating Limits Report (COLR), to compensate for the inoperability of the End of Cycle Recirculation Pump Trip (EOC–RPT) instrumentation. This will provide an alternative to the existing Limiting Condition for Operation for the EOC–RPT instrumentation. The revised Technical Specification will require that either the EOC–RPT instrumentation be operable or that Minimum Critical Power Ratio and Linear Heat Generation Rate limits for the inoperable EOC–RPT be placed in effect as specified in the COLR.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The End of Cycle Recirculation Pump Trip (EOC–RPT) functions to insert negative reactivity in response to certain anticipated transients. The EOC–RPT is a mitigation function and not the initiator of any evaluated accident or transient. Operation with inoperable EOC–RPT instrumentation and compliance with new restrictive Minimum Critical Power Ratio (MCPR) and Linear Heat Generation Rate (LHGR) operating limits establish sufficient margin to the core thermal MCPR safety limit (SL) and the thermal mechanical design limits as would be the case with operable EOC–RPT instrumentation and existing MCPR and LHGR limits.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will not create any new modes of plant or equipment operation. The proposed change allows the option to apply an additional penalty factor to the MCPR and LHGR when the EOC–RPT is inoperable. With the addition of the penalty factor, the margin to the MCPR SL and the thermal mechanical design limits are maintained. Therefore, operating the plant with the proposed change will not create the possibility of a new or different kind of accident from any previously analyzed.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

By establishing a new restrictive MCPR and LHGR operating limit, there are no changes to the plant design and safety analysis. There are no changes to the reactor core design instrument setpoints. The margin of safety assumed in the safety analysis is not affected. Applicable regulatory requirements will continue to be met and adequate defense-in[-]depth will be maintained. Sufficient safety margins will be maintained.

The analytical methods used to determine the revised core operating limits were reviewed and approved by the NRC, and are described in Technical Specification 5.6.5. Specific analyses were prepared by the RBS fuel vendor to develop core operating limits without crediting the EOC–RPT. Therefore, implementation of the proposed changes will not involve a significant reduction in the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Allen G. Howe.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: February 15, 2005.

Description of amendment request: The proposed amendment would approve application of an alternative source term methodology with the exception that Technical Information Document 14844, ''Calculation of Distance Factors for Power Test Reactor Sites,'' will continue to be used as the radiation dose basis for equipment qualification.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The implementation of AST assumptions has been evaluated in revisions to the analyses of the following limiting DBAs at the Byron Station and Braidwood Station.

Loss-of-Coolant Accident
Fuel Handling Accident
Control Rod Ejection Accident
Locked Rotor Accident
Main Steam Line Break Accident
Steam Generator Tube Rupture Accident

Based upon the results of these analyses, it has been demonstrated that, with the requested changes, the dose consequences of these limiting events are within the regulatory guidance provided by the NRC for use with the AST methodology. This guidance is presented in RG 1.183, and Standard Review Plan Section 15.0.1. The AST is an input to calculations used to evaluate the consequences of an accident and does not by itself affect the plant response or the actual pathway of the activity released from the fuel. It does, however, better represent the physical characteristics of the release such that appropriate mitigation techniques may be applied.

The AST methodology follows the guidance provided in RG 1.183 and satisfies the dose limits in 10 CFR 50.67. Even though these limits are not directly comparable to the previously specified whole body and thyroid requirements of 10 CFR 50, Appendix A, General Design Criteria (GDC) 19, ''Control room,'' and 10 CFR 100.11, ''Determination of exclusion area, low population zone, and population center distance,'' the results of the AST analyses have demonstrated that the 10 CFR 50.67 limits are satisfied. Therefore, it is concluded that AST does not involve a significant increase in the consequences of an accident previously evaluated.

Implementation of AST provides increased operating margins for the control room ventilation system filtration efficiencies. It also relaxes containment integrity requirements while handling irradiated fuel that has decayed for greater than 48 hours and during core alterations. Automatic initiation of the radiation isolation mode for the control room is not credited in the accident analysis which allows relaxation of certain Technical Specification surveillance requirements.

The equipment affected by the proposed changes is mitigative in nature and relied upon after an accident has been initiated. Application of the AST does result in changes to the functions and operation of various filtration systems as described in the Updated Final Safety Analysis Report (UFSAR). These effects have been considered in the evaluations for these proposed changes. While the operation of various systems does change with the implementation of AST, the affected systems are not accident initiators; and application of the AST methodology, itself, is not an initiator of a design basis accident. The proposed changes to the TS revise certain equipment performance requirements but do not require any physical changes to the plant.

As a result, the proposed changes do not affect any of the parameters or conditions

that could contribute to the initiation of any accidents. Relaxation of operability requirements during the specified conditions will not significantly increase the probability of occurrence of an accident previously analyzed. Since design basis accident initiators are not being altered by adoption of the AST, the probability of an accident previously evaluated is not affected.

Based on the above discussion, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve a physical change to the plant. Implementation of AST provides increased operating margins for filtration system efficiencies. Application of AST also allows for the relaxation of containment integrity requirements while handling irradiated fuel that has decayed for greater than 48 hours and during core alterations. Automatic initiation of the radiation isolation mode for the control room is no longer credited in the accident analysis.

Similarly, the proposed changes do not require any physical changes to any structures, systems or components involved in the mitigation of any accidents. Therefore, no new initiators or precursors of a new or different kind of accident are created. New equipment or personnel failure modes that might initiate a new type of accident are not created as a result of the proposed changes.

Based on the above discussion, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Approval of a change from the original source term methodology (*i.e.*, TID 14844) to an AST methodology, consistent with the guidance in RG 1.183, will not result in a significant reduction in the margin of safety. The safety margins and analytical conservatisms associated with the AST methodology have been evaluated and were found acceptable. The results of the revised DBA analyses, performed in support of the proposed changes, are subject to specific acceptance criteria as specified in RG 1.183. The dose consequences of these DBAs remain within the acceptance criteria presented in 10 CFR 50.67 and RG 1.183.

The proposed changes continue to ensure that the doses at the exclusion area boundary (EAB) and low population zone boundary (LPZ), as well as the control room, are within the specified regulatory limits.

Therefore, based on the above discussion, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Gene Y. Suh.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio; Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania; Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: February 22, 2005.

Description of amendment request: The requested change will delete Technical Specification requirements related to Occupational Radiation Exposure Reports and Monthly Operating Reports.

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on June 23, 2004 (69 FR 35067). The licensee affirmed the applicability of the model NSHC determination in its application dated February 22, 2005.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change eliminates the Technical Specifications (TSs) reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above, the requested change does not involve a significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chiefs: Gene Y. Suh, Richard J. Laufer.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: March 22, 2005.

Description of amendment request: The proposed amendments revise the Technical Specifications (TS) for several Reactor Protection System functional units. The steam/feedwater flow mismatch coincident with steam generator water level—low reactor trip is being deleted, the reactor trip on turbine trip interlock is being changed from P–7 to P–8, the value of the P–8 interlock setpoint is being changed from 45 percent rated thermal power (RTP) to 40 percent RTP, and the value of the P–8 interlock allowable value is being changed from 48 percent RTP to 43 percent RTP.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes revise the operability requirements, surveillance requirements and the interlock setpoint for two Reactor Trip System functional units. The affected trip functional units are not initiators of any accident previously evaluated. The proposed changes to the affected trip functional units do not adversely affect the initiators of any accident previously evaluated. A best estimate

analysis has shown that a turbine trip without a reactor trip below 40% power does not challenge the pressurizer PORVs [power operated relief valves] or the steam generator safety valves; thereby, not adversely affecting the probability of a small break LOCA [loss of coolant accident] due to a stuck open PORV, or an excessive cooldown event due to a stuck open steam generator safety valve. As a result, the probability of any accident previously evaluated is not significantly increased by the proposed changes.

The steam/feedwater flow mismatch coincident with steam generator water level—low reactor trip is not credited as a primary trip in any previously evaluated accidents. The reactor trip on turbine trip below the P–8 interlock is not credited as a primary trip in any previously evaluated accidents. Therefore, the mitigation functions that have been assumed in the accident analyses will continue to be performed by the systems and components currently credited in the analyses; and the accident analysis results are not affected by the changes to the affected trip functional units. The P–8 setpoint is not an initial condition of any accident previously evaluated. Therefore, the accident analysis results are not affected by changes to the P–8 setpoint. No safety analyses previously performed in the Turkey Point Units 3 and 4 UFSAR [Updated Final Safety Analysis Report] required reanalysis for these proposed changes. All accident analyses acceptance criteria continue to be met. The proposed changes do not create any new credible limiting single failure. As a result, the consequences of any accident previously evaluated are not significantly increased by the proposed changes.

In conclusion, operation of the facility in accordance with the proposed amendments does not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated.

No changes are being made to the plant that would introduce any new accident causal mechanisms. The proposed changes do not adversely affect previously identified accident initiators and do not create any new accident initiators. No new limiting single failures or accident scenarios are created by the proposed changes. No new challenges to any installed safety system are created by these proposed changes. The proposed changes do not result in any event previously deemed incredible being made credible.

The steam/feedwater flow mismatch coincident with steam generator water level—low reactor trip is not credited as an inhibitor of any potential or actual accident initiators. So, deletion of this reactor trip functional unit will not create the possibility of a new or different kind of accident from any previously evaluated.

Changing the interlock for the reactor trip on turbine trip from P–7 to P–8 changes the power level associated with enabling and disabling the reactor trip on turbine trip function. The turbine pressure input to the reactor protection system permissives is not an accident initiator and is not credited in the accident analyses. Changing the P–8 allowable and trip setpoint values changes the power level associated with enabling and disabling the reactor trip functions currently associated with P–8. The change does not affect how the associated trip functional units operate or function. Since these interlock changes do not affect the way that the associated trip functional units operate or function, the changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Therefore, operation of the facility in accordance with the proposed amendments does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

No UFSAR safety analyses were changed or modified as a result of these proposed changes. Therefore, all margins associated with the current UFSAR safety analyses acceptance criteria are unaffected. The current UFSAR safety analyses remain bounding. No UFSAR Chapter 14 events explicitly credit the steam/feedwater flow mismatch reactor trip function and the reactor trip on turbine trip function below the P–8 setpoint value. The safety systems credited in the safety analyses will continue to be available to perform their mitigation functions. Changing the P–8 setpoint from 45% to 40% is in the conservative direction for the Reactor Coolant Flow—Low Reactor Trip and the Reactor Coolant Pump Breaker Position Reactor Trip. Therefore, the proposed changes do not result in a significant reduction in a margin of safety; and operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Michael L. Marshall, Jr.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: March 28, 2005.

Description of amendment request: The proposed amendment would revise the Technical Specifications to allow the option of not measuring the moderator temperature coefficient within 7 effective full-power days after reaching an equilibrium boron concentration of 300 parts per million. This option would be available if the benchmark criteria in WCAP–13749–P–A and the revised prediction specified in the core operating limits report are satisfied.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change[s] do[es] not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability or consequences of accidents previously evaluated in the UFSAR [updated final safety analysis report] are unaffected by this proposed change. There is no change to any equipment response or accident mitigation scenario, and this change results in no additional challenges to fission product barrier integrity. The proposed change does not alter the design, configuration, operation, or function of any plant system, structure, or component. Further, the existing limits on moderator temperature coefficient (MTC) established by the Technical Specifications (TS), based on assumptions in the safety analyses, remain unchanged and continue to be satisfied. As a result, the outcomes of previously evaluated accidents are unaffected. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change[s] do[es] not create the possibility of a new or different kind of accident from any previously evaluated.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The proposed change does not challenge the performance or integrity of any safety-related system. The proposed change neither installs or removes any plant equipment, nor alters the design, physical configuration, or mode of operation of any plant structure, system, or component. The MTC is a variable that must remain within prescribed limits, but it is not an accident initiator. No physical changes are being made to the plant, so no new accident causal mechanisms are being introduced. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change[s] do[es] not involve a significant reduction in the margin of safety.

The margin of safety associated with the acceptance criteria of any accident is unchanged. The proposed change will have no affect on the availability, operability, or performance of the safety-related systems and components. The proposed change does not alter the design, configuration, operation, or function of any plant system, structure, or component. The ability of any operable structure, system, or component to perform its designated safety function is unaffected by

this change. A change to a surveillance requirement is proposed based on an alternative method of confirming that the surveillance is met. The Technical Specifications establish limits for the moderator temperature coefficient (MTC) based on assumptions in the accident analyses. Applying the conditional exemption from the MTC measurement changes the method of meeting the surveillance requirement; however, this change does not modify the TS values and ensures adherence to the current TS limits. The basis for the derivation of the MTC limits from the moderator density coefficient (MDC) assumed in the accident analysis is unchanged. Further, the safety analysis assumption of a constant MDC and its assumed value will not change. Therefore, the margin of safety as defined in the TS is not reduced and the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Section Chief: Darrell J. Roberts.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: March 28, 2005.

Description of amendment request: The proposed amendment would revise Seabrook Station, Unit No. 1 (Seabrook) Technical Specification (TS) 3/4.9.13, ''Spent Fuel Assembly Storage.'' This revision would reflect a revised criticality safety analysis supporting a two-zone spent fuel pool consisting of BORAFLEX® and BORAL® fuel assembly storage racks. Additionally, the proposed change would create TS 3/4.9.15, ''Spent Fuel Pool Boron Concentration.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed license amendment incorporates the results of a revised criticality analysis for the spent fuel pool without making any physical changes to the facility. The revised criticality analysis for the spent fuel pool (1) credits boron during movement of fuel in the spent fuel pool, (2) assumes no neutron-absorbing material in the BORAFLEX® storage racks, and (3) applies a conservative penalty in the analysis of BORAL® racks. These changes do not increase the probability of a fuel assembly being misplaced within the spent fuel pool. The movement of fuel assemblies will continue to be controlled by approved procedures, and the placement of spent fuel will be controlled by the revised Technical Specifications. The proposed changes do not alter or prevent the ability of structures, systems, or components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR).

The proposed changes do not affect the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated in the Seabrook Station UFSAR. The consequences of a misplaced fuel assembly are not increased because the analysis demonstrates that the fuel will remain sub-critical with a minimum of 872 ppm [part per million] boron in the spent fuel pool. The new technical specification included in this proposed change will ensure that the minimum boron concentration is established during the movement of fuel in the spent fuel pool. Further, the proposed changes neither increase the types and amounts of radioactivity released offsite nor increase occupational or public radiation exposures.

Therefore, the proposed changes do not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to the TS do not alter the operation of the spent fuel storage system or its ability to perform its design function. The proposed changes do not include any physical changes to the plant and do not introduce a new or different accident from any type previously evaluated. A misplaced fuel assembly does not represent a new or different type [of] accident, and the analysis shows that the fuel remains sub-critical for the limiting case of a misplaced fuel assembly. Similarly, continuing to take credit for boron in the spent fuel under accident conditions does not create the possibility of a new or different kind of accident. The previous criticality analyses took credit for soluble boron in the spent fuel pool water to show acceptable results in the analyses of fuel misloading events.

Therefore the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The changes proposed by this license amendment ensure that the spent fuel will remain sub-critical under normal and accident conditions. The controlled placement of fuel assemblies within the spent fuel pool will maintain K_{eff} less than or equal to 0.95 as required by TS 5.6.1.1 for spent fuel storage. The proposed amendment maintains the 0.95 limit on K_{eff} by restricting the placement of spent fuel and by crediting soluble boron in the fuel pool water.

To assure that the true reactivity will be less than the calculated reactivity, the analyses contain conservative assumptions for calculating the safety limits for the spent fuel rack. With this proposed change, K_{eff} will be less than or equal to 0.95 with a 95% probability at a 95% confidence level.

Therefore, the proposed amendment does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Section Chief: Darrell J. Roberts.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2 (NMP2), Oswego County, New York

Date of amendment request: April 1, 2005.

Description of amendment request: The licensee proposed to revise Section 3.8.7, ''Inverters—Operating,'' of the Technical Specifications (TSs), extending the time allowed to fix inoperable emergency uninterruptible power supply (UPS) inverters from the current 24 hours to 7 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff's analysis is presented below:

The first standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment does not affect the design of the emergency UPS inverters, the operational characteristics or function of the inverters, the interfaces between the inverters and other plant systems, or the reliability of the inverters. An inoperable emergency UPS inverter was not considered an initiator of a previously analyzed event. In addition, the required actions and the associated completion times specified by the TSs are not initiators of previously evaluated accidents. As a result, extending the completion time

for an inoperable emergency UPS inverter would not have a significant impact on the frequency of occurrence for a previously analyzed accident. Furthermore, the proposed amendment will not result in modifications to plant activities associated with inverter maintenance, but rather, provides operational flexibility by allowing additional time to perform inverter corrective maintenance and post-maintenance testing on-line. The proposed extension of inoperable time will not significantly affect the capability of inverters to perform their safety function, which is to ensure an uninterruptible supply of 120-volt alternating current (ac) electrical power to the associated power distribution subsystems. The licensee performed a probabilistic risk assessment which concluded that the increase in plant risk is small. Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The second standard requires that operation of the unit in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment does not alter the design, configuration, or method of operation of the emergency UPS inverters or their associated 120-volt ac uninterruptible power distribution subsystems, nor does the amendment alter any safety analyses inputs and assumptions. The proposed extended emergency UPS inverter completion time does not reduce the number of emergency UPS inverters below the minimum required for safe shutdown or accident mitigation, and does not affect the parameters within which NMP2 is operated or the setpoints at which protective or mitigative actions are initiated. The use of the alternate safety-related maintenance supply to power the 120-volt ac uninterruptible power distribution subsystem is consistent with the NMP2 design. If a station blackout event were to occur while an emergency UPS inverter is out of service, a dedicated portable power supply would be connected to provide a continuous source of power to the connected systems. Accordingly, no new failure modes, system interactions, or accident responses will be created that could result in a new or different kind of accident.

The third standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant reduction in a margin of safety. Margins of safety are established in the design of components, the configuration of components to meet certain performance parameters, and in the establishment of setpoints to initiate alarms or actions. The proposed amendment will not affect any margin of safety as defined in the NMP2 Updated Safety Analysis Report. The amendment does not change the design or operational parameters of the UPS inverters as compared to original plant design. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the NRC staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard J. Laufer.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: April 1, 2005.

Description of amendment request: The proposed amendment would provide one-time extension to the completion time for restoration of a service water train to operable status in Technical Specification (TS) 3.7.8, ''Service Water System (SWS).''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment does not involve a significant increase in the probability of an accident previously evaluated because the extended Technical Specification action completion time is not an accident initiator. Therefore the probability is not increased significantly.

The proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated. With service water pump P–7C inoperable, 100% of the required post-accident SWS cooling capability remains available with the redundant train maintained operable. A risk analysis was performed to show that the consequences are not significantly increased. The compensatory measures provide additional assurance that there is no significant increase in the consequences of an accident associated with extending the Technical Specification action completion time for the service water system for an additional 96 hours.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment only extends the Technical Specification action completion time and does not involve a physical alteration of any system, structure or component (SSC), or change in the way any SSC is operated. The proposed amendment does not involve operation of any required SSCs in a manner or configuration different from those previously recognized or evaluated. No new failure mechanisms will be introduced by the changes being requested.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment does not involve a significant reduction in a margin of safety. With service water pump P–7C inoperable, 100% of the required post-accident service water system cooling capability remains available with the redundant train maintained operable. Therefore, there is no significant reduction in the margin of safety.

Based on the availability of redundant systems, the compensatory measures that will be taken, and the low probability of an accident that could not be mitigated by the available systems, the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR Part 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Section Chief: L. Raghavan.

PPL Susquehanna, LLC, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2 (SSES 2), Luzerne County, Pennsylvania

Date of amendment request: January 28, 2005.

Description of amendment request: The proposed amendment would revise

the SSES 2 Technical Specification (TS) Table 3.3.5.1–1 ''Emergency Core Cooling System Instrumentation,'' to change Function 3.e ''HPCI [High-Pressure Coolant Injection] System,'' conditions referenced from Required Action A.1 from ''D'' to ''C.'' This is an editorial revision to correct a typographical error that has been present since PPL converted to the Improved Technical Specifications in 1998.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The proposed change to the Unit 2 TS Table 3.3.5.1 provides a correction to a typographical error that occurred when preparing a change to Unit 2 Technical Specification Table 3.3.5.1–1 in the response to an NRC Request for Additional Information (RAI). The request was initiated during NRC review of documents submitted by PPL for the conversion to the Improved Technical Specifications. This proposed change is considered to be administrative in nature because it was originally submitted correctly and was inadvertently changed in response to the RAI.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

As stated above, the proposed change to the Unit 2 TS Table 3.3.5.1 provides a correction to a typographical error that occurred when preparing the response to an NRC Request for Additional Information. The request was initiated by the NRC during its review of documents submitted by PPL for the conversion to the Improved Technical Specifications. This proposed change is administrative in nature.

Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Again, the proposed change to the Unit 2 TS Table 3.3.5.1 provides a correction to a typographical error that occurred when preparing the response to an NRC Request for Additional Information. The request was initiated by the NRC during its review of documents submitted by PPL for the conversion to the Improved Technical Specifications. This proposed change is administrative in nature.

Therefore, these proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Richard J. Laufer.

PSEG Nuclear LLC, Docket Nos. 50–272, Salem Nuclear Generating Station, Unit No. 1 Salem County, New Jersey

Date of amendment request: February 23, 2005.

Description of amendment request: The proposed changes will revise Technical Specification (TS) Steam Generator (SG) requirements for Salem Nuclear Generating Station, Unit No. 1. The proposed changes would replace TS 3/4.4.5 ''Steam Generator (SG)'' with ''Steam Generator Tube Integrity;'' add a new TS 6.8.4.i, ''Steam Generator Program;'' and add a new reporting requirement TS 6.9.1.10 ''Steam Generator Tube Inspection Report.'' Additionally, the proposed changes would revise TS 3/4.4.6.2, ''Reactor Coolant System Operational Leakage.'' Specifically, the Limiting Condition for Operation and ACTION and Surveillance Requirements of TS 3/4.4.6.2 would be revised to clarify the requirements related to primary-to-secondary leakage. These changes would facilitate implementation of industry initiative Nuclear Energy Institute (NEI) 97–08, ''Steam Generator Program Guidelines,'' to allow a comprehensive, performance-based approach to managing SG performance at Salem Nuclear Generating Station, Unit No. 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change[s] require[s] a Steam Generator Program that includes performance criteria that will provide reasonable assurance that the steam generator (SG) tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby, cool down and all anticipated transients included in the design specification). The SG performance criteria are based on tube structural integrity, accident induced leakage, and operational leakage.

The structural integrity performance criterion is:

All in-service steam generator tubes shall retain structural integrity over the full range of normal operating conditions (including startup, operation in the power range, hot standby, and cool down and all anticipated transients included in the design specification) and design basis accidents. This includes retaining a safety factor of 3.0 against burst under normal steady state full power operation primary-to-secondary pressure differential and a safety factor of 1.4 against burst applied to the design basis accident primary-to-secondary pressure differentials. Apart from the above requirements, additional loading conditions associated with the design basis accidents, or combination of accidents in accordance with the design and licensing basis, shall also be evaluated to determine if the associated loads contribute significantly to burst or collapse. In the assessment of tube integrity, those loads that do significantly affect burst or collapse shall be determined and assessed in combination with the loads due to pressure with a safety factor of 1.2 on the combined primary loads and 1.0 on axial secondary loads.

The accident induced leakage performance criterion is:

The primary-to-secondary accident induced leakage rate for any design basis accidents, other than a SG tube rupture, shall not exceed the leakage rate assumed in the accident analysis in terms of total leakage rate for all SGs and leakage rate for an individual SG. Leakage is not to exceed 1 gpm per SG.

The operational leakage performance criterion is:

The reactor coolant system operational primary-to-secondary leakage through any one SG shall be limited to 150 gallons per day.

A steam generator tube rupture (SGTR) event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. In the analysis of a[n] SGTR event, a bounding primary-to-secondary leakage rate equal to the operational leakage rate limits in the licensing basis plus the leakage rate associated with a double-ended rupture of a single tube is assumed.

For other design basis accidents such as main steam line break (MSLB), rod ejection, and reactor coolant pump locked rotor the tubes are assumed to retain their structural integrity (i.e., they are assumed not to rupture). These analyses assume that primary-to-secondary leakage for all SGs is 1 gallon per minute or increases to 1 gallon per minute as a result of accident-induced stresses. The accident induced leakage criterion retained by the proposed changes accounts for tubes that may leak during design basis accidents. The accident induced leakage criterion limits this leakage to no more than the value assumed in the accident analysis.

The SG performance criteria proposed as part of these TS changes identify the standards against which tube integrity is to be measured. Meeting the performance criteria provides reasonable assurance that the SG tubing will remain capable of fulfilling its specific safety function of maintaining reactor coolant pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident. The performance criteria are only a part of the Steam Generator Program required by the proposed addition of TS 6.8.4.i. The program defined by NEI 97–06 includes a framework that incorporates a balance of prevention, inspection, evaluation, repair, and leakage monitoring.

The consequences of design basis accidents are, in part, functions of the DOSE EQUIVALENT I–131 in the primary coolant and the primary-to-secondary leakage rates resulting from an accident. Therefore, limits are included in the Salem TS for operational leakage and for DOSE EQUIVALENT I–131 in primary coolant to ensure the plant is operated within its analyzed condition. The Salem analysis of the limiting design basis accident assumes that primary-to-secondary leak rate after the accident is 1 gallon per minute with no more than 500 gallons per day through any one SG, and that the reactor coolant activity levels of DOSE EQUIVALENT I–131 are at the TS values before the accident.

The proposed change[s] do[es] not affect the design of the SGs, their method of operation, or primary coolant chemistry controls. The proposed approach updates the current TS and enhances the requirements for SG inspections.

The proposed change[s] do[es] not adversely impact any other previously evaluated design basis accident and [are] an improvement over the current TS.

Therefore, the proposed changes do not affect the consequences of a[n] SGTR accident and the probability of such an accident is reduced. In addition, the proposed changes do not affect the probabilities or consequences of an MSLB, rod ejection, or a reactor coolant pump locked rotor event.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed performance based requirements are an improvement over the requirements imposed by the current TS.

Implementation of the proposed Steam Generator Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The result of the implementation of the Steam Generator Program will be an enhancement of SG tube performance. Primary-to-secondary leakage that may be experienced during all plant conditions will be monitored to ensure it remains within current accident analysis assumptions.

The proposed changes do not affect the design of the SGs, their method of operation, or primary or secondary coolant chemistry controls. In addition, the proposed change[s] do[es] not impact any other plant system or component. The change[s] enhance[s] SG inspection requirements.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes also isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of a SG is maintained by ensuring the integrity of its tubes.

Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change[s] do[es] not affect tube design or operating environment. The proposed change[s] [are] expected to result in an improvement in the tube integrity by implementing the Steam Generator Program to manage SG tube inspection, assessment, and plugging. The requirements established by the Steam Generator Program are consistent with those in the applicable design codes and standards and are an improvement over the requirements in the current TS.

For the above reasons, the margin of safety is not changed and overall plant safety will be enhanced by the proposed changes to the TS.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: Darrell J. Roberts.

Southern California Edison Company (SCE), et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit 2 and Unit 3, San Diego County, California

Date of amendment requests: March 24, 2005.

Description of amendment requests: The proposed change would revise the following Technical Specifications (TSs):

- TS 1.1, Definitions, correct the definition of SHUTDOWN MARGIN (SDM).
- TS 3.1.1, SHUTDOWN MARGIN (SDM)—Tavg > 2000F, and TS 3.1.2, SHUTDOWN MARGIN (SDM)—Tavg < 2000F, relocate the numerical shutdown margin requirements to the Core Operating Limits Report (COLR).
- TS 3.1.3, Reactivity Balance, increase the required action time from 72 hours to 7 days when the ''Core reactivity balance not within limit.''
- TS 3.1.5, Control Element Assembly (CEA) Alignment, TS 3.1.6, Shutdown Control Element Assembly (CEA) Insertion Limits, and TS 3.1.7, Regulating CEA Insertion Limits, remove the requirement to verify SDM.
- TS 3.2.4, Departure From Nucleate Boiling Ratio (DNBR), relocate to the COLR the power margin that must be accommodated when the Core Operating Limit Supervisory System (COLSS) is in service and neither CEA calculator is OPERABLE.
- TS 5.7.1.5, CORE OPERATING LIMITS REPORT (COLR), identify that the limits for TSs 3.1.1 and 3.1.2 shall be in the COLR.

The proposed changes are consistent with the Standard Technical Specifications for Combustion Engineering Plants, NUREG–1432, Revision 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Limiting Conditions of Operation (LCOs) and Core Operating Limits Report (COLR) will continue to restrict operation to within the regions that provide acceptable results. The safety analysis will continue to be performed in accordance with the Nuclear Regulatory Commission (NRC) approved San Onofre Units 2 and 3 reload analysis methodology.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not add any new equipment, modify any interfaces with any existing equipment, alter the equipment's function, or change the method of operating the equipment. The proposed change does not alter plant conditions in a manner that could affect other plant components. The proposed change does not cause any existing equipment to become an accident initiator.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Safety Limits ensure that Specified Acceptable Fuel Design Limits are not exceeded during steady state operation, normal operational transients, and anticipated operational occurrences. All fuel limits and design criteria will continue to be met, based on the NRC approved San Onofre Units 2 and 3 reload analysis methodology. Therefore, the proposed change will have no impact on the margins as defined in the Technical Specification bases.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Robert A. Gramm.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: December 16, 2004.

Brief description of amendments: The amendments delete TS 5.6.1, ''Occupational Radiation Exposure Report'' and TS 5.6.4, ''Monthly Operating Reports,'' as described in the Notice of Availability published in the **Federal Register** on June 23, 2004 (69 FR 35067).

Date of issuance: April 27, 2005.

Effective date: April 27, 2005, and shall be implemented within 90 days of the date of issuance.

Amendment Nos.: Unit 1–154, Unit 2–154, Unit 3–154.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: February 1, 2005 (70 FR 5236).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 27, 2005.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: November 17, 2004.

Brief Description of amendments: The amendments eliminate the requirements to submit monthly operating reports and annual occupational radiation exposure reports.

Date of issuance: April 19, 2005.

Effective date: April 19, 2005.

Amendment Nos.: 235 and 263.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 15, 2005 (70 FR 7763).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 19, 2005.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: November 17, 2004.

Brief description of amendment: The amendment eliminates the requirements to submit monthly operating reports and annual occupational radiation exposure reports.

Date of issuance: April 19, 2005.

Effective date: April 19, 2005.

Amendment No.: 204.

Renewed Facility Operating License No. DPR–23. Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 15, 2005 (70 FR 7763)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 2005.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: November 17, 2004.

Brief description of amendment: This amendment revises Technical Specifications by eliminating the requirements to submit monthly operating reports and annual occupational radiation exposure reports.

Date of issuance: April 19, 2005.

Effective date: April 19, 2005.

Amendment No.: 118.

Facility Operating License No. NPF–63. Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 15, 2004 (70 FR 7763).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 2005.

No significant hazards consideration comments received: No.

Entergy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: September 23, 2004, as supplemented by letter dated January 13, 2005.

Brief description of amendment: The change revises Columbia Generating Station's licensing basis by replacing the current plant-specific reactor pressure vessel material surveillance program with the boiling water reactor vessels and internals project (BWRVIP) integrated surveillance program (ISP). Specifically, the amendment revises Columbia's final safety analysis report to include participation in the ISP as described in the program document BWRVIP–86–A, ''BWR [Boiling Water Reactor] Vessel and Internals Project Updated BWR Integrated Surveillance Program (ISP) Implementation Plan,'' dated October 2002.

Date of issuance: April 28, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 192.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 26, 2004 (69 FR 62471).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 2005.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: December 20, 2004.

Brief description of amendment: The amendment deletes TS 5.6.1, ''Occupational Radiation Exposure Report,'' and TS 5.6.4, ''Monthly Operating Reports,'' as described in the Notice of Availability published in the **Federal Register** on June 23, 2004 (69 FR 35067).

Date of issuance: April 14, 2005.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 223.

Renewed Facility Operating License No. DPR–51: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 18, 2005 (70 FR 2890).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 14, 2005.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Docket Nos. 50–247 and 50–286, Indian Point Nuclear Generating Unit Nos. 2 and 3, Westchester County, New York

Date of application for amendment: October 22, 2004.

Brief description of amendment: These amendments revise the Technical Specifications by eliminating the requirements associated with hydrogen recombiners and hydrogen monitors.

Date of issuance: April 14, 2005.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 243 and 228.

Facility Operating License Nos. DPR–26 and DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 1, 2005 (70 FR 5240).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 14, 2005.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Docket Nos. 50–247 and 50–286, Indian Point Nuclear Generating Unit Nos. 2 and 3, Westchester County, New York

Date of application for amendment: October 25, 2004.

Brief description of amendment: These amendments revise the Technical Specifications by eliminating the requirements to submit monthly operating reports and occupational radiation exposure reports.

Date of issuance: April 14, 2005.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 242 and 227.

Facility Operating License Nos. DPR–26 and DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 1, 2005 (70 FR 5241).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 14, 2005.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: April 30, 2004.

Brief description of amendments: The amendments modify the technical specification (TS) requirements to adopt the provisions of the industry/TS Task Force (TSTF) change TSTF–359, ''Increased Flexibility in Mode Restraints.''

Date of issuance: April 5, 2005.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment Nos.: 141, 141, 134, 134.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 26, 2004.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 5, 2005.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: September 15, 2004.

Brief description of amendments: The proposed amendment will delete the Technical Specification (TS) requirements related to hydrogen/oxygen monitors. The proposed TS changes support implementation of the revisions to Title 10 of the Code of Federal Regulations (10 CFR), Section 50.44, ''Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors,'' that became effective on October 16, 2003. The changes are consistent with Revision 1 of the NRC-approved Industry/Technical Specifications Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–447, ''Elimination of Hydrogen Recombiners and Change to Hydrogen and Oxygen Monitors.''

Date of issuance: April 28, 2005.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment Nos.: 213/205.

Facility Operating License Nos. DPR–19, DPR–25: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** February 1, 2005 (70 FR 5243).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 28, 2005.

No significant hazards consideration comments received: No.

Exelon Generating Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: September 15, 2004.

Brief description of amendments: The amendments delete the Technical Specification requirements to maintain hydrogen recombiners and hydrogen/oxygen monitors and related Surveillance Requirements. The revised Title 10 of the Code of Federal Regulations (10 CFR) Section 50.44, ''Combustible Gas Control for Nuclear Power Plants,'' eliminated the requirements for hydrogen recombiners and relaxed safety classifications and licensee commitments to certain design qualification criteria for hydrogen and oxygen monitors.

Date of issuance: April 22, 2005.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment Nos.: 172/158.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** February 1, 2005 (70 FR 5243).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 22, 2005.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: November 25, 2003.

Brief description of amendments: The amendment revised the Technical Specifications (TSs) associated with Reactor Coolant System—CHEMISTRY. Specifically, the amendment relocates Reactor Coolant System—CHEMISTRY, in its entirety from the TSs to the Technical Requirements Manual (TRM). In addition, the amendment deletes the specific activity requirements related to E-Bar, gross beta and gross gamma.

Date of issuance: April 18, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 174 and 136.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the TSs.

*Date of initial notice in **Federal Register:*** February 17, 2004 (69 FR 7522).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 2005.

No significant hazards consideration determination comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: November 17, 2004.

Brief description of amendment: The amendment eliminates the requirements to submit monthly operating reports and annual occupational radiation exposure reports.

Date of issuance: April 19, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 217.

Facility Operating License No. DPR–72: Amendment revises the Technical Specifications.

*Date of initial notice in **Federal Register:*** February 15, 2005 (70 FR 7768).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 2005.

No significant hazards consideration comments received: No.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: June 28, 2004.

Description of amendment request: The amendment revised the Seabrook Station, Unit No. 1 Technical Specifications (TSs) to align the language of Surveillance Requirement 4.9.4 with that of Limiting Condition for Operation 3.9.4, ''Containment Building Penetrations.'' The amendment changes the requirement from ''during core alterations and the movement of irradiated fuel'' to ''during the movement of recently irradiated fuel.''

Date of issuance: April 21, 2005.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 102.

Facility Operating License No. NPF–86: The amendment revised the TSs.

*Date of initial notice in **Federal Register***: August 31, 2004 (69 FR 53110).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 21, 2005.

No significant hazards consideration comments received: No.

National Aeronautics and Space Administration, Docket No. 50–30, the Plum Brook Test Reactor, Sandusky, Ohio

Date of application for amendment: January 14, 2005.

Brief description of amendment: The amendment clarifies the license requirements for confirmation of Final Status Survey results prior to backfilling or covering of excavated areas.

Date of issuance: April 21, 2005.

Effective date: The license amendment is effective as of its date of issuance.

Amendment No.: 12.

Facility License No. TR–3: This amendment consists of changes to the Facility License.

*Date of initial notice in **Federal Register:*** March 15, 2005 (70 FR 12743).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation enclosed with the amendment dated April 21, 2005.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket Nos. 50–220, and 50–410, Nine Mile Point Nuclear Station, Unit Nos. 1 and 2, Oswego County, New York

Date of application for amendments: January 24, 2005.

Brief description of amendments: The amendments deleted Sections 6.6.1 and 5.6.1, ''Occupational Radiation Exposure Report,'' and Sections 6.6.4 and 5.6.4, ''Monthly Operating Reports,'' from the NMP1 and NMP2 Technical Specifications.

Date of issuance: April 19, 2005.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment Nos.: 188 and 115.

Facility Operating License Nos. DPR–63 and NPF–69: Amendments revise the Technical Specifications.

*Date of initial notice in **Federal Register***: February 15, 2005 (70 FR 7769).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 19, 2005.

No significant hazards consideration comments received: No

PPL Susquehanna, LLC, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: September 22, 2004.

Brief description of amendment: The amendment extended the validity of the

reactor pressure vessel pressure-temperature limit curves from May 1, 2005, to May 1, 2006.

Date of issuance: April 25, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 197.

Facility Operating License No. NPF–22: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 7, 2004 (69 FR 70721).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 25, 2005.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Dates of application for amendments: February 26 and April 28, 2004, as supplemented by letters dated July 8 and October 20, 2004.

Brief description of amendments: The amendments revised Technical Specification (TS) Section 5.6.6, Reactor Coolant System (RCS) Pressure Temperature Limits Report (PTLR), to facilitate future licensee-controlled changes to the PTLR. The changes include a revised PTLR that provides new heatup and cooldown limits and Cold Overpressure Protection System (COPS) setpoints, and to recalculate the minimum size of the pressurizer power operated relief valve orifice of the RCS vent. In addition, the changes relocate the COPS arming temperature to the PTLR, and lower the COPS arming temperature from 350 °F to 220 °F. The licensee also included TS bases changes to support the changes to the TSs.

Date of issuance: March 28, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 136 (Unit 1) and 115 (Unit 2).

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 13, 2004 (69 FR 19575) and April 22, 2004 (69 FR 34707)

The supplements dated July 8 and October 20, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 28, 2005.

No significant hazards consideration comments received: No

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: December 2, 2004.

Brief description of amendments: The amendments modify technical specification (TS) requirements for mode change limitations in Limiting Condition for Operation 3.0.4 and Surveillance Requirement 4.0.4 consistent with Industry/TS Task Force (TSTF) Standard TS Change Traveler, TSTF–359, Revision 9, ''Increased Flexibility in Mode Restraints.'' A notice of availability for this TS improvement using the Consolidated Line Item Improvement Process was published in the **Federal Register** (FR) on April 4, 2003 (68 FR 16579).

Date of issuance: April 11, 2005.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 301, 290.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the TSs.

Date of initial notice in **Federal Register**: January 18, 2005 (70 FR 2901)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 11, 2005.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: September 23, 2003, as supplemented by letter dated June 9, 2004.

Brief description of amendments: The amendments revise the Technical Specifications (TSs) to extend the interval between local leak rate tests for the containment purge and vent valves with resilient seats (containment purge valves, hydrogen purge valves, and containment pressure relief valves).

Date of issuance: April 13, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 116 and 116.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the TSs.

Date of initial notice in ***Federal Register***: November 12, 2003 (68 FR 64140).

The supplement dated June 9, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 13, 2005.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 13, 2004.

Brief description of amendment: The amendment revised Surveillance Requirement (SR) 3.8.1.7 (fast-start test), SR 3.8.1.12 (safety injection actuation signal test), SR 3.8.1.15 (hot restart test), and SR 3.8.1.20 (redundant unit test) to clarify what voltage and frequency limits are applicable during the transient and steady state portions of the diesel generator start testing performed by these SRs.

Date of issuance: April 21, 2005.

Effective date: April 21, 2005, and shall be implemented within 90 days from the date of issuance.

Amendment No.: 161.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 18, 2005 (70 FR 2904)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 21, 2005.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I,

which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(I)–(viii).

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: April 11, 2005, as supplemented on April 14, 2005.

Description of amendment request: The amendments revise Technical Specification (TS) 5.5.9, ''Steam Generator (SG) Tube Surveillance Program,'' to incorporate changes in the SG inspection scope for Braidwood Station, Unit 2 only, during refueling outage 11.

Date of issuance: April 25, 2005.

Effective date: April 25, 2005.

Amendment Nos.: 135, 135.

Facility Operating License Nos. NPF–72 and NPF–77: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. Joliet Herald News, April 15 and 18, 2005, and Morris Daily Herald, April 19, 2005. The announcement provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated April 25, 2005.

Attorney for licensee: Thomas S. O'Neil.

NRC Section Chief: Gene Y Suh.

Dated at Rockville, Maryland, this 2nd day of May 2005.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–2207 Filed 5–9–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Centrue Financial Corporation To Withdraw Its Common Stock, $.01 Par Value, and Preferred Share Purchase Rights, From Listing and Registration on the American Stock Exchange LLC File No. 1–15025

May 4, 2005.

On April 14, 2005, Centrue Financial Corporation, a Delaware corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value, and preferred share purchase rights (collectively ''Securities''), from listing and registration on the American Stock Exchange LLC (''Amex'').

On October 19, 2004, the Board of Directors (''Board'') of the Issuer approved a resolution to withdraw the Securities from listing and registration on Amex and to list the Securities on the Nasdaq National Market Systems (''Nasdaq''). The Board stated in its application that it believes that it is in the best interest of the Issuer and its shareholders to withdraw the Securities from Amex and to list on Nasdaq. The Issuer stated that the Securities began trading on Nasdaq on February 25, 2005.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to withdrawal of the Securities from listing on the Amex and from registration under Section 12(b) of the Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

Any interested person may, on or before May 31, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of the Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–15025 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number 1–15025. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing[5] on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–2269 Filed 5–9–05; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51650; File No. SR–CBOE–2005–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Amending Its Marketing Fee Relating to Remote Market-Makers

May 3, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 25, 2005, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. On April 26, 2005, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] The CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under Section 19(b)(3)(A)(ii) of the Act,[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its marketing fee to impose the fee on transactions of Remote Market-Makers (''RMMs''). The marketing fee will be assessed at the rate of $.22 per contract on all classes of equity options, options on HOLDRs®, and options on SPDRs®. The fee will not apply to Market-Maker-to-Market-Maker transactions. Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*.

CHICAGO BOARD OPTIONS EXCHANGE, INC.

FEE SCHEDULE

1. No change.

2. MARKET-MAKER, *RMM,* e-DPM & DPM MARKETING FEE (in option classes in which a DPM has been appointed)(6).....$.22

3.–4. No change.

NOTES:

(1)–(5) No change.

(6) The Marketing Fee will be assessed only on transactions of Market-Makers, *RMMs,* e-DPMs and DPMs at the rate of $.22 per contract on all classes of equity options, options on HOLDRs®, and options on SPDRs®. The fee will not apply to Market-Maker-to-Market-Maker transactions. This fee shall not apply to index options and options on ETFs (other than options on SPDRs). Should any surplus of the marketing fees at the end of each month occur, the Exchange would then refund such surplus at the end of the month if any, on a pro rata basis based upon contributions made by the Market-Makers, *RMMs,* e-DPMs and DPMs.

(7)–(15) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for its proposal and discussed any comments it had received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 29, 2004, the CBOE amended its marketing fee program.[6] The current marketing fee is assessed upon Designated Primary Market-Makers (''DPMs''), electronic Designated Primary Market-Makers (''e-DPMs''), and Market-Makers at a rate of $.22 for every contract they enter into on the Exchange other than Market-Maker-to-Market-Maker transactions (which includes all transactions between any combination of DPMs, e-DPMs, and Market-Makers). The marketing fee is assessed in all equity option classes, options on HOLDRs®,[7] and options on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the CBOE made technical corrections to the rule text of the proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] For a description of the CBOE's marketing fee program, *see* Securities Exchange Act Release No. 50736 (Nov. 24, 2004), 69 FR 69966 (Dec. 1, 2004) (SR–CBOE–2004–68).

[7] HOLDRs are trust-issued receipts that represent an investor's beneficial ownership of a specified

Continued

SPDRs®.[8] The Exchange recently established a new membership status called RMMs.[9] The RMM program allows individuals and member organizations to stream quotes into designated Hybrid 2.0 classes from locations outside of the Exchange's physical trading crowds. RMMs may create customized class appointments, called virtual trading crowds (''VTCs''), which allow them to cover a range of classes irrespective of their geographic locations on the CBOE trading floor.[10]

This proposed rule change amends the marketing fee program to include RMMs in the classification of Exchange members subject to the marketing fee. The Exchange states that the purpose of the marketing fee plan is to provide the members of the Exchange with the ability to compete for the opportunity to trade with those orders that may otherwise be routed to other exchanges. The marketing fee will be assessed whereby DPMs, e-DPMs, RMMs, and Market-Makers will be debited $.22 for every contract they enter into on the Exchange other than Market-Maker-to-Market-Maker transactions (which includes all transactions between any combination of DPMs, e-DPMs, RMMs, and Market-Makers).

According to the Exchange, all funds generated by the marketing fee will be collected by the Exchange and recorded according to the DPM, station, and class (''Trading Crowds'') where the options subject to the fee are traded. The money collected will be disbursed by the Exchange according to the instructions of the DPM. The CBOE states that those funds will be available to the DPM solely for those Trading Crowds where the fee was assessed and may only be used by that DPM to attract orders in the classes of options where the DPM is appointed. Funds collected from RMMs and e-DPMs will be used to attract order flow for the classes in which the RMM and e-DPM are appointed. The Exchanges notes that its Board of Directors has previously established a Marketing Fee Oversight Committee, which will conduct a quarterly review to determine the effectiveness of the marketing fee and which may recommend to the Exchange that it modify the fee in the future based upon its effectiveness.

As in the current marketing fee program, the Exchange states that it will not be involved in the determination of the terms governing the orders that qualify for payment with any payment accepting firm or the amount of any such payment. The Exchange will provide administrative support for the program in such matters as maintaining the funds, keeping track of the number of qualified orders each firm directs to the Exchange, and making the necessary debits and credits to the accounts of the traders and the payment accepting firms to reflect the payments that are made. The Exchange states that fees collected during a calendar month shall only be available to the DPM for payment for that calendar month's order flow.

The Exchange believes that it is important to note that Exchange Market-Makers, RMMs, DPMs, and e-DPMs will have no way of identifying prior to execution whether a particular order is from a payment-accepting firm, or from a firm that does not accept payment for their order flow.

Consistent with the current marketing fee, the Exchange states that it will continue to refund any surplus at the end of the month on a pro rata basis based upon contributions made by the Market-Makers, RMMs, e-DPMs, and DPMs.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(4) of the Act[12] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among the CBOE's members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The CBOE neither solicited nor received written comments with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[13] and subparagraph (f)(2) of Rule 19b–4 thereunder.[14] Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2005–34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2005–34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

group of stocks. *See* Interpretation .07 to CBOE Rule 5.3.

[8] *See* Securities Exchange Act Release No. 51052 (Jan. 18, 2005), 70 FR 3757 (Jan. 26, 2005) (SR–CBOE–2005–05).

[9] *See* Securities Exchange Act Release No. 51366 (Mar. 14, 2005), 70 FR 13217 (Mar. 18, 2005) (SR–CBOE–2004–75).

[10] On April 19, 2005, the SEC granted accelerated approval to SR–CBOE–2005–23, amending CBOE Rule 8.4 to remove the Physical Trading Crowd appointment alternative for RMMs. *See* Securities Exchange Act Release No. 51543 (Apr. 14, 2005), 70 FR 20952 (Apr. 22, 2005) (SR–CBOE–2005–23).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on April 26, 2005, the date on which the Exchange submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–34 and should be submitted on or before May 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2239 Filed 5–9–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51643; File No. SR–FICC–2005–01]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Timely Notification of Significant Events That Effect a Change in Control of a Member or Could Have a Substantial Impact on a Member's Business or Financial Condition

May 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 6, 2005, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would require certain FICC members to notify FICC when they experience an event that would effect a change in control of such member or could have a substantial impact on such member's business or financial condition.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, FICC's Government Securities Division's (''GSD'') rules require a member to ''promptly'' inform FICC when they experience a ''material change in control or financial condition.'' [3] FICC's Mortgage-Backed Securities Division's (''MBSD'') rules do not contain any similar requirements.

FICC believes that the GSD rule does not cover a broad-enough scope of events that FICC should be aware of in order to properly manage the risks that such events might pose to FICC and its membership. In addition, FICC believes that the current rule is not effectively enforceable because the terms ''promptly'' and ''material change in control or financial condition'' are not adequately defined.

Under the proposed rule change, GSD netting members and MBSD clearing members would be required to provide oral and written notification to FICC upon experiencing a ''Reportable Event.'' The term ''Reportable Event'' would be defined as an event that would effect a change in control of a GSD netting member or an MBSD clearing member or an event that could have a substantial impact on those types of member's business or financial condition including, but not limited to: (a) Material organizational changes including mergers, acquisitions, changes in corporate form, name changes, changes in the ownership of a netting or clearing member or its affiliates, and material changes in management; (b) material changes in business lines, including new business lines undertaken; and (c) status as a defendant in litigation which could reasonably impact the netting or clearing member's financial condition or ability to conduct business.[4]

In order to provide FICC with enough time to analyze the implications of a Reportable Event and to determine an appropriate course of action, FICC believes that it is important for it to learn of a Reportable Event as soon as possible. As such, a netting or clearing member must submit written notice to FICC at least 90 calendar days prior to the effective date of such Reportable Event unless the member demonstrates that it could not have reasonably done so and also provides oral and written notice to FICC as soon as possible. Failure to so notify FICC would result in a $5,000 fine.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it should enhance FICC's ability to collect and evaluate the type of information that it needs to be aware of in order to properly manage risks and enforce its rules, thereby assuring the safeguarding of securities and funds for which FICC is in control.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] GSD Rule 3, Section 4.

[4] A similar requirement was added as Addendum T to the National Securities Clearing Corporation's rules in 1998. Securities Exchange Act Release No. 40582 (Oct. 20, 1998), 63 FR 57346 (Oct. 27, 1998).

publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FICC–2005–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–FICC–2005–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://ficc.com/gov/gov. docs.jsp?NS-query=.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2005–01 and should be submitted on or before May 31, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2240 Filed 5–9–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51649; File No. SR–NSCC–2005–04]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change To Establish a Confirmation and Matching Service for Over-The-Counter U.S. Equity Options Transactions

May 3, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 29, 2005, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC is seeking permanent approval to add Addendum M to its Rules and Procedures to establish a confirmation and matching service for over-the-counter (''OTC'') U.S. equity options transactions (''NSCC Equity Options Service'').[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, confirmation of trade details among dealers and the dealers' buy-side customers in the OTC equity options industry is supported largely by faxes and telephone communication. It is widely acknowledged by the industry that this current operational infrastructure, which depends upon nonstandard and manual processing, results in excessive processing costs, delays, and errors. The industry is seeking to reduce the attendant operational risks associated with OTC equity options processing by automating the trade confirmation process for OTC equity options.

In response to similar conditions prevailing in the credit default swaps industry, The Depository Trust & Clearing Corporation (''DTCC''), the corporate parent of NSCC, created a subsidiary, DTCC Deriv/SERV LLC (''Deriv/SERV''), in 2003. Deriv/SERV currently offers a confirmation and matching service for OTC credit default swaps transactions and their associated cash flows. This service is now used by approximately 75 entities including all of the largest OTC credit default swaps dealers.

Deriv/SERV has developed a confirmation and matching service for OTC equity options transactions and their associated cash flows (''Deriv/SERV Equity Options Service''). The Deriv/SERV Equity Options Service provides for confirmation and matching either between two OTC equity options dealers or between an OTC equity options dealer and its buy-side customer. Where either the buyer or the seller of an equity option is a U.S. person and the equity option is issued by a U.S. issuer (''U.S. Equity Option Transaction''), NSCC provides confirmation and matching services (''NSCC Equity Options Service'') to Deriv/SERV pursuant to the NSCC/DTCC Deriv/SERV Service Agreement (''Service Agreement'').[4] In connection

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[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission approved NSCC's Equity Options Service on a temporary basis through May 31, 2005, so that NSCC could evaluate the operations of the service and report its findings to the Commission. Securities Exchange Act Release No. 50652 (November 17, 2004), 69 FR 67377.

[3] The Commission has modified the text of the summaries prepared by NSCC.

[4] DTC has represented that the continued processing of Deriv/SERV's transactions will not be a strain on the capacity of DTC's systems. The host computer and other automated facilities associated with the NSCC Equity Options Service are provided by DTC pursuant to service agreements between NSCC and DTCC and between DTCC and DTC.

with the NSCC Equity Options Service, Deriv/SERV has become a Data Services Only Member of NSCC.[5]

The Deriv/SERV Equity Options Service is operated pursuant to the operating procedures of Deriv/SERV (''Deriv/SERV Operating Procedures''). U.S. Equity Option Transactions are also subject to NSCC's proposed Addendum M. Therefore, each user of the Deriv/SERV Equity Options Service enters into an agreement with Deriv/SERV obligating the user to abide by the terms of the Deriv/SERV Operating Procedures and obligating them to abide by Addendum M for any U.S. Equity Option Transactions. Pursuant to the Service Agreements between NSCC/DTCC and Deriv/SERV, NSCC has the right to require Deriv/SERV to cause Deriv/SERV's users to abide by the terms of Addendum M. In addition, pursuant to the Service Agreement, NSCC and Deriv/SERV have agreed that should the Commission request that NSCC provide to the Commission any information relating to the NSCC Equity Options Service, Deriv/SERV will provide any such information in its possession to NSCC so that NSCC may provide such information to the Commission.

NSCC is neither responsible for the content of the messages transmitted through the NSCC Equity Options Service nor is it responsible for any errors, omissions, or delays that may occur relating to the NSCC Equity Options Service in the absence of gross negligence on NSCC's part. Both the Service Agreement and the Deriv/SERV Operating Procedures provide that NSCC has no liability in connection with the NSCC Equity Options Service in the absence of gross negligence on NSCC's part. Because the NSCC Equity Options Service does not involve money settlement, securities clearance, or netting through the facilities of NSCC, it is a nonguaranteed service of NSCC.[6]

Deriv/SERV will charge its users fees in connection with the Deriv/SERV Equity Options Service and pursuant to the Service Agreement will make payments to NSCC for the services that NSCC provides. NSCC will file proposed rule changes under Section 19(b) of the Act for fees that NSCC charges to Deriv/SERV for the NSCC Equity Options Service and for any changes made by NSCC to the Equity Options Service.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder because the implementation of the proposal should provide for the prompt and accurate clearance and settlement of U.S. OTC equity option transactions processed through the NSCC Equity Options Service by facilitating the transmission of standardized information on a centralized communications platform. This should reduce processing errors, delays, and risks that are typically associated with manual processes.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not solicited or received any written comments on this proposal. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)* or
- Send an E-mail to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2005–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NSCC–2005–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.nscc.com/legal.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NSCC–2005–04 and should be submitted on or before May 25, 2005.

[5] NSCC Rules and Procedures, Rule 31.

[6] NSCC offers certain ''guaranteed'' services through its CNS system in which NSCC acts as a central counterparty and provides settlement-related guarantees regarding certain trades cleared and netted at NSCC. NSCC also offers ''nonguaranteed'' services, such as NSCC's Mutual Fund and Insurance Processing Services, in which members do not receive the protections of the NSCC guarantee. Some of NSCC's nonguaranteed services entail settlement of funds through NSCC on a nonguaranteed basis (*i.e.*, NSCC's FundSERV® service). Other nonguaranteed services involve the communication of information only without settlement of transactions or funds through the facilities of NSCC (*i.e.*, NSCC's Profile service). The NSCC Equity Options Service is a nonguaranteed service limited to the matching and communication of information and does not involve settlement of securities transactions or funds through the facilities of NSCC. In its Matching Release, the Commission concluded that matching constitutes a clearing agency function, specifically the ''comparison of data respecting the terms of settlement of securities transactions,'' within the meaning of Section 3(a)(23)(A) of the Exchange Act. Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943 [File No. S7–10–98].

[7] 15 U.S.C. 78q–1.

[8] 17 CFR 200.30–3(a)(12).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2238 Filed 5–9–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Notice of Application of Equitable Resources, Inc. To Withdraw Its Common Stock, No Par Value, From Listing and Registration on the Philadelphia Stock Exchange, Inc. File No. 1–03551

May 4, 2005.

On April 4, 2005, Equitable Resources, Inc., a Pennsylvania corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, no par value (''Security''), from listing and registration on the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer adopted resolutions on December 1, 2004 to withdraw the Security from listing on the Exchange. The Board stated that it is in the best interest of the Issuer to withdraw the Security from listing on Phlx for the following reasons: (i) The New York Stock Exchange, Inc. (''NYSE'') has effected 91% of the Issuer's total average trading volume since January 1, 2003 and is the Issuer's primary exchange; (ii) Phlx, which is primarily an options trading exchange, effects an insignificant number and amount of trades in the Security each day; (iii) Phlx does not list Issuer options and the Issuer is not included in Phlx's utility index; (iv) since the Sarbanes-Oxley Act of 2002, each exchange has adopted new, more stringent corporate governance rules, and NYSE recently adopted amendments to its 2003 corporate governance rules; (v) while Phlx patterned its corporate governance rules after NYSE, certain differences existed and with the NYSE amendment, additional differences now exist; (vi) the Issuer is committed to strong governance practices, but compliance with multiple standards has become time consuming and costly; and (vii) after due consideration, the Issuer has not identified any economic, investor relations, or legal benefit to being listed on Phlx.

The Issuer stated in its application that it has met the requirements of Phlx Rule 809 governing an issuer's voluntary withdrawal of a security from listing and registration by submitting the necessary documents to withdraw the Security from listing on Phlx. The Issuer's application relates solely to the withdrawal of the Security from listing on Phlx and from registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before May 31, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of Phlx, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–03551 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number 1–03551. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–2266 Filed 5–9–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SOCIAL SECURITY ADMINISTRATION

The Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of quarterly and strategic planning meeting

DATES:

Monday, May 23, 2005—1 p.m. to 6:30 p.m.

Tuesday, May 24, 2005—9 a.m. to 6 p.m.

Wednesday, May 25, 2005—9 a.m. to 5 p.m.

Thursday, May 26, 2005—9 a.m. to 12 p.m.

ADDRESSES: Sheraton National Hotel, 900 S. Orme Street, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION:

Type of meeting: On May 23–26, 2005, the Ticket to Work and Work Incentives Advisory Panel (the ''Panel'') will hold a quarterly and strategic planning meeting open to the public.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel. Section 101(f) of Pub. L. 106–170 establishes the Panel to advise the President, the Congress, and the Commissioner of SSA on issues related to work incentive programs, planning, and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the Act. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a).

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive briefings and presentations on matters of interest, conduct full Panel deliberations on the implementation of the Act and receive public testimony.

The Panel will meet in person commencing on Monday, May 23, 2005, from 1 p.m. until 6:30 p.m. The quarterly meeting will continue on

Tuesday, May 24, 2005, from 9 a.m. until 6 p.m. The Panel will meet in person for a strategic planning meeting on Wednesday, May 25, 2005, from 9 a.m. until 5 p.m., continuing on Thursday, May 26, 2005, from 9 a.m. until 12 p.m.

Members of the public must schedule a time slot in order to comment. In the event public comments do not take the entire scheduled time period, the Panel may use that time to deliberate or conduct other Panel business. Public testimony will be heard on Monday, May 23, 2005, from 5:30 p.m. until 6:30 p.m. and Tuesday, May 24, 2005, from 9 a.m. until 9:30 a.m. and 4:30 p.m. until 5 p.m. Individuals interested in providing testimony in person should contact the Panel staff as outlined below to a schedule time slot. Each presenter will be acknowledged by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute, verbal presentation.

Full written testimony on the Implementation of the Ticket to Work and Work Incentives Program, no longer than five (5) pages, may be submitted in person or by mail, fax or e-mail on an on-going basis to the Panel for consideration.

Since seating may be limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Ms. Shirletta Banks, at *Shirletta.banks@ssa.gov* or by calling (202) 358–6430.

The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel* at least one week before the starting date or can be received, in advance, electronically or by fax upon request.

Contact Information: Records are kept of all proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the staff by:

Mail addressed to the Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024.

Telephone contact with Debra Tidwell-Peters at (202) 358–6430. Fax at (202) 358–6440. E-mail to *TWWIIAPanel@ssa.gov*.

Dated: May 2, 2005.

Debra Tidwell-Peters,

Designated Federal Officer.

[FR Doc. 05–9278 Filed 5–9–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–1995–950]

Notice of Request for Extension of a Previously Approved Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Department of Transportation's (DOT) intention to request extension of a previously approved information collection.

DATES: Comments on this notice must be received July 11, 2005.

ADDRESSES: You may submit comments identified by DOT–DMS Docket Number OST–1995–950 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 on Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this information collection. For detailed instructions on submitting comments and additional information, 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 Notes.

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 on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jack Schmidt, Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–5420.

SUPPLEMENTARY INFORMATION:

Title: Passenger Manifest Information.

OMB Control Number: 2105–0534.

Expiration Date: January 31, 2006.

Type of Request: Extension without change of a previously approved collection.

Abstract: Pub. L. 101–604 (entitled the Aviation Security Improvement Act of 1990, or ''ASIA 90'', and later codified as 49 U.S.C. 44909) requires that certificated air carriers and large foreign air carriers collect the full name of each U.S. citizen traveling on flight segments to or from the United States and solicit a contact name and telephone number. In case of an aviation disaster, airlines would be required to provide the information to the Department of State and, in certain instances, to the National Transportation Safety Board. Each carrier would develop its own collection system. The Passenger Manifest Information, Final Rule (14 CFR 243), was published in the **Federal Register**, Vol. 63, No. 32 (February 18, 1998). The rule was effective March 20, 1998.

Respondents: U.S. air carriers, foreign air carriers, travel agents and air travelers.

Estimated Total Burden on Respondents: 1.05 million hours.

Estimated Respondents: 23,245 (excluding air travelers).

Comments are invited on: (a) Whether the continued collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the current information collection; (c) ways to enhance the quality, utility, and clarity of the information being collected, and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on May 3, 2005.

Randall D. Bennett,

Director, Office of Aviation Analysis.

[FR Doc. 05–9265 Filed 5–9–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–95–179 and OST–95–623]

Notice of Request for Extension of a Previously Approved Collection

AGENCY: Office of the Secretary.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Department of Transportation's (DOT) intention to request extension of a previously approved information collection.

DATES: Comments on this notice must be received on or before July 11, 2005.

ADDRESSES: You may submit comments identified by DOT–DMS Docket Number OST–95–179 and OST–95–623 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 on Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this information collection. For detailed instructions on submitting comments and additional information, 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 Notes.

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 on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jack Schmidt, Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–5420.

SUPPLEMENTARY INFORMATION:

Title: Disclosure of Code-sharing Arrangements and Long-term Wet Leases.

OMB Control Number: 2105–0537.

Expiration Date: September 30, 2005.

Type of Request: Extension of a previously approved collection.

Abstract: Code-sharing is the name given to a common airline industry marketing practice where, by mutual agreement between cooperating carriers, at least one of the airline designator codes used on a flight is different from that of the airline operating the aircraft. In one version, two or more airlines each use their own designator codes on the same aircraft operation. Although only one airline operates the flight, each airline in a code-sharing arrangement may hold out, market and sell the flight as its own in published schedules. Code-sharing also refers to other arrangements where a code on a passenger's ticket is not that of the operator of the flight, but where the operator does not also hold out the service in its own name. Such code-sharing arrangements are common between commuter air carriers and their larger affiliates and the number of arrangements between U.S. air carriers and foreign air carriers has also been increasing. Arrangements falling into this category are similar to leases of aircraft and crew (wet leases).

The Department recognizes the strong preference of air travelers for on-line service (service by a single carrier) on connecting flights over interline service (service by multiple carriers). Code-sharing arrangements are, in part, a marketing response to this demand for on-line service. Often, code-sharing partners offer services similar to those available for on-line connections with the goal of offering ''seamless'' service (*i.e.*, service where the transfers from flight to flight or airline to airline are facilitated). For example, they may locate gates near each other to make connections more convenient or coordinate baggage handling to give greater assurance that baggage will be properly handled.

Code-sharing arrangements can help airlines operate more efficiently because they can reduce costs by providing a joint service with one aircraft rather than operating separate services with two aircraft. Particularly in thin markets, this efficiency can lead to increased price and service options for consumers or enable the use of equipment sized appropriately for the market. Therefore, the Department recognizes that code-sharing, as well as long-term wet leases, can offer significant economic benefits. Although code-sharing and wet-lease arrangements can offer significant consumer benefits, they can also be misleading unless consumers know that the transportation they are considering for purchase will not be provided by the airline whose designator code is shown on the ticket, a schedule or an itinerary and unless they know the identity of the airline on which they will be flying. The growth in the use of code-sharing, wet-leasing and similar marketing tools, particularly in international air transportation, had given the Department concern about whether the then-current disclosure rules (14 CFR 399.88) protected the public interest adequately.

Respondents: All U.S. air carriers, foreign air carriers, computer reservations systems (CRSs), travel agents doing business in the United States, and the traveling public.

Estimated Total Annual Burden on Respondents: Annual reporting burden for this data collection is estimated at 424,994 hours for all travel agents and airline ticket agents and 424,994 hours for air travelers based on 15 seconds per phone call and an average of 2.1 phone calls per trip. Most of this data collection (third party notification) is accomplished through highly automated computerized systems.

Estimated Number of Respondents: 33,898 excluding travelers.

Comments are invited on: (a) Whether this collection of information (third party notification) 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 of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including through the use of automated techniques or other forms of information technology.

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

Issued in Washington, DC on May 3, 2005.

Randall D. Bennett,

Director, Office of Aviation Analysis.

[FR Doc. 05–9266 Filed 5–9–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice for McClellan-Palomar Airport, Carlsbad, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the County of San Diego for McClellan-Palomar Airport under the provisions of 49 U.S.C. 47501 *et. seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is April 26, 2005.

FOR FURTHER INFORMATION CONTACT: Peter Ciesla, Federal Aviation Administration, Western Pacific Region, Airports Division, PO Box 92007, Los Angeles, California, 90009–2007, Telephone: (310) 725–3633.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted by McClellan-Palomar Airport are in compliance with applicable requirements of Part 150, effective April 26, 2005. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR), Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which set forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the County of San Diego. The documentation that constitutes the ''noise exposure maps'' as defined in section 150.7 of Part 150 includes: Figure 5–4, Existing Conditions (2004) Noise Exposure Map and Figure 6–1, Future Condition (2009) Noise Exposure Map. The Noise Exposure Maps contain current and forecast information including the depiction of the airport and its boundaries, the runway configurations, land uses such as residential, commercial/travel/recreational, industrial/manufacturing, schools, government services, open space, and unplanned areas, and also those areas within the Community Noise Equivalent Level (CNEL) 60, 65, 70 and 75 noise contours. Estimates for the number of people and residences, within these contours for the year 2004 are shown in Table 5–12. Estimates of the future number of people and residences within the 2009 noise contours are shown in Table 6–7. Flight tracks for the existing and the five-year forecast Noise Exposure Maps are found in Figures 5–1, 5–2, and 5–3. The type and frequency of aircraft operations (including nighttime operations) are found in Table 5–1 for the existing conditions (2004) and Table 6–1 for the future conditions (2009). The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on April 26, 2005.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily require consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Community and Environmental Needs Division, APP–600, 800 Independence Avenue, SW., Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261.

Mr. Peter Drinkwater, Airport Director, County of San Diego, Department of Public Works, 5555 Overland Avenue, Suite 2188, San Diego, CA 92123–1295.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on April 26, 2005.

Mia Paredes Ratcliff,

Acting Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 05–9305 Filed 5–9–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 05–05–C–00–DAY To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Dayton International Airport, Dayton, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the

revenue from a PFC at Dayton International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 9, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Eugene B. Conrad Jr., Director of Aviation of the City of Dayton at the following address: 3600 Terminal Drive, Suite 300, Vandalia, Ohio 45377–3313.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Dayton under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jason Watt, Program Manager, Detroit Airport District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174, (734) 229–2906. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dayton International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 26, 2005, the FAA determined that the Application to impose and use the revenue from a PFC submitted by the City of Dayton was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 26, 2005.

The following is a brief overview of the application.

Proposed charge effective date: December 1, 2013.

Proposed charge expiration date: February 1, 2018.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $33,577,115.

Brief description of proposed projects: Terminal Environment Restoration and In-Line Baggage Make-Up Facility.

Class or classes of air carriers, which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. The application may be reviewed in person at this same location.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Dayton.

Issued in Des Plaines, Illinois on April 29, 2005.

Elliott Black,

Manager, Planning and Programming Branch. Airports Division, Great Lakes Region.

[FR Doc. 05–9304 Filed 5–9–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Agency Information Collection; Activity Under OMB Review; Report of Traffic and Capacity Statistics—The T–100 System

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on December 17, 2004 (69 FR 75601).

DATES: Written comments should be submitted by June 9, 2005.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Room 4125, RITA, BTS, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or e-mail *bernard.stankus@dot.gov*.

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics (BTS)

Title: Report of Traffic and Capacity Statistics ''The T–100 System.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2138–0040.

Forms: Schedule T–100 and T–100(f).

Affected Public: Certificated, commuter and foreign air carriers.

Abstract: T–100 reports are used to measure the air transportation activity to, from and within the United States.

Estimated Annual Burden Hours: 23,268.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: BTS Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department concerning consumer protection. Comments should address whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 4, 2005.

Donald W. Bright,

Assistant Director, Office of Airline Information.

[FR Doc. 05–9264 Filed 5–9–05; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 28, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 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 June 9, 2005 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: Money Services Business Program Response.

Description: FinCEN will use survey data to estimate current size, extent, income derived by and nature of the MSB industry to more effectively regulate and inform MSBs about BSA regulations.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 24,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Other (one time).

Estimated Total Reporting/Recordkeeping Burden: 6,000 hours.

Clearance Officer: Russell Stephenson, (202) 354–6012, Financial Crimes Enforcement Network, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–9285 Filed 5–9–05; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 29, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 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 June 9, 2005 to be assured of consideration.

Departmental Offices/Community Development Financial Institutions (CDFI) Fund

OMB Number: 1559–0028.

Form Number: CDFI–0005.

Type of Review: Reinstatement.

Title: The Community Development Financial Institutions Program—Certification Application.

Description: The certification application will be used to determine whether an entity seeking CDFI certification or recertification meets the Fund's requirements for such certification as set forth in 12 CFR 1805.201.

Respondents: Business or other for-profit, Not-for-profit institution, State, local or tribal government.

Estimated Number of Respondents: 315.

Estimated Burden Hours Per Respondent: 40 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 12,600 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 11309, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–9286 Filed 5–9–05; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 3, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 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 June 9, 2005 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0012.

Form Number: FinCEN Form 110.

Type of Review: Revision.

Title: Designation of Exempt Person.

Description: Banks will use the form to exempt certain customers from the requirements to report to the Treasury a customer's cash transactions exceeding $10,000.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 19,000.

Estimated Burden Hours Per Respondent: 1 hour, 10 minutes.

Frequency of Response: Other (one time).

Estimated Total Reporting/Recordkeeping Burden: 340,000 hours.

Clearance Officer: Russell Stephenson, (202) 354–6012, Financial Crimes Enforcement Network, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–9287 Filed 5–9–05; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 3, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 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 June 9, 2005 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0065.

Form Numbers: IRS Forms 4070, 4070A, 4070PR, 4070A–PR.

Type of Review: Revision.

Title: Form 4070: Employee's report of Tips to Employer; *Form 4070A:* Employee's Daily Record of Tips; *Forma 4070PR:* Informe al Patrono de Propinas Recibidas por el Empleado; and *Forma 4070A–PR:* Registro Diario de Propinas del Empleado.

Description: Employees who receive at least $20 per month in tips must report the tips to their employers monthly for purposes of withholding of employment taxes. Forms 4070 and 4070PR (Puerto Rico only) are used for this purpose. Employees must keep a daily record of tips they receive. Forms 4070A and 4070A–PR are used for this purpose.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 615,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Form	Record-keeping	Learning about the law or the form	Preparing the form	Copying and proving the form
4070	6 min.	2 min.	16 min.	10 min.
4070A	3 hr., 23 min.	21 min.	54 min.	27 min.
4070PR	6 min.	3 min.	12 min.	10 min.
4070A–PR	3 hr., 23 min.	2 min.	54 min.	27 min.

Frequency of response: Monthly.

Estimated Total Reporting/ Recordkeeping Burden: 39,769,200 hours.

OMB Number: 1545–0863.

Regulation Project Number: LR–218–78 Final.

Type of Review: Extension.

Title: Product Liability Losses and Accumulations for Product Liability Losses.

Description: Generally, a taxpayer who sustains a product liability loss must carry the loss back 10 years. However, a taxpayer may elect to have such loss treated as a regular net operating loss under section 172. If desired, such election is made by attaching a statement to the tax return. This statement will enable the IRS to monitor compliance with the statutory requirements.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Respondent: 30 minutes.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 2,500 hours.

OMB Number: 1545–0987.

Regulation Project Number: IA–62–91 Final and Temporary.

Type of Review: Extension.

Title: Capitalization and Inclusion in Inventory of Certain Costs.

Description: The paperwork requirements are necessary to determine whether taxpayers comply with the cost allocation rules of section 263A and with the requirements for changing their methods of accounting. The information will be used to verify taxpayers' changes in methods of accounting.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents/ Recordkeepers: 20,000.

Estimated Burden Hours Respondent/ Recordkeeper: 5 hours.

Frequency of response: Other (in the year of change).

Estimated Total Reporting/ Recordkeeping Burden: 100,000 hours.

OMB Number: 1545–1244.

Regulation Project Number: PS–39–89 Final.

Type of Review: Extension.

Title: Limitation on Passive Activity Losses and Credits—Treatment of Self-Charged Items of Income and Expense.

Description: The IRS will use this information to determine whether the entity has made a proper timely election and to determine that taxpayers are complying with the election in the taxable year of the election and subsequent taxable years.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Respondent: 6 minutes.

Frequency of response: Other (first taxable year that entity seeks to make election).

Estimated Total Reporting Burden: 150 hours.

OMB Number: 1545–1647.

Revenue Procedure Number: Revenue Procedure 2001–21.

Type of Review: Extension.

Title: Debt Roll-Ups.

Description: This revenue procedure provides for an election that will facilitate the consolidation of two or more outstanding debt instruments into a single debt instrument. Under the election, taxpayers can treat certain exchanges of debt instruments as realization events for federal income tax purposes even through the exchanges do not result in significant modifications under § 1.1001–3 of the Income Tax Regulations.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 100.

Estimated Burden Hours Respondent/ Recordkeeper: 45 minutes.

Frequency of response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 75 hours.

OMB Number: 1545–1650.

Regulation Project Number: REG–208156–91 Final.

Type of Review: Extension.

Title: Accounting for Long-Term Contracts.

Description: The information collected is required to notify the Commissioner of a taxpayer's decision to sever to aggregate one or more long-term contracts under the regulations. The statement is needed so the Commissioner can determine whether taxpayer properly severed or aggregated its contract(s). The regulations affect any taxpayer that manufactures or constructs property under long-term contracts.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 50,000.

Estimated Burden Hours Respondent: 15 minutes.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 12,500 hours.

OMB Number: 1545–1771.

Revenue Procedure Number: Revenue Procedure 2002–15.

Type of Review: Extension.

Title: Automatic Relief for Late Initial Entity Classification Elections-Check the Box.

Description: 26 CFR 301.9100–1 and 301–9100–3 provides the Internal Revenue Service with authority to grant relief for late entity classification elections. This revenue procedure provides that, in certain circumstances, taxpayers whose initial entity classification election was filed late can obtain relief by filing Form 8832 and attaching a statement explaining that the requirements of the revenue procedure have been met.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Respondent: 1 hour.

Frequency of response: Other (once).

Estimated Total Reporting Burden: 100 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–9288 Filed 5–9–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–136311–01]

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–136311–01, Exclusions From Gross Income of Foreign Corporations (section 883(a) and (c)).

DATES: Written comments should be received on or before July 11, 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: Exclusions From Gross Income of Foreign Corporations.

OMB Number: 1545–1677.

Regulation Project Number: REG–136311–01.

Abstract: This regulation contains rules implementing the portions of section 883(a) and (c) of the Internal Revenue Code that relate to income derived by foreign corporations from the international operation of a ship or ships or aircraft. The rules provide, in general, that a foreign corporation organized in a qualified foreign country and engaged in the international operation of ships or aircraft shall exclude qualified income from gross income for purposes of United States Federal income taxation, provided that the corporation can satisfy certain ownership and related documentation requirements.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit and not-for-profit institutions and individuals or households.

Estimated Number of Respondents 16,400.

Estimated Time Per Respondent 1 hr., 27 min.

Estimated Total Annual Burden Hours 23,900.

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: April 29, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–2243 Filed 5–9–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, June 2, 2005 from 12 p.m. to 1 p.m. e.t.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

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 Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Thursday, June 2, 2005 from 12 p.m. to 1 p.m. e.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: May 2, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–2244 Filed 5–9–05; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 70, No. 89

Tuesday, May 10, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20056; Airspace Docket No. 05–AEA–01]

Amendment of Class E Airspace; Harrisburg, PA

Correction

In rule document 05–7191 beginning on page 18295 in the issue of Monday, April 11, 2005, make the following correction:

§71.1 [Corrected]

On page 18296, in §71.1, in the second column, under the heading

AEA PA E5 Harrisburg, PA (Revised)

in the third line, ''ling'' should read ''line''.

[FR Doc. C5–7191 Filed 5–9–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
May 10, 2005

Part II

Department of Veterans Affairs

38 CFR Part 5

Duties of VA; Rights and Responsibilities of Claimants and Beneficiaries; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 5

RIN 2900–AL82

Duties of VA; Rights and Responsibilities of Claimants and Beneficiaries

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to reorganize and rewrite in plain language its disability compensation and pension regulations relating to the duties of VA and the rights and responsibilities of claimants and beneficiaries. These revisions are proposed as part of VA's rewrite and reorganization of all of its compensation and pension regulations in a logical, claimant-focused, and user-friendly format. The intended effect of the proposed revisions is to assist claimants, beneficiaries, and VA personnel in locating and understanding these regulations.

DATES: Comments must be received by VA on or before July 11, 2005.

ADDRESSES: Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or fax comments to (202) 273–9026; or e-mail comments to *VAregulations@va.gov* or through *http://www.Regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AL82.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call 202–273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Clay Witt, Chief, Regulations Rewrite Project (00REG2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–9515.

SUPPLEMENTARY INFORMATION: The Secretary of Veterans Affairs has established an Office of Regulation Policy and Management to provide centralized management and coordination of VA's rulemaking process. One of the major functions of this office is to oversee a Regulation Rewrite Project (the Project) to improve the clarity and consistency of existing VA regulations. The Project responds to a recommendation made in the October 2001 ''VA Claims Processing Task Force: Report to the Secretary of Veterans Affairs.'' The Task Force recommended that the compensation and pension regulations be rewritten and reorganized in order to improve VA's claims adjudication process. Therefore, the Project began its efforts by reviewing, reorganizing and redrafting the content of the regulations in 38 CFR part 3 governing the compensation and pension program of the Veterans Benefits Administration. These regulations are among the most difficult VA regulations for readers to understand and apply.

Once rewritten, the proposed regulations will be published in several portions for public review and comment. This is one such portion. It includes proposed rules regarding duties of VA and rights and responsibilities of claimants and beneficiaries. After review and consideration of public comments, final versions of these proposed regulations will ultimately be published in a new part 5 in 38 CFR.

Outline

Overview of New Part 5 Organization
Overview of Proposed Subpart C Organization
Table Comparing Current Part 3 Rules with Proposed Part 5 Rules
Content of Proposed Regulations

Rights of Claimants and Beneficiaries

5.80 Right to representation.
5.81 Submission of information, evidence, or argument.
5.82 Right to a hearing.
5.83 Right to notice of decisions and proposed adverse actions.
5.84 Restoration of benefits following adverse action.

Duties of VA

5.90 [Reserved]
5.91 Medical evidence for disability claims.
5.92 Independent medical opinions.
5.93 Service records which are lost, destroyed, or otherwise unavailable.

Responsibilities of Claimants and Beneficiaries

5.100 Time limits for claimant or beneficiary responses.
5.101 Requirement to provide Social Security numbers.
5.102 Meeting reexamination requirements.
5.103 Failure to report for VA examination or reexamination.
5.104 Certifying continuing eligibility to receive benefits.

Endnote Regarding Amendatory Language
Paperwork Reduction Act
Regulatory Flexibility Act
Executive Order 12866
Unfunded Mandates
Catalog of Federal Domestic Assistance numbers
List of Subjects in 38 CFR Part 5

Overview of New Part 5 Organization

We plan to organize the part 5 regulations so that all provisions governing a specific benefit are located in the same subpart, with general provisions pertaining to all compensation and pension benefits also grouped together. We believe this organization will allow claimants, beneficiaries, and their representatives, as well as VA personnel, to find information relating to a specific benefit more quickly than the organization provided in current part 3.

The first major subdivision would be ''Subpart A—General Provisions.'' It would include information regarding the scope of the regulations in new part 5, delegations of authority, general definitions, and general policy provisions for this part.

- ''Subpart B—Service Requirements for Veterans'' would include information regarding a veteran's military service, including minimum service requirements, types of service, periods of war, and service evidence requirements. This subpart was published as proposed on January 30, 2004. *See* 69 FR 4820.
- ''Subpart C—Adjudicative Process, General'' would inform readers about claims and benefit application filing procedures, VA's duties, rights and responsibilities of claimants and beneficiaries, general evidence requirements, and general effective dates for new awards, as well as revision of decisions and protection of VA ratings. This subpart will be published as three separate Notices of Proposed Rulemaking (NPRMs) due to its size. The portion concerning claimants' and beneficiaries' rights and responsibilities and VA's duties is the subject of this document.
- ''Subpart D—Dependents and Survivors'' would inform readers how VA determines whether an individual is a dependent or a survivor for purposes of determining eligibility for VA benefits. It would also provide the evidence requirements for these determinations.
- ''Subpart E—Claims for Service Connection and Disability Compensation'' would define service-connected disability compensation, including direct and secondary service connection. This subpart would inform readers how VA determines entitlement to service connection. The subpart would also contain those provisions governing presumptions related to service connection, rating principles, and effective dates, as well as several special ratings. This subpart will be published as three separate NPRMs due

to its size. The first, concerning presumptions related to service connection, was published on July 27, 2004. *See* 69 FR 44614.

• ''Subpart F—Nonservice-Connected Disability Pensions and Death Pensions'' would include information regarding the three types of nonservice-connected pension: Improved Pension, Old-Law Pension, and Section 306 Pension. This subpart would also include those provisions that state how to establish entitlement to Improved Pension, and the effective dates governing each pension. This subpart will be published as two separate NPRMs due to its size. The portion concerning Old-Law Pension, Section 306 Pension, and elections of Improved Pension was published as proposed on December 27, 2004. *See* 69 FR 77578.

• ''Subpart G—Dependency and Indemnity Compensation, Death Compensation, Accrued Benefits, and Special Rules Applicable Upon Death of a Beneficiary'' would contain regulations governing claims for dependency and indemnity compensation (DIC); death compensation; accrued benefits; benefits awarded, but unpaid at death; and various special rules that apply to the disposition of VA benefits, or proceeds of VA benefits, when a beneficiary dies. This subpart would also include related definitions, effective-date rules, and rate-of-payment rules. This subpart will be published as two separate NPRMs due to its size. The portion concerning accrued benefits, special rules applicable upon the death of a beneficiary, and several effective-date rules, was published as proposed on October 1, 2004. *See* 69 FR 59072. The portion concerning DIC benefits and general provisions relating to proof of death and service-connected cause of death will be the subject of a separate NPRM.

• ''Subpart H—Special and Ancillary Benefits for Veterans, Dependents, and Survivors'' would pertain to special and ancillary benefits available, including benefits for children with various birth defects.

• ''Subpart I—Benefits for Filipino Veterans and Survivors'' would pertain to the various benefits available to Filipino veterans and their survivors.

• ''Subpart J—Burial Benefits'' would pertain to burial allowances.

• ''Subpart K—Matters Affecting Receipt of Benefits'' would contain provisions regarding bars to benefits, forfeiture of benefits, and renouncement of benefits.

• ''Subpart L—Payments and Adjustments to Payments'' would include general rate-setting rules, several adjustment and resumption regulations, and election of benefit rules. Because of its size, proposed regulations in subpart L will be published in two separate NPRMs.

The final subpart, ''Subpart M—Apportionments and Payments to Fiduciaries or Incarcerated Beneficiaries,'' would include regulations governing apportionments, benefits for incarcerated beneficiaries, and guardianship.

Some of the regulations in this NPRM cross-reference other compensation and pension regulations. If those regulations have been published in this or earlier NPRMs as part of the Project, we cite the proposed part 5 section. However, where a regulation proposed in this NPRM would cross-reference a proposed part 5 regulation that has not yet been published, we cite to the current part 3 regulation that deals with the same subject matter. The current part 3 section we cite may differ from its eventual part 5 counterpart in some respects, but we believe this method will assist readers in understanding these proposed regulations where no part 5 counterpart has yet been published.

Because of its large size, proposed part 5 will be published in a number of NPRMs, such as this one. VA will not adopt any portion of part 5 as final until all of the NPRMs have been published for public comment.

In connection with this rulemaking, VA will accept comments relating to a prior rulemaking issued as part of the Project, if the matter being commented on relates to both NPRMs.

Overview of Proposed Subpart C Organization

This NPRM pertains to compensation and pension regulations that apply to the duties of VA and the rights and responsibilities of claimants and beneficiaries. These regulations would be contained in proposed subpart C of new 38 CFR part 5. Although these regulations have been substantially restructured and rewritten for greater clarity and ease of use, most of the basic concepts in these proposed regulations are the same as in their existing counterparts in 38 CFR part 3. However, a few substantive changes are proposed.

Table Comparing Current Part 3 Rules With Proposed Part 5 Rules

The following table shows the correspondence between the current regulations in part 3 and the proposed regulations contained in this NPRM:

Proposed part 5 section or paragraph	Based in whole or in part on 38 CFR part 3 section or paragraph (or ''New'')
5.80	1st sentence, 3.103(e); 2nd sentence, new.
5.81(a)	3.103(d)
5.81(b)	New.
5.82(a)(1)	3.103(c)(1)
5.82(a)(2)	New.
5.82(b)	3.103(c)(2)
5.82(c)	3.103(c)(1)
5.82(d)(1)	3.103(c)(1)
5.82(d)(2)	3.103(c)(2)
5.82(d)(3)	New.
5.82(e)(1)	3.103(c)(2)
5.82(e)(2)	3.103(c)(1)
5.82(e)(3)	New.
5.82(f)(1)	3.105(i)(1)
5.82(f)(2)	3.105(i)(1)
5.82(f)(3)	3.105(i)(1)
5.82(f)(4)	3.105(i)(1)
5.82(f)(5)	3.105(i)(2)
5.83(a)	3.1(q); 3.103(b)
5.83(a)(1)	3.103(b)(1), (f)
5.83(a)(2)	3.103(b)(1), (f)
5.83(a)(3)	3.103(b)(1), (f)
5.83(a)(4)	3.103(b)(1), (f)
5.83(a)(5)	3.103(b)(1), (f)
5.83(b)	3.103(b)(2)
5.83(c)(1)	3.103(b)(3)(i)
5.83(c)(2)	3.103(b)(3)(ii)
5.83(c)(3)	3.103(b)(3)(iii)
5.83(c)(4)	3.103(b)(3)(iv)
5.83(c)(5)	3.103(b)(3)(v)
5.83(c)(6)	3.103(b)(3)(vi)
5.84	3.103(b)(4)
5.91(a)	3.326 (b)–(c)
5.91(b)	3.304(c)
5.92	3.328
5.93	New.
5.100	3.110
5.101(a)	3.216
5.101(b)(1)	3.216
5.101(b)(2)	3.216
5.101(c)	3.400(w)
5.101(d)	New.
5.101(e)	3.216
5.101(f)	3.216
5.102(a)	3.327(a)
5.102(b)	3.327(a)
5.102(c)(1)	3.327(b)(1)
5.102(c)(2)(i)	3.327(b)(2)(i)
5.102(c)(2)(ii)	3.327(b)(2)(ii)–(iii)
5.102(c)(2)(iii)	3.327(b)(2)(iv)
5.102(c)(2)(iv)	3.327(b)(2)(v)
5.102(c)(2)(v)	3.327(b)(2)(vi)
5.102(c)(3)	3.327(b)(1); 4.28
5.102(d)(1)–(2)	3.327(c)
5.103, except for 5.103(e).	3.655
5.103(e)	3.330
5.104(a)	3.652(a)
5.104(b)	3.652(a)(1)
5.104(c)	3.652(a)(1)–(2)
5.104(d)	3.652(b)

Readers who use this table to compare existing regulatory provisions with the proposed provisions, and who observe a substantive difference between them, should consult the text that appears later in this document for an explanation of any significant changes

in each regulation. Not every paragraph of every current part 3 regulation regarding the subject matter of this rulemaking is accounted for in the table. In some instances, other portions of the part 3 sections that are addressed in these proposed regulations will appear in subparts of part 5 that are being published separately for public comment. For example, a reader might find a reference to paragraph (a) of a part 3 section in the table, but no reference to paragraph (b) of that section because paragraph (b) will be addressed in a separate NPRM. The table also does not include provisions from part 3 regulations that will not be repeated in part 5. Such provisions are discussed specifically under the appropriate part 5 heading in this preamble. Readers are invited to comment on the proposed part 5 provisions and also on our proposals to omit those part 3 provisions from part 5.

Content of Proposed Regulations

Rights of Claimants and Beneficiaries

5.80 Right to Representation

We propose to state the provisions pertaining to claimants' and beneficiaries' right to representation, located in current § 3.103(e), in § 5.80. We believe that this concept is difficult to find in the current Part 3 organization and that assigning it a separate section would make it more prominent than it is in Part 3. We also propose to add a provision stating that VA will inform a claimant or beneficiary of this right when VA sends them a decision or a proposed reduction, discontinuance, or other adverse action. Current 38 CFR 19.25 only requires VA to inform claimants of this right when a decision is rendered. However, it has been long-standing VA practice to inform beneficiaries of this right when we propose an adverse action. To ensure that beneficiaries and their representatives know that VA will provide such notice, we propose to include this provision in §§ 5.80 and 5.83(a).

5.81 Submission of Information, Evidence, or Argument

We also propose that current § 3.103(d), ''Submission of evidence,'' be set forth without substantive change in a new regulation, designated as § 5.81(a). This proposed regulation states that any information, evidence, or argument offered in support of a claim is to be made part of the record of proceedings. Also to be included in the record are any issues raised by the claimant.

New § 5.81(b) clarifies who may submit information, evidence, or argument. Of course a claimant or beneficiary may make such submissions, or, where applicable, do so through a fiduciary or guardian acting as his or her surrogate. In addition, unless provided otherwise in another part 5 section, we propose to permit a representative to submit any information, evidence, or argument on behalf of a claimant or beneficiary pursuant to any part 5 regulation that allows or requires submission of information, evidence, or argument. VA's regulations do not explicitly state that a representative may submit any information, evidence, or argument on behalf of a claimant or beneficiary, but it has long been VA's practice to allow such submissions. This practice allows a representative to properly assist a claimant or beneficiary in submitting items needed by VA in the adjudication process.

5.82 Right to a Hearing

We also propose a regulation, § 5.82, pertaining to a claimant's right to a hearing before the agency of original jurisdiction. The regulation would consist of all the provisions relating to this right that are currently in §§ 3.103(c) and 3.105(i). It is logical to place all provisions pertaining to a single subject in one regulation.

We propose not to include in § 5.82 the last sentence of current § 3.103(c)(2), which reads as follows: ''In cases in which the nature, origin, or degree of disability is in issue, the claimant may request visual examination by a physician designated by VA and the physician's observations will be read into the record.'' We believe that the right of a claimant to request an examination or opinion is no longer needed because under 38 U.S.C. 5103A(d), enacted in 2000, VA will provide a medical examination or opinion if it is ''necessary to make a decision on the claim.'' This statutory provision has been codified at 38 CFR 3.159(c)(4)(i).

Current 38 CFR 3.103(c)(1) states in relevant part, ''[u]pon request, a claimant is entitled to a hearing at any time on any issue or issues involved in a claim.'' We propose to replace the reference to ''a hearing'' with ''one hearing.'' A claimant generally requests a hearing after receiving an initial decision on a claim or after receiving an adverse decision affecting the receipt of VA benefits (or a proposed decision to reduce or discontinue VA benefits). The hearing is generally requested for the purpose of presenting additional evidence or argument to substantiate the claim. The VA official conducting the hearing is obligated to elicit any information or evidence not already of record in support of the benefits claimed. Therefore, the current regulatory language that provides for multiple hearing opportunities for a claimant to present information or evidence is unnecessarily expansive. We also note that this proposed change does not affect a claimant's right to a hearing before the Board of Veterans' Appeals. The third sentence of proposed 5.82(a)(1) states, ''A claimant is also entitled to a hearing before the Board of Veterans'' Appeals. *See* § 20.700 and § 20.1304 of this chapter.''

At proposed § 5.82(a)(2), we state that, under certain circumstances, one additional hearing on an issue will be provided to a claimant. The additional hearing will be provided if the claimant asserts that a new witness has been discovered or new evidence found that could substantiate the claim and that this witness or evidence could only be presented at a hearing and could not be presented at the original hearing. This limits the circumstances when the additional hearing can be requested and serves the interests of claimants, beneficiaries, and VA in expeditiously handling claims. We believe that including this exception to the one-hearing rule is fair to claimants and beneficiaries.

Neither current § 3.103, nor any other part 3 regulation, generally provides that VA will provide advance notice of a scheduled hearing to a claimant. (Section 3.105(i)(1) provides for such notice only of predetermination hearings.) It has long been VA's practice to provide advance notice of all hearings, and we have put such a provision in 5.82(d)(1).

In § 5.82(d)(3), we propose to add a provision setting forth current VA procedure: to make a decision based upon evidence and testimony presented during the hearing in addition to all other evidence of record. This is consistent with VA's duty to consider all evidence of record when making a decision.

In § 5.82(e)(3), we propose to add a provision stating that if a claimant fails without good cause to report for a scheduled hearing, VA's decision will be based upon the evidence of record. (Examples of good cause in our proposed provision include, but are not limited to, illness or hospitalization of the claimant, or death of an immediate family member). This provision is similar to a rule in current § 3.105(i)(2), which concerns predetermination hearings. We believe that establishing a fair, consistent policy for all hearings

will ensure that all claimants and beneficiaries are treated the same and will help make the hearing process more efficient.

Current § 3.105(i) contains the rules pertaining to a claimant's or beneficiary's rights in predetermination hearings. We propose to place these provisions into paragraph (f) of § 5.82 because it is logical to place those regulations pertaining to predetermination hearings in the same regulation that covers other hearing rights.

Current § 3.105(i)(1) provides that if a beneficiary wants a predetermination hearing, VA must receive the request within 30 days from the date of VA's notice to the beneficiary of the right to a hearing. We propose to include the word ''timely'' in proposed paragraph (f)(1) to reinforce the existence of a time limitation.

In a separate NPRM, ''Subpart A—General Provisions'', we plan to expand upon the current definition of ''notice'' (found in 38 CFR § 3.1(q)) to state in part 5 that copies of VA notices will be sent to a claimant or fiduciary, as well as a representative, to the last known address of record. Therefore, we propose in §§ 5.82, 5.83, 5.103 and 5.104, to simply state that VA notices will be sent to claimants or beneficiaries (as appropriate) to avoid unnecessary repetition.

5.83 Right to Notice of Decisions and Proposed Adverse Actions

Current § 3.103 is titled, ''Procedural due process and appellate rights,'' and states the requirements for providing notice of decisions to claimants. The current section also includes those provisions that VA must follow when advising a beneficiary of a proposal to reduce or discontinue benefit payments.

In paragraph (a) of proposed § 5.83, we state the general notice procedures that VA must follow when advising a claimant or beneficiary of any decision that affects a benefit payment or the granting of relief. Proposed paragraphs (a)(1) through (5) provide that the notice must explain the following: the reason for the decision; the effective date of the decision; the right to a hearing; the right to representation; and the right to an appeal. This material is derived from current § 3.103(b)(1) and (f).

In paragraph (b) of proposed § 5.83, VA proposes to describe the advance notice that VA must provide to a beneficiary if VA intends to take action adverse to the beneficiary (*e.g.*, reduce or discontinue benefits). This paragraph restates provisions in current § 3.103(b)(2) without substantive change, and adds a requirement that VA will ''inform the beneficiary of the 30-day time limit to request a predetermination hearing under § 5.82(f).'' We propose to include a cross-reference in this paragraph to current § 3.105, which governs the procedures applicable to the type of action VA is taking.

In proposed § 5.83(c), we propose to list the situations in which VA need not provide notice of an adverse action before VA takes that action. This list is not new, but is a restatement of those exceptions found at current § 3.103(b)(3)(i) through (vi). Section 5.83(c) states that, under certain circumstances, VA will send contemporaneous notice of an adverse action, particularly when the information leading to the action came from the beneficiary, or the fiduciary. We propose to list these in paragraphs (c)(1) through (6).

In addition to those listed in the current regulation, there are two other circumstances in which notice of discontinuance of benefits is not required. Notice of discontinuance of benefits is not required if VA receives a Record of Interment from the National Cemetery Administration or if VA receives an Application for United States Flag for Burial Purposes. The Record of Interment or the Application for United States Flag for Burial Purposes are reliable indications of a beneficiary's death and therefore no notice is required to terminate benefits. Therefore, we propose to add receipt of such documents to the proposed list in paragraph (c).

We intend to move current § 3.103(a), which is a statement of policy, to the beginning of part 5, where it would serve as a general introductory statement concerning the entire part 5 regulations. This change will be addressed in a separate NPRM.

5.84 Restoration of Benefits Following Adverse Action

Proposed § 5.84 is derived from current § 3.103(b)(4). No substantive changes to this regulation are intended.

Duties of VA

5.90 VA Assistance in Developing Claims

Title 38 CFR 3.159 is currently the subject of a separate VA rulemaking which will implement changes made by section 701 of Pub. L. 108–183, 117 Stat. 2670. When that rulemaking is complete, we plan to repeat the language of the amended § 3.159 as § 5.90. We therefore propose in this rulemaking to reserve space for proposed § 5.90.

5.91 Medical Evidence for Disability Claims

Prosped paragraph (a) of § 5.91 would state rules regarding alternative sources of medical evidence that VA may rely on in lieu of a VA medical examination or period of observation, assuming the evidence is adequate for adjudicating a claim. This paragraph, derived from current § 3.326(b) and (c), as well as 38 U.S.C. 5125, notes that VA may rely on a hospital or examination report from another government agency, private facility, or private physician. We note, further, that VA will make reasonable efforts to obtain such non-federal reports under it's § 3.159(c)(1) duty to assist.

The third sentence of current § 3.326(a) requires that a claimant report to a scheduled VA examination. Because this requirement is discussed in detail in current § 3.655 and will be addressed in § 5.103 as proposed in this notice, we believe that restating it in proposed § 5.91 would be redundant. Therefore, we propose not to include this sentence in proposed § 5.91.

We also plan to restate the second sentence of current § 3.326(b) and place it in a separate regulation specifically relating to medical examinations for former prisoners of war. That change will be addressed in a separate NPRM.

Proposed § 5.91(b) states a rule regarding adjudicating claims based on combat injuries and conditions that are obviously due to service. The paragraph provides that VA may rate such injuries and conditions pending receipt of service records. This paragraph is derived from the last sentence of current § 3.304(c).

We propose to not include the first two sentences of current § 3.304(c). The first sentence of current § 3.304(c) states, ''The development of evidence in connection with claims for service connection will be accomplished when deemed necessary but it should not be undertaken when evidence present is sufficient for this determination.'' The second sentence of current § 3.304(c) states, ''In initially rating disability of record at the time of discharge, the records of the service department, including the reports of examination at enlistment and the clinical records during service, will ordinarily suffice.'' We believe that in light of the requirements of the Veterans Claims Assistance Act of 2000, Pub. L. 106–475, 114 Stat. 2096, and its implementing regulation, current § 3.159, VA is required to obtain all relevant federal records pertinent to substantiating a claim, and to make reasonable attempts to obtain non-federal reports. Because

current law and regulations define the information and evidence that VA is required to obtain or try to obtain, the first sentence of current § 3.304(c) is unnecessary. In addition, because the examinations conducted by the Department of Defense for service members at the time of discharge do not ordinarily yield the evidence required for VA to assign a proper evaluation under 38 CFR part 4, Schedule of Rating Disabilities, service medical records rarely will ''suffice'' without a VA examination.

5.92 Independent Medical Opinions

We propose to repeat the content of § 3.328 in § 5.92 without change.

5.93 Service Records Which Are Lost, Destroyed, or Otherwise Unavailable

We propose to establish a new rule to apply if potentially relevant service records which were in the custody of specified U.S. Government entities are lost or destroyed, or otherwise became unavailable. Our goal is to help claimants and adjudicators identify sources of alternative evidence. The proposed rule is derived from existing VA procedures and policies.

As indicated in paragraph (a) of the proposed rule, in certain cases records in the custody of the Department of Defense have been destroyed or are otherwise unavailable due to no fault of the claimant. In such cases, VA attempts to obtain alternative evidence in order to assist the claimant in developing the evidence necessary to substantiate his or her claim. Proposed paragraph (a) requires VA to attempt to obtain potentially relevant alternative evidence before denying a claim based on a lack of evidence that may have been contained in the unavailable records.

Proposed paragraph (b) describes the most common situation in which VA must seek alternative evidence, which is when the original records were destroyed in the 1973 fire at the National Personnel Records Center. That fire destroyed approximately 80 percent of the stored records for Army veterans who served between November 1, 1912, and January 1, 1960. The United States Court of Appeals for Veterans Claims (CAVC) has taken judicial notice of certain provisions of the VA Veterans Benefits Administration Adjudication Procedures Manual, (Manual M21–1), which detail the assistance that VA generally provides if a claimant's records were destroyed in the 1973 fire. *See McCormick* v. *Gober*, 14 Vet. App. 39, 44–45 (2000) (remanding for VA consideration of Manual M21–1 provisions); *Dixon* v. *Derwinski*, 3 Vet. App. 261, 263 (1992) (holding that VA ''had a duty to advise appellant that, even though his service records could not be found, alternative methods of supporting the claim would be considered,'' and citing Manual M21–1 provisions). In proposed paragraph (b) we identify the records most likely to have been affected by the 1973 fire.

In proposed paragraph (c), we state some of the sources of alternative evidence that VA uses when the primary records are unavailable due to the 1973 fire. The list of sources in this paragraph is not all-inclusive; it is intended to assist claimants by alerting them to potential sources of relevant evidence.

Responsibilities of Claimants and Beneficiaries

5.100 Time Limits for Claimant or Beneficiary Responses

We propose to repeat the content of § 3.110 in § 5.100 without change.

5.101 Requirement To Provide Social Security Numbers

Section 5101(c)(1) of title 38, United States Code, requires claimants applying for disability compensation or pension benefits, as well as persons already in receipt of such benefits, to provide VA, on request, the Social Security numbers for themselves and any dependent or beneficiary on whose behalf, or based upon whom, the claimant or beneficiary receives or has applied for benefits. Further, 38 U.S.C. 5101(c)(2) requires that VA deny the claims of, or discontinue paying benefits to, those persons who fail to provide such Social Security number upon request. Pursuant to 38 U.S.C. 1822, these requirements also apply to claims for or awards of monetary benefits under chapter 18 of title 38, United States Code. VA has implemented these statutes in current § 3.216.

Section 5101(c)(2) of title 38, United States Code, and current § 3.216 both refer only to terminating payments when a person fails to disclose a requested Social Security number to VA. We have proposed in 38 CFR § 5.101(b) that VA may reduce rather than discontinue payments in certain circumstances (for example, when we have a beneficiary's Social Security number but not the number of a dependent for whom additional benefits are being paid). Although 38 U.S.C. 5101(c)(2) refers to termination of payments, we believe it is reasonable to construe it to require only a reduction in cases where we have the beneficiary's Social Security number but not a dependent's. According to VAOPGCPREC 24–95, 38 U.S.C. 5101(c)(2) was enacted to prevent fraudulent payments by allowing for the verification of the existence and income of beneficiaries and their dependents. We believe it is reasonable to conclude that Congress did not intend that a beneficiary who has provided his or her own Social Security number would forfeit all of his or her benefits based on the failure to provide the Social Security number of a dependent for whom or based upon whom additional benefits were being paid.

We propose to rewrite § 3.216 in plain language and reorganize its provisions logically but without substantive change. In addition, current § 3.500(w) provides the effective date of a discontinuance or reduction of benefits based upon the failure to provide a Social Security number. VA proposes to include this brief effective date provision in proposed 38 CFR 5.101(c) to allow the reader to easily find the effective date provisions for a discontinuance or reduction of benefits based on a failure to provide VA with a Social Security number.

Section 5101(c)(2) of title 38, U.S.C., states that VA may reinstate benefits if a beneficiary whose benefits have been discontinued for failure to provide a Social Security number subsequently provides it. We propose to add a provision, in 38 CFR 5.101(d), that clarifies that VA will reinstate benefits from the date VA received the Social Security number if the number is ultimately provided. This is consistent with VA practice and with the authorizing statute.

Current § 3.216 gives beneficiaries 60 days to submit a requested Social Security number. We believe this a reasonable time limit and propose to apply it to claimants as well, in 38 CFR 5.101(e).

5.102 Meeting Reexamination Requirements

In § 5.102, we propose to include provisions in current § 3.327, which governs the circumstances under which beneficiaries may be required to report for reexaminations to verify the continued presence and/or current level of a disability. In proposed § 5.102, we would restate the language used in § 3.327 to clarify some terms, to illustrate those situations that would warrant a reexamination, and to increase readability.

At § 5.102(a) we propose to replace the phrase ''material change,'' which may be ambiguous, with the phrase ''if reexamination is otherwise necessary to ensure that the disability is accurately evaluated.''

We also propose to more clearly refer to the three types of circumstances under which VA would request periodic future reexaminations. Current § 3.327(a) states that ''reexaminations will be required if it is likely that a disability has improved, or if evidence indicates there has been a material change in a disability or that the current rating may be incorrect.'' We propose to clarify that these examinations are needed to: verify that the beneficiary still has the disability at issue; ascertain whether or not a disability has improved to the point that a reduction in rating would be warranted; or otherwise ensure that the disability is accurately evaluated. This language is broad enough to encompass those disabilities that are evaluated under the criteria in the Schedule for Rating Disabilities, as well as those that are not, such as disabilities for which VA is paying special monthly compensation or special monthly pension. This would also include both ratings for disability compensation and pension. The third circumstance encompasses those situations where a disability still exists and has not improved, but reexamination is still necessary because the rating schedule or other pertinent regulations have changed, or there is an indication that the rating assigned was based on inaccurate or incomplete information.

We also propose to expand the rule contained in current § 3.327(a) that a beneficiary is required to report for VA reexaminations. We propose to include a cross-reference to § 5.103 in proposed § 5.102(b), and also propose to state that if the beneficiary fails to report for a scheduled VA examination, a determination of the claim will be made based upon the other evidence of record. This would help ensure that the reader is made aware of the consequences of failing to report for a VA examination.

Current § 3.327(b)(2) lists six circumstances when a periodic future reexamination will not be requested in disability compensation cases. Current § 3.327(b)(2)(i) states that in service-connected cases, no periodic future examinations will be scheduled when the disability is static. Current § 3.327(b)(2)(iii) states that in service-connected cases, no periodic future examinations will be scheduled where the disability from disease is permanent in character and of such nature that there is no likelihood of improvement. We believe that paragraphs (b)(2)(i) and (b)(2)(iii) address essentially the same situation, that no reexamination is necessary if the disability is ''static'' or is ''permanent'' and unlikely to improve. Therefore, we propose to consolidate these two provisions into one paragraph, (c)(2)(i).

We also propose to revise the provisions governing ''prestabilization ratings'' found in current paragraph (b)(1) and to use terms from the chart in current § 4.28. In order to clarify the meaning of ''prestabilization ratings,'' we propose to refer, in § 5.102(c)(3), more specifically to ratings assigned to ''a disability that has not yet become stable'' and to ''a disability caused by a wound or injury that has not yet completely healed.''

5.103 Failure To Report for VA Examination or Reexamination

Proposed § 5.103 includes provisions of §§ 3.330 and 3.655. Current § 3.655(b) provides for two possible consequences of a claimant's or beneficiary's failure to report for a scheduled VA examination. If an ''original disability compensation claim'' is pending and a claimant fails to report for an examination, VA will decide the claim based upon the evidence of record. If, however, ''any other original claim,'' a ''reopened claim,'' or a ''claim for increase'' is pending and a veteran fails to report for a scheduled VA examination, VA denies the claim. We propose to retain this distinction in proposed paragraph (b).

In current § 3.655(c)(1), when a beneficiary fails to report for a scheduled reexamination, and, as a result, VA proposes to reduce or discontinue benefits, VA is required to issue a ''pretermination notice.'' The pretermination notice currently must, among other things, advise the beneficiary of his or her ''procedural and appellate rights.'' We believe that it is unnecessary and potentially misleading to refer to the provision of ''appellate rights'' in a pretermination notice, which is not, by its nature, an appealable decision. We therefore propose to eliminate the reference to ''appellate rights.'' Additionally, we propose to change the term ''pretermination notice'' to ''notice of proposed discontinuance or reduction.'' The term ''pretermination notice'' could be confusing, as current § 3.655(c) contemplates notice of not only discontinuance of benefits, but also notice of a proposed reduction of benefits. For example, current § 3.655(c)(1) states, ''[s]uch notice shall also include the prospective date of discontinuance or reduction, the reason therefore and a statement of the claimant's procedural and appellate rights.'' We believe the phrase ''notice of proposed discontinuance or reduction'' is more accurate.

Current § 3.330 applies to resumption of disability ratings following a period during which benefit payments were discontinued or reduced because of a beneficiary's failure to report for a reexamination. The resumption is triggered by the beneficiary's subsequent willingness to undergo a reexamination. We consider this material to fit logically into the substance of § 3.655, and we therefore propose to integrate § 3.330 into proposed § 5.103(e).

We propose not to include in part 5 paragraph (a) of current § 3.655. We regard the initial clause of current paragraph (a), ''[w]hen entitlement or continued entitlement to a benefit cannot be established or confirmed without a current VA examination or reexamination,'' as unnecessary. VA generally will schedule an examination or reexamination when it appears necessary to do so in order to establish or confirm entitlement to a benefit. However, it may be the case that, since the scheduling of the examination or reexamination, additional evidence associated with the claims file indicates that the claim may be granted or the benefit continued without recourse to an examination or reexamination. In such a case, it would be unfair to penalize the claimant or beneficiary for failure to report for the examination or reexamination by denying the claim or reducing or discontinuing the benefit when there is otherwise sufficient evidence to grant the claim or continue to provide the benefit.

In proposed paragraph (f), we propose to add language that would emphasize that the examples of good cause described therein are not exclusive—that other circumstances not listed may be considered as ''good cause'' provided their gravity is similar to that of the currently listed examples of illness or hospitalization of the claimant or beneficiary, and death of an immediate family member. We propose to include a statement that VA will make these determinations on a case-by-case basis.

5.104 Certifying Continuing Eligibility To Receive Benefits

We propose to amend those regulations that pertain to informing beneficiaries of the need to submit specific information to VA to certify continuing eligibility to receive benefits or the amount of benefits payable. These provisions are contained in current § 3.652 and are proposed as § 5.104. We believe that these provisions may be revised to more clearly inform beneficiaries of the procedures that must be followed to certify eligibility and the types of information that must

be provided upon the request of VA. We propose to revise the language so that it would be clear to beneficiaries that they must submit, upon request, information such as marital status, income, number of dependents or any other information that is necessary to establish continuing eligibility to receive benefits. We also believe that current § 3.652 could more clearly inform beneficiaries of the consequences of failing to provide the information requested, such as the reduction or discontinuance of benefits. We would include in § 5.104 appropriate clarification.

Current § 3.500(v), ''Failure to furnish evidence of continued eligibility,'' simply refers the reader back to current § 3.652 (proposed § 5.104). Therefore, we will not include this paragraph in any part 5 regulation.

Endnote Regarding Amendatory Language

We intend to ultimately remove part 3 entirely, but we are not including amendatory language to accomplish that at this time. VA will provide public notice before removing part 3.

Paperwork Reduction Act

Although this document contains provisions constituting a collection of information, at 38 CFR 5.82, 5.101, and 5.104, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this proposed rule. The information collection requirements for §§ 5.82, 5.101, and 5.104 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 2900–0001, 2900–0004, 2900–0005, 2900–0006, 2900–0085, 2900–0572, and 2900–0624.

Regulatory Flexibility Act

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

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, or tribal governments, or the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers for this proposal are 64.100–.102, 64.104–.110, 64.115, and 64.127.

List of Subjects in 38 CFR Part 5

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans.

Approved: January 31, 2005.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to further amend 38 CFR part 5 as proposed to be added at 69 FR 4832, January 30, 2004, by adding subpart C to read as follows:

PART 5—COMPENSATION, PENSION, BURIAL, AND RELATED BENEFITS

Subpart C—Adjudication Process, General

Rights of Claimants and Beneficiaries

Sec.

5.80 Right to representation.
5.81 Submission of information, evidence, or argument.
5.82 Right to a hearing.
5.83 Right to notice of decisions and proposed adverse actions.
5.84 Restoration of benefits following adverse action.

Duties of VA

5.90 [Reserved]
5.91 Medical evidence for disability claims.
5.92 Independent medical opinions.
5.93 Service records which are lost, destroyed, or otherwise unavailable.

Responsibilities of Claimants and Beneficiaries

5.100 Time limits for claimant or beneficiary responses.
5.101 Requirement to provide Social Security numbers.
5.102 Meeting reexamination requirements.
5.103 Failure to report for VA examination or reexamination.
5.104 Certifying continuing eligibility to receive benefits.

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart C—Adjudicative Process, General

Rights of Claimants and Beneficiaries

§ 5.80 Right to representation.

Subject to the provisions of §§ 14.626 through 14.635 of this chapter, a claimant or beneficiary is entitled to the representation of his or her choice at every stage in the claims process. When VA notifies a claimant or beneficiary under § 5.83 of a decision or a proposed reduction, discontinuance, or other adverse action, VA will also notify him or her of the right to representation.

(Authority: 38 U.S.C. 501, 5901–5904)

Cross Reference: Section 19.25 of this chapter (concerning notification of the right to appeal, which includes notification of the right to representation).

§ 5.81 Submission of information, evidence, or argument.

(a) *Submissions included in the record.* VA will include in the record of proceedings any information, evidence (whether documentary, testimonial, or in other form), and any argument that a claimant offers in support of a claim. VA will also include in the record of proceedings with respect to the claim any issues a claimant raises, either in writing or at a hearing.

(b) *Who may submit information, evidence, or argument.* Information, evidence, or argument may be submitted by a claimant or beneficiary, or, where applicable, through a guardian or fiduciary acting on his or her behalf. Unless specifically provided otherwise in this part, a claimant's or beneficiary's authorized representative may submit information, evidence, or argument pursuant to any section of this part that allows or requires submission of information, evidence or argument.

(Authority: 38 U.S.C. 501)

§ 5.82 Right to a hearing.

(a) *General*—(1) *The one-hearing rule.* Upon request, a claimant is entitled to one hearing before the agency of original jurisdiction at any time on any issue or issues involved in a pending claim before the agency of original jurisdiction. When VA notifies a claimant or beneficiary of a decision or a proposed reduction, discontinuance, or other adverse action under § 5.83, VA will also notify the claimant or beneficiary of the right to a hearing. A claimant is also entitled to a hearing before the Board of Veterans' Appeals. *See* §§ 20.700 and 20.1304 of this

chapter. Except as provided in paragraph (a)(2) of this section, a claimant who received a hearing before the claim was reviewed by the Board of Veterans' Appeals (Board) is not entitled to an additional hearing after that claim is remanded by the Board to the agency of original jurisdiction.

(2) *Exception to the one-hearing rule.* A claimant will be provided one additional hearing on any issue involved in a claim when the claimant asserts that: He or she has discovered a new witness or new evidence to substantiate the claim; he or she can present that witness or evidence only at an oral hearing; and the witness or evidence could not have been presented at the original hearing.

(b) *Purpose of hearings; requirement for oath or affirmation.* The purpose of a hearing under this section is to provide the claimant with an opportunity to introduce into the record of proceedings, in person, any available evidence, arguments, or contentions which he or she considers important to the case. Testimony at a hearing will be under oath or affirmation.

(c) *Where VA will conduct hearings.* The hearing will be held in the VA office that has jurisdiction over the claim or in the VA office with adjudicative functions nearest the claimant's home. Subject to available resources and solely at the option of VA, the hearing may be held at any other VA facility or Federal building at which suitable hearing facilities are available.

(d) *VA responsibilities in conjunction with hearings.* (1) VA will provide advance notice to a claimant of the time and place of the hearing. If the hearing arises in the context of a proposed reduction, discontinuance, other adverse action or an appeal, a VA employee or employees having decision-making authority and who did not previously participate in the case will conduct the hearing. The employee or employees will establish a record of the hearing and will issue a decision after the hearing.

(2) The VA employee or employees conducting the hearing will explain fully the issues and suggest the submission of evidence the claimant may have overlooked that would tend to prove the claim. To assure clarity and completeness of the hearing record, questions directed to the claimant and to witnesses will be framed to explore fully the basis for entitlement rather than with an intent to refute evidence or to discredit testimony. The employee, or employees, conducting the hearing will ensure that all testimony is given under oath or affirmation.

(3) If a hearing is conducted, VA will make a decision based upon evidence and testimony presented during the hearing in addition to all other evidence of record.

(e) *Claimant rights and responsibilities in conjunction with hearings.* (1) The claimant is entitled to have witnesses testify. The claimant and witnesses must appear at the hearing, either in person or by videoconferencing. Normally, VA will not schedule a hearing for the sole purpose of receiving argument from a representative.

(2) All expenses incurred by the claimant in conjunction with the hearing are the responsibility of the claimant.

(3) If a claimant fails without good cause to report for a scheduled hearing, VA will decide the claim based upon the evidence of record. Examples of good cause include, but are not limited to, illness or hospitalization of the claimant, or death of an immediate family member.

(f) *Requirements for predetermination hearings.* Except as otherwise provided in § 5.83(c), VA will provide notice of the right to a hearing before VA reduces, discontinues, or otherwise adversely affects benefits. A predetermination hearing will not be provided unless VA receives a request for one no more than 30 days after the date of the notice of the proposed action.

(1) If the beneficiary does not timely request a predetermination hearing, or fails without good cause to report for a scheduled predetermination hearing, VA will make a determination on the proposed action based on the evidence of record. Examples of good cause include, but are not limited to, illness or hospitalization of the beneficiary, or death of an immediate family member.

(2) If VA receives a request for a predetermination hearing no more than 30 days after the date of the notice of the proposed action, VA will send the beneficiary written notice of the time and place for the hearing.

(3) VA will send the notice of the time and place for the predetermination hearing at least 10 days before the scheduled hearing date. This 10-day advance notice requirement may be waived by the beneficiary or representative.

(4) If a predetermination hearing is timely requested, VA will not make a final determination reducing, discontinuing, or otherwise adversely affecting benefits before the scheduled date of the hearing.

(5) If a predetermination hearing is conducted, VA will make the determination based upon evidence and testimony presented during the hearing in addition to all other evidence of record.

Cross Reference: See § 3.105 of this chapter for the procedures VA follows when revising decisions and the effective date of these decisions.

(Authority: 38 U.S.C. 501(a)(1))

§ 5.83 Right to notice of decisions and proposed adverse actions.

(a) *General.* VA will send to a claimant or beneficiary written notice of any decision, or proposed adverse action, that affects the payment of benefits or the granting of relief to that claimant or beneficiary. The notice will explain:

(1) If a claim is not fully granted, the reason for the decision and a summary of the evidence considered;

(2) The effective date of any adjustment of benefits;

(3) The right to a hearing on any issue involved in the claim;

(4) The right to representation; and

(5) The right to appeal, including how and when to exercise this right to appeal. (Appellate procedures are found in part 20 of this chapter.)

(b) *VA will send an advance notice of adverse action.* Except as otherwise provided in paragraph (c) of this section, VA will notify a beneficiary at least 60 days before it reduces, discontinues, or otherwise adversely affects the beneficiary's receipt of VA benefits. The notice will inform the beneficiary of the 30-day time limit to request a predetermination hearing under § 5.82(f). VA will allow the beneficiary 60 days after the date of the notice to submit evidence and/or argument to show why the adverse action should not be taken.

Cross Reference: See § 3.105 of this chapter for procedures applicable to the type of action VA is taking.

(c) *When VA will send a contemporaneous notice of reduction, discontinuance, or other adverse action.* VA will send a written notice to a beneficiary at the same time it reduces, discontinues, or otherwise takes an adverse action under any of the circumstances described in paragraphs (c)(1) through (c)(6) of this section.

(1)(i) The adverse action results solely from information or statements, provided orally or in writing to VA by the beneficiary or the fiduciary, as to income, net worth, dependency, or marital status;

(ii) The information or statements are factual and unambiguous; and

(iii) The beneficiary or fiduciary has knowledge or notice that such information or statements may be used to calculate benefit amounts. *See* § 3.217

of this chapter for procedures governing the submission by a beneficiary or his or her fiduciary of oral or written information or statements.

(2) The adverse action results from the beneficiary's or fiduciary's failure to return an eligibility verification report as required by § 3.277 of this chapter.

(3) VA receives credible evidence indicating that a beneficiary has died. However, VA is not required to send a notice of discontinuance of benefits (contemporaneous or otherwise) if VA receives:

(i) A death certificate;

(ii) A terminal hospital report verifying the death of a beneficiary;

(iii) A claim for VA burial benefits;

(iv) An ''Application for United States Flag for Burial Purposes''; or

(v) A ''Record of Interment'' from the National Cemetery Administration.

(4) The adverse action results from a beneficiary's written and signed statement renouncing VA benefits (*see* § 3.106 of this chapter on renouncement).

(5) The adverse action results from a veteran's written and signed statement that he or she has returned to active service. The statement must include each of the following:

(i) The branch of service;

(ii) The date of reentry into service;

(iii) The veteran's acknowledgement that receipt of active military service pay precludes receipt at the same time of VA disability compensation or pension. *See* § 3.654 of this chapter regarding active service pay.

(6) The adverse action results from a garnishment order issued under 42 U.S.C. 659(a), allowing the U.S. to consent to garnishment or withholding of pay for members of the Armed Forces and, in certain circumstances, disability compensation, to enforce child support and alimony obligations. *See* 42 U.S.C. 659(h)(1)(A)(ii)(V) for the limited circumstance of garnishing certain disability pay.

(Authority: 38 U.S.C. 501, 5104)

§ 5.84 Restoration of benefits following adverse action.

(a) If VA reduces or discontinues benefits, or takes other action adverse to a beneficiary, based upon information or an oral statement provided by the beneficiary or fiduciary, VA will retroactively restore such benefits if the beneficiary or fiduciary asserts no more than 30 days after the date of the VA notice of adverse action either of the following:

(1) The information or statement is inaccurate.

(2) The information or statement was not provided by the beneficiary or his or her fiduciary.

(b) Restoration of benefits under this section does not preclude VA from later taking action that adversely affects the beneficiary's receipt of benefits based on the information or oral statements referred to in paragraph (a) of this section.

(Authority: 38 U.S.C. 501, 5104)

Duties of VA

§ 5.90 [Reserved]

§ 5.91 Medical evidence for disability claims.

(a) *Medical evidence rendering VA examination unnecessary.* If they are adequate for purposes of adjudicating a claim, VA may rely on hospital or examination reports from a government or private facility, or reports from private physicians. When such reports are of record, VA does not need to provide a VA examination or period of hospital observation.

(b) *Rating injuries and conditions obviously incurred in service.* VA may assign an evaluation for combat injuries or other conditions that obviously were incurred in service as soon as sufficient evidence to rate the severity of the condition is available, even if VA has not yet received the claimant's enlistment examination and other service records.

(Authority: 38 U.S.C. 1154, 5103A, 5125)

§ 5.92 Independent medical opinions.

(a) *General.* When warranted by the medical complexity or controversy involved in a pending claim, an advisory medical opinion may be obtained from one or more medical experts who are not employees of VA. Opinions shall be obtained from recognized medical schools, universities, clinics or medical institutions with which arrangements for such opinions have been made, and an appropriate official of the institution shall select the individual expert(s) to render an opinion.

(b) *Requests.* A request for an independent medical opinion in conjunction with a claim pending at the regional office level may be initiated by the office having jurisdiction over the claim, by the claimant, or by his or her representative. The request must be submitted in writing and must set forth in detail the reasons why the opinion is necessary. All such requests shall be submitted through the Veterans Service Center Manager of the office having jurisdiction over the claim, and those requests which in the judgment of the Veterans Service Center Manager merit consideration shall be referred to the Compensation and Pension Service for approval.

(c) *Approval.* Approval shall be granted only upon a determination by the Compensation and Pension Service that the issue under consideration poses a medical problem of such obscurity or complexity, or has generated such controversy in the medical community at large, as to justify solicitation of an independent medical opinion. When approval has been granted, the Compensation and Pension Service shall obtain the opinion. A determination that an independent medical opinion is not warranted may be contested only as part of an appeal on the merits of the decision rendered on the primary issue by the agency of original jurisdiction.

(d) *Notification.* The Compensation and Pension Service shall notify the claimant when the request for an independent medical opinion has been approved with regard to his or her claim and shall furnish the claimant with a copy of the opinion when it is received. If, in the judgment of the Secretary, disclosure of the independent medical opinion would be harmful to the physical or mental health of the claimant, disclosure shall be subject to the special procedures set forth in § 1.577 of this chapter.

(Authority: 5 U.S.C. 552a(f)(3); 38 U.S.C. 5109, 5701(b)(1))

§ 5.93 Service records which are lost, destroyed, or otherwise unavailable.

(a) *Records in the custody of the Department of Defense.* When records that are potentially relevant to a claim for benefits and that were in the custody of the Department of Defense have been lost or destroyed, or otherwise have become unavailable, VA will not deny the claim without attempting to obtain potentially relevant alternative evidence. (Examples of sources of alternative evidence are listed in paragraph (c) of this section).

(b) *Destruction due to fire at the National Personnel Records Center.* On July 12, 1973, there was a fire at the National Archives and Records Administration's National Personnel Records Center (NPRC). When the NPRC reports that it does not have the claimant's records because they were destroyed by this fire, VA will not deny the claim without attempting to obtain potentially relevant alternative evidence. (Examples of sources of alternative evidence are listed in paragraph (c) of this section). The following are the two main groups of records destroyed by the NPRC fire:

(1) *Army.* Records for certain Army veterans who served between November

1, 1912, and January 1, 1960. Records of Army retirees who were alive on July 12, 1973, were not destroyed by the fire because they were stored at a different location.

(2) *Air Force.* Records for certain Air Force veterans with surnames ''Hubbard'' through Z who were discharged between September 25, 1947 and January 1, 1964, and had no retired or Reserve status.

(c) *Alternative evidence development.* Depending on the facts of the case, sources of potentially relevant alternative evidence for records described in paragraphs (a) or (b) of this section include the following:

(1) A claimant's personal copies of discharge papers, service medical records, or other evidence of military service;

(2) State Adjutant Generals' offices or State historical commissions;

(3) The Office of Personnel Management (if the veteran was employed by a Federal or State agency), a private employer, or the Railroad Retirement Board (if the veteran was employed by a railroad);

(4) The Social Security Administration;

(5) VA or military files or records relating to an earlier claim filed with VA;

(6) Service medical personnel or people who knew the veteran during his or her service;

(7) State or local accident and police reports from the time and place the veteran served;

(8) Employment physical examinations or insurance examinations;

(9) Hospitals, clinics, or private physicians who treated a veteran, especially soon after separation, or pharmacies that filled prescriptions;

(10) Letters written during service or photographs taken during service.

(Authority: 38 U.S.C. 501)

Responsibilities of Claimants and Beneficiaries

§ 5.100 Time limits for claimant or beneficiary responses.

(a) In computing the time limit for any action required of a claimant or beneficiary, including the filing of claims or evidence requested by VA, the first day of the specified period will be excluded and the last day included. This rule is applicable in cases in which the time limit expires on a workday. Where the time limit would expire on a Saturday, Sunday, or holiday, the next succeeding workday will be included in the computation.

(b) The first day of the specified period referred to in paragraph (a) of this section shall be the date of mailing of notification to the claimant or beneficiary of the action required and the time limit therefor. The date of the letter of notification shall be considered the date of mailing for purposes of computing time limits. As to appeals, see §§ 20.302 and 20.305 of this chapter.

(Authority: 38 U.S.C. 501)

§ 5.101 Requirement to provide Social Security numbers.

(a) *General requirement to provide Social Security number.* If requested to do so by VA, each claimant for, or beneficiary of, compensation, pension, dependency and indemnity compensation, or a monetary benefit under 38 U.S.C. chapter 18 must provide to VA his or her Social Security number, as well as the Social Security number of any dependent or other person on whose behalf, or based upon whom, benefits are sought or received.

(b) *Individuals receiving VA benefits.* If 60 days after VA requests a Social Security number, the beneficiary fails either to provide the requested Social Security number or to show that no Social Security number was assigned, VA will take the following action:

(1) If the beneficiary fails to provide his or her own Social Security number, VA will discontinue benefits.

(2) If the beneficiary fails to provide the Social Security number for any dependent, VA will reduce the benefits payable by the amount payable to or on behalf of such dependent; however, VA may still consider that dependent's income for purposes of determining entitlement to income-based benefits.

(c) *Effective date of reduction or discontinuance.* VA's discontinuance or reduction of benefits under paragraph (b) of this section will be effective on the first day of the first month beginning more than 60 days after the date VA requested the Social Security number.

(d) *Effective date of resumed payments.* If a claimant or beneficiary provides VA with the requested Social Security number, VA will resume payment of benefits at the prior rate, effective on the date VA received the Social Security number, provided that payment of benefits at that rate is otherwise in order.

(e) *Claimant's application for VA benefits.* If 60 days after VA requests a Social Security number, the claimant fails either to provide the requested Social Security number or to show that no Social Security number was assigned, VA will deny the claim. If a claimant fails to provide to VA the Social Security number of a dependent, then VA will deny benefits that are based on the existence of the dependent.

(f) *When a Social Security number is not required.* A claimant or beneficiary is not required to provide a Social Security number for any person to whom a Social Security number has not been assigned.

(Authority: 38 U.S.C. 501, 1822, 5101(c))

§ 5.102 Meeting reexamination requirements.

(a) *General.* VA may reexamine a beneficiary, or require a period or periods of hospital observation, at any time to ensure that the beneficiary's disability rating is accurate. For example, VA may reexamine a beneficiary if evidence indicates that the disability for which VA is making payments may no longer exist or may have improved to such a degree that a reduced rating might be appropriate; or if reexamination is otherwise necessary to ensure that the disability is accurately evaluated. Paragraphs (c) and (d) of this section provide general guidelines for scheduling reexaminations, but do not limit VA's authority to schedule reexaminations or periods of hospital observation at any time in order to ensure that a disability is accurately rated.

(b) *Beneficiaries are required to report for scheduled reexaminations.* A beneficiary must report for a VA-scheduled reexamination. If he or she does not report, VA will take the steps described in § 5.103 of this part, ''Failure to report for VA examination or reexamination.''

(c) *Scheduling reexaminations in disability compensation cases.* The following rules apply to disability compensation cases:

(1) *General rule.* As a general rule, if periodic future reexaminations are warranted, VA may schedule such reexaminations to occur between two and five years after the date on which VA last examined the beneficiary, unless some other law or regulation specifies another time period.

(2) *When VA will not schedule periodic reexaminations.* VA will not schedule periodic future reexaminations under the following circumstances:

(i) The disability is static;

(ii) Medical examinations or hospital reports show that the symptoms and findings of the disability have persisted without significant improvement for at least five years;

(iii) The beneficiary has attained the age of 55, except in unusual circumstances;

(iv) The disability in question is rated at a prescribed mandatory minimum level under the Schedule for Rating Disabilities in part 4 of this chapter; or

(v) The combined disability rating would not decrease even if a reexamination for the specific disability at issue would result in a decreased rating for that disability; however, if a reexamination potentially would reduce an award of special monthly compensation, reexamination may be warranted even if the combined disability rating would not be reduced.

Cross Reference: See § 4.25 of this chapter for information on ''combined ratings'' and how they are calculated.

(3) *Discharge from service with unstabilized disability.* If a person is discharged from military service with a disability that has not yet become stable or with a disability caused by a wound or injury that has not yet completely healed, VA may, pursuant to § 4.28 of this chapter, temporarily assign a prestabilization disability rating of either 100 percent or 50 percent to the disability. If VA assigns a prestabilization rating under § 4.28 of this chapter, VA will schedule a reexamination to occur 6 to 12 months after the date the person separates from service, to determine the appropriate schedular evaluation under the Schedule for Rating Disabilities in part 4 of this chapter.

(d) *Pension cases.* The following rules apply to pension cases:

(1) If the beneficiary has attained the age of 55, VA will schedule a reexamination only in unusual circumstances.

(2) VA generally will not schedule a reexamination if it is obvious that the disability is unlikely to improve over the long term or the medical history has confirmed the presence of a permanent and total nonservice-connected disability. In other cases, VA will reexamine only in unusual circumstances.

(Authority: 38 U.S.C. 501)

§ 5.103 Failure to report for VA examination or reexamination.

(a) *General.* VA will schedule a VA examination when needed to establish entitlement to a benefit or an increased disability evaluation. VA will schedule a VA reexamination when needed to confirm continued entitlement to a benefit or continued entitlement to a particular disability evaluation. *See* § 3.159(c)(4) of this chapter, ''Providing medical examinations or obtaining medical opinions.'' If a claimant or beneficiary, with good cause, fails to report for a VA examination or reexamination, VA will reschedule the examination or reexamination. Examples of good cause are listed in paragraph (f) of this section.

(b) *Failure without good cause to report for a scheduled examination.* If a claimant or beneficiary, without good cause, fails to report for a VA examination, VA will decide the claim as follows:

(1) For an original disability compensation claim, VA will make a decision based on the evidence in the claims file.

(2) For any other original claim, a new claim, a reopened claim, or a claim for increase, VA will deny the claim.

(c) *Failure without good cause to report for a scheduled reexamination*—(1) *Continuing entitlement to a benefit.* If a beneficiary fails, without good cause, to report for a VA reexamination and continuing entitlement to the benefit cannot be confirmed without a VA reexamination, VA will propose to discontinue the benefit.

(2) *Continuing entitlement to a particular evaluation.* If a beneficiary fails, without good cause, to report for a VA reexamination and continuing entitlement to a particular disability evaluation for one or more of the beneficiary's disabilities cannot be confirmed without a VA reexamination, VA will propose to reduce the evaluation for the disability or disabilities at issue to one of the following, as applicable:

(i) The highest disability evaluation assigned to that disability that is protected under § 3.951(b) of this chapter.

(ii) The evaluation specified as the minimum evaluation permitted for that disability under the Schedule for Rating Disabilities in part 4 of this chapter.

(iii) Zero percent if there is neither an evaluation protected under the provisions of § 3.951 of this chapter nor a minimum evaluation specified in the Schedule for Rating Disabilities in part 4 of this chapter.

Cross Reference: See § 3.344 of this chapter, ''Stabilization of disability evaluations.''

(d) *Advance notice of proposed discontinuance or reduction*—(1) *Notice.* If VA proposes to discontinue or reduce payment under paragraph (b) or (c) of this section, VA will notify the beneficiary by letter of its intended action. The letter must include the date on which the proposed discontinuance or reduction will be effective, and the beneficiary's procedural rights. *See* §§ 5.80 through 5.83.

(2) *Time period during which the beneficiary must respond.* No more than 60 days after the date of VA's notice, VA must receive either notification that the beneficiary will report for reexamination or evidence showing that VA should not discontinue or reduce payments. If VA receives notification that the beneficiary will report for reexamination, it will schedule a reexamination. If VA receives evidence showing that VA should not discontinue or reduce payments, it will not do so.

(3) *No response or inadequate response.* If VA does not receive the notification or evidence required by paragraph (d)(2) of this section, VA will take the action described in the letter referred to in paragraph (d)(1) of this section. The action will be effective on the date identified in the letter or the day after the date of the last payment made by VA to the beneficiary, whichever is later.

(4) *Hearing.* The beneficiary may request a hearing to challenge VA's proposed adverse action as provided in § 5.82(f). If, within 30 days after the date on the notice letter, VA does not receive the beneficiary's request for a hearing, then VA will discontinue or reduce payments effective on the date the notice letter specified or the date of VA's last payment, whichever is later, unless evidence is presented which warrants a different determination.

(5) *Rescheduled reexamination.* The beneficiary may ask VA to schedule another date for reexamination, either instead of or in addition to asking for a hearing. If VA receives the request to reschedule before the payments are discontinued or reduced, VA will halt its action to discontinue or reduce payments and will schedule a new reexamination date. VA will notify the beneficiary that if he or she fails to report for the rescheduled reexamination, then VA will immediately discontinue or reduce the payments as of the date of the last payment.

(e) *Resumption of payments.* If VA discontinues or reduces payments for failure to report for a reexamination, VA will issue a new decision after the beneficiary reports for a VA reexamination. VA will notify the beneficiary of any period of time for which it could not pay benefits at the previous level and the reason(s) why, and identify the period of time for which it has resumed paying such benefits.

(f) *Examples of good cause.* Examples of good cause for failure to report for a VA examination or reexamination include a claimant's or beneficiary's illness or hospitalization, and the death of an immediate family member. VA will determine on a case-by-case basis whether good cause is established.

(Authority: 38 U.S.C. 501)

§ 5.104 Certifying continuing eligibility to receive benefits.

Except as otherwise provided, the following rules govern the certification of continuing eligibility.

(a) *Responsibility to certify continuing eligibility upon request.* Each beneficiary, if requested to do so by VA, must certify whether the factual basis that established entitlement to benefits still exists. The requested certification may concern marital status, income, number of dependents, or any other fact affecting entitlement to a benefit or the amount of benefits payable. VA must receive the beneficiary's certification, including any requested information, not later than 60 days after the date of VA's request.

(b) *If VA does not receive the certification within 60 days.* If VA does not receive the requested certification within 60 days after the date of VA's request, VA will assume that the fact(s) about which the certification was requested ceased to exist as of the end of the month in which VA received the last evidence of record establishing or confirming the fact(s).

(c) *Additional 60 days provided.* If VA does not receive the requested certification within 60 days after the date of VA's request, VA will notify, in writing, the beneficiary that VA proposes to reduce or discontinue the benefits and will allow the beneficiary 60 days in which to provide VA with the required certification. The notice must include the effective date of the proposed reduction or discontinuance. If the beneficiary does not provide the required certification within the additional 60 days, VA will reduce or discontinue the benefit, according to the appropriate effective date provisions of §§ 3.500 through 3.504 of this chapter in effect on the date the eligibility factor(s) is considered to have ceased to exist.

(d) *VA action when the evidence is received.* When the certification requested is provided, VA will adjust the benefits, if necessary, according to the information provided and the other evidence in the claims file.

(Authority: 38 U.S.C. 501)

[FR Doc. 05–9230 Filed 5–9–05; 8:45 am]

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Federal Register

Tuesday,
May 10, 2005

Part III

The President

Proclamation 7898—Jewish Heritage Week, 2005

Notice of May 5, 2005—Continuation of the National Emergency Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria

Federal Register
Vol. 70, No. 89
Tuesday, May 10, 2005

Presidential Documents

Title 3—

The President

Proclamation 7898 of May 5, 2005

Jewish Heritage Week, 2005

By the President of the United States of America

A Proclamation

During Jewish Heritage Week, we celebrate and honor Jewish Americans for their contributions to this country and for helping to shape our national character.

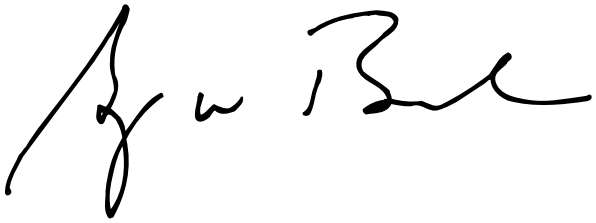
The story of the Jewish people reflects the triumph of faith, the importance of family, and the power of hope. Through inspiring stories of personal sacrifice and survival, the Jewish people have demonstrated unyielding trust in a loving God and enduring faith in human freedom.

America is stronger and more hopeful because of the industry, talent, and imagination of Jewish Americans from around the world. Their commitment to excellence in science, public service, law, athletics, literature, and countless other fields has enriched our Nation and enhanced our culture. Through strong ties to family and community, Jewish Americans reflect a compassionate spirit and set a positive example for others.

We are also grateful for their legacy of selfless service to our country. As our troops defend liberty and justice abroad, we recognize Jewish Americans who have answered the call to help keep our Nation secure and build a more peaceful world. Their personal courage, love of country, and devotion to duty are helping to bring freedom and hope to millions who had previously lived under tyranny.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 8 through May 15, 2005, as Jewish Heritage Week. I urge all Americans to celebrate the contributions of Jewish Americans to our Nation and observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of May, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 05–9439
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Presidential Documents

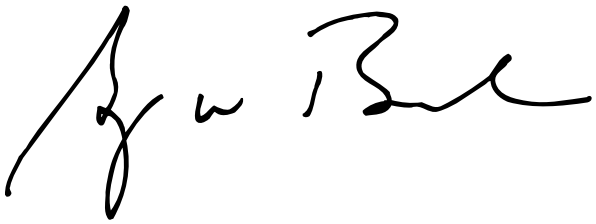
Notice of May 5, 2005

Continuation of the National Emergency Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria

On May 11, 2004, pursuant to my authority under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) and the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (Public Law 108–175), I issued Executive Order 13338 in which I declared a national emergency blocking the property of certain persons and prohibiting the exportation or reexportation of certain goods to Syria. I took this action to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of the Government of Syria in supporting terrorism, continuing its occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining United States and international efforts with respect to the stabilization and reconstruction of Iraq.

Because the actions and policies of the Government of Syria continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on May 11, 2004, and the measures adopted on that date to deal with that emergency, must continue in effect beyond May 11, 2005. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency blocking the property of certain persons and prohibiting the exportation or reexportation of certain goods to Syria.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
May 5, 2005.

[FR Doc. 05–9440
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Federal Register

Vol. 70, No. 89

Tuesday, May 10, 2005

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Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, MAY

22585–22780 2
22781–23008 3
23009–23774 4
23775–23926 5
23927–24292 6
24293–24476 9
24477–24698 10

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7890 23007
7891 23771
7892 23773
7893 23915
7894 23917
7895 23919
7896 23921
7897 24475
7898 24695

Executive Orders:
13338 (See Notice of May 5, 2005) 24697

Administrative Orders:
Memorandums:
Memorandum of April 21, 2005 23925
Notices:
Notice of May 5, 2005 24697

5 CFR

550 24477
1207 24293

Proposed Rules:
Ch. LXXXI 23065

7 CFR

2 23927
301 24297
319 22585
340 23009
905 23928

Proposed Rules:
319 22612
948 23942
983 23065

8 CFR

214 23775

9 CFR

78 22588

Proposed Rules:
94 23809
327 24485

10 CFR

72 22781
300 24302

Proposed Rules:
71 23303

11 CFR

Proposed Rules:
100 23068
106 23072
300 23072

12 CFR

201 24303
748 22764

14 CFR

25 24478
39 .....23783, 23784, 23911, 23930, 24304, 24305, 24307, 24480, 24481
71 .....22590, 23002, 23786, 23787, 23788, 23789, 23790, 23934, 23935, 24677
97 .....22781, 23002
121 23935
129 23935

Proposed Rules:
39 .....22613, 22615, 22618, 22620, 22826, 24326, 24331, 24335, 24338, 24341, 24488
71 23810

15 CFR

Proposed Rules:
801 23811

18 CFR

Proposed Rules:
35 23945
131 23945
154 23945
157 23945
250 23945
281 23945
284 23945
300 23945
341 23945
344 23945
346 23945
347 23945
348 23945
375 23945
385 23945

19 CFR

122 .....22782, 22783

21 CFR

1300 22591
1301 22591
1304 22591
1305 22591
1307 22591

Proposed Rules:
1 24490
101 23813
361 24491

23 CFR

771 24468

24 CFR

Proposed Rules:
207 24272

25 CFR
542 23011

26 CFR
1 23790

29 CFR
2200 22785
2204 22785
Proposed Rules:
1910 22828

30 CFR
915 22792
917 22795

31 CFR
285 22797

33 CFR
100 23936
117 24482
165 ....22800, 24309
Proposed Rules:
100 ....23821, 23946
117 24492
165 ....23821, 23824, 23948, 23950, 24342, 24344

36 CFR
1253 22800

37 CFR
270 24309

38 CFR
3 23027
17 22595
36 22596
Proposed Rules:
5 24680

40 CFR
52 ....22597, 22599, 22603, 23029, 24310
70 ....22599, 22603
81 ....22801, 22803
93 24280
300 ....22606, 24314
Proposed Rules:
52 ....22623, 23075, 24347, 24348
70 22623
300 22624

41 CFR
Proposed Rules:
102–117 23078
102–118 23078

42 CFR
412 24168
416 23690
Proposed Rules:
405 23306
412 23306
413 23306
415 23306
419 23306
422 23306
485 23306

45 CFR
80 24314
84 24314
86 24314
90 24314
91 24314

46 CFR
310 24483

47 CFR
0 23032
2 23032
15 23032
27 22610
73 24322
Proposed Rules:
76 24350
90 23080

48 CFR
207 23790
211 23804
212 23790
217 24323
225 23790
252 23790
Proposed Rules:
204 23826
232 23827

49 CFR
565 23938
622 24468
Proposed Rules:
Subt. A 23953
383 24358
571 ....23081, 23953

50 CFR
648 ....22806, 23939
660 ....22808, 23040, 23054, 23804
679 23940
Proposed Rules:
17 ....22835, 23083
20 ....22624, 22625, 23954
223 24359
635 24494
679 23829
697 24495

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 MAY 10, 2005

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; published 4-25-05

Cessna; published 4-25-05

TRANSPORTATION DEPARTMENT

Maritime Administration

Merchant Marine training:

Merchant Marine Academy and State maritime academy graduates; service obligation reporting requirements; published 5-10-05

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]

Pistachios grown in—

California; comments due by 5-19-05; published 5-4-05 [FR 05-08861]

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Fees:

Official inspection and weighing services; comments due by 5-20-05; published 3-21-05 [FR 05-05501]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Reports and guidance documents; availability, etc.:

National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

AMERICAN BATTLE MONUMENTS COMMISSION

Practice and procedure:

Overseas memorials policies; comments due by 5-18-05; published 4-19-05 [FR 05-07743]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries—

Georges Bank cod, haddock, and yellowtail flounder; comments due by 5-16-05; published 4-14-05 [FR 05-07514]

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; correction; comments due by 5-18-05; published 5-3-05 [FR 05-08817]

West Coast salmon; comments due by 5-18-05; published 5-4-05 [FR 05-08858]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:

Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

Civilian health and medical program of uniformed services (CHAMPUS):

TRICARE program—

Reserve Select, Transitional Assistance Management Program; and early eligibility for certain reserve component members; requirements and procedures; comments due by 5-16-05; published 3-16-05 [FR 05-05219]

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]

ENERGY DEPARTMENT

National Nuclear Security Administration

Computer security:

Information access on Department of Energy computers and computer systems; minimum requirements; comments due by 5-16-05; published 3-17-05 [FR 05-05183]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Georgia; comments due by 5-20-05; published 4-20-05 [FR 05-07936]

Ohio; comments due by 5-16-05; published 4-15-05 [FR 05-07509]

Air quality implementation plans; approval and promulgation; various States:

Kentucky; comments due by 5-18-05; published 5-2-05 [FR 05-08705]

New Mexico; comments due by 5-16-05; published 4-14-05 [FR 05-07335]

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]

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 5-16-05; published 4-15-05 [FR 05-07411]

National priorities list update; comments due by 5-18-05; published 4-18-05 [FR 05-07573]

National priorities list update; comments due by 5-18-05; published 4-18-05 [FR 05-07572]

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]

FARM CREDIT ADMINISTRATION

Corporate governance; comments due by 5-20-05; published 2-24-05 [FR 05-03475]

FEDERAL COMMUNICATIONS COMMISSION

Committees; establishment, renewal, termination, etc.:

Technological Advisory Council; Open for comments until further notice; published 3-18-05 [FR 05-05403]

Common carrier services:

Interconnection—

Incumbent local exchange carriers unbounding obligations; local competition provisions; wireline services offering advanced telecommunications capability; Open for comments until further notice; published 12-29-04 [FR 04-28531]

Radio services, special:
Private land mobile radio services—
900 MHz band; Business and Industrial Land Transportation Pool channels; flexible use; comments due by 5-18-05; published 5-4-05 [FR 05-08682]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:
Medical device reporting; comments due by 5-16-05; published 2-28-05 [FR 05-03829]

Reports and guidance documents; availability, etc.:
Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

Medical devices—
Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:
Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

Drawbridge operations and ports and waterways safety:
Port Everglades, FL; security zone; comments due by 5-20-05; published 4-29-05 [FR 05-08570]

Drawbridge operations:
Connecticut; comments due by 5-19-05; published 4-19-05 [FR 05-07906]
Maine; comments due by 5-20-05; published 4-20-05 [FR 05-07892]

Ports and waterways safety:
Legal Seafood Fireworks Display, Boston, MA; safety zone; comments due by 5-20-05; published 5-5-05 [FR 05-08927]
New York Harbor Captain of Port Zone; security zone; comments due by 5-16-05; published 4-20-05 [FR 05-07902]

Regattas and marine parades:
Dania Beach/Hollywood Super Boat Race; comments due by 5-17-05; published 3-18-05 [FR 05-05336]

HOMELAND SECURITY DEPARTMENT

Privacy Act; implementation; comments due by 5-18-05; published 4-18-05 [FR 05-07705]

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:
Findings on petitions, etc.—
Karst meshweaver; comments due by 5-15-05; published 2-1-05 [FR 05-01765]

INTERIOR DEPARTMENT

National Park Service

Gulf Islands National Seashore; personal watercraft use; comments due by 5-16-05; published 3-17-05 [FR 05-04734]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program performance standards:
Topsoil replacement and revegetation success standards; comments due by 5-16-05; published 3-17-05 [FR 05-05023]

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]

PERSONNEL MANAGEMENT OFFICE

Absence and leave:
Senior Executive Service; accrual and accumulation; comments due by 5-20-05; published 3-21-05 [FR 05-05508]

Excepted service:
Student Career Experience Program; comments due by 5-16-05; published 3-16-05 [FR 05-05179]

SMALL BUSINESS ADMINISTRATION

Disaster loan areas:
Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Generalized System of Preferences:
2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT

Air travel; nondiscrimination on basis of disability:
Individuals with disabilities; rights and responsibililities; technical assistance manual; comments due by 5-20-05; published 4-20-05 [FR 05-07544]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Boeing; comments due by 5-16-05; published 3-30-05 [FR 05-06250]
Bombardier; comments due by 5-16-05; published 3-17-05 [FR 05-05139]
Cessna; comments due by 5-17-05; published 4-22-05 [FR 05-08095]
Cessna Aircraft Co.; comments due by 5-16-05; published 3-17-05 [FR 05-05294]
Learjet; comments due by 5-19-05; published 4-4-05 [FR 05-06579]
McDonnell Douglas; comments due by 5-17-05; published 4-22-05 [FR 05-08094]

Class E airspace; comments due by 5-18-05; published 4-18-05 [FR 05-07621]

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Railroad locomotive safety standards:
Inspection and maintenance standards for steam locomotives; comments due by 5-19-05; published 4-19-05 [FR 05-07739]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Insurer reporting requirements:
Insurers required to file reports; list; comments due by 5-16-05; published 3-15-05 [FR 05-05092]

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:
Regulatory Flexibility Act; section 610 and plain language reviews; comments due by 5-16-05; published 2-15-05 [FR 05-02873]

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.J. Res. 19/P.L. 109–11

Providing for the appointment of Shirley Ann Jackson as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2005; 119 Stat. 229)

H.J. Res. 20/P.L. 109–12

Providing for the appointment of Robert P. Kogod as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2005; 119 Stat. 230)

Last List May 3, 2005

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