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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 - Session Full
9:00 a.m.-Noon
and Tuesday, July 19, 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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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560-AH21

Flexible Marketing Allotments for Sugar; Correction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Correcting amendment.

SUMMARY: This document corrects the final regulations published on September 13, 2004 that amended the Sugar Program regulations of the Commodity Credit Corporation (CCC) by revising several definitions used in the program and the sugar marketing allotment regulations with respect to the reassignment of processors' allocation deficits. A correction is needed to restore two paragraphs that were inadvertently removed and add a clarifying paragraph.

DATES: Effective May 17, 2005.

FOR FURTHER INFORMATION CONTACT:

Barbara Fecso, Dairy and Sweeteners Analysis, Economic and Policy Analysis Staff, Farm Service Agency (FSA), United States Department of Agriculture (USDA), Stop 0516, 1400 Independence Ave., SW., Washington, DC 20250-0516. Telephone: (202) 720-4146; e-mail: barbara.fecso@usda.gov. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This rule corrects the final regulations published in the **Federal Register** on September 13, 2004 (69 FR 55061-55063) that amended the sugar marketing allotment regulations at 7

CFR 1435 with respect to the reassignment of processors' marketing allocations. In the final rule, the revision to section 1435.309 inadvertently removed paragraphs (c)(3) and (c)(4). These paragraphs are restored. The revision to section 1435.309(c) provided that if CCC determines a sugarcane processor will be unable to market its full allocation for the crop year in which an allotment is in effect, the deficit will be reassigned by June 1. This correction deletes the reference to June 1 in section 1435.309(c) and adds a new paragraph 1435.109(d) that clarifies that June 1 is the date by which the initial estimate of the deficit will be reassigned and that later reassignments will be made if CCC determines after June 1 that a sugarcane processor will be unable to market its full allocation for the crop year in which an allotment is in effect. These corrections are required for the proper administration of the program.

List of Subjects in 7 CFR Part 1435

Loan programs—agriculture, Price support programs, Reporting and record keeping requirements, and Sugar.

■ Accordingly, 7 CFR part 1435 is corrected as follows:

PART 1435—SUGAR PROGRAM

■ 1. The authority citation for part 1435 continues to read as follows:

Authority: 7 U.S.C. 1359aa-1359jj and 7272 *et seq.*; 15 U.S.C. 714b and 714c.

Subpart D—Flexible Marketing Allotments for Sugar

- 2. Amend § 1435.309 by:
 - a. Revising paragraph (c) introductory text;
 - b. Adding paragraphs (c)(3) and (c)(4);
 - c. Redesignating paragraphs (d) and (e) as paragraphs (e) and (f) respectively;
 - d. Removing “(d)(1)” from newly designated paragraph (e)(2) and adding “(e)(1)” in its place;
 - e. Removing “(d)(1) and (d)(2)” from newly designated paragraph (e)(3) and adding “(e)(1) and (e)(2)” in its place; and
 - f. Adding new paragraph (d).

The revisions and additions read as follows:

§ 1435.309 Reassignment of deficits.

* * * * *

(c) If CCC determines a sugarcane processor will be unable to market its

full allocation for the crop year in which an allotment is in effect, the deficit will be reassigned as follows:

* * * * *

(3) If the deficit cannot be eliminated by paragraphs (c)(1) and (c)(2) of this section, be reassigned to CCC. CCC shall sell such quantity from inventory unless CCC determines such sales would have a significant effect on the sugar price.

(4) If any portion of the deficit remains after paragraphs (c)(1), (c)(2), and (c)(3) of this section have been implemented, be reassigned to imports.

(d) The initial estimate of the sugarcane deficit will be reassigned by June 1. CCC will conduct later reassignments if CCC determines, after June 1, that a sugarcane processor will be unable to market its full allocation.

* * * * *

Signed in Washington, DC, on May 6, 2005.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 05-9698 Filed 5-16-05; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-21204; Directorate Identifier 2005-NM-078-AD; Amendment 39-14087; AD 2005-10-10]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model CL-600-2B19 (Regional Jet Series 100 & 440) Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes. This AD requires revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness of the Canadair Regional Jet Maintenance Requirements Manual by incorporating new repetitive detailed inspections of the secondary load path indicator for the horizontal stabilizer

trim actuator (HSTA). This AD is prompted by a report of a potential failure of the horizontal stabilizer trim actuator (HSTA) secondary nut in conjunction with a latent failure of the HSTA primary load path discovered during sampling program activities. We are issuing this AD to detect and correct latent failure of the primary load path of the HSTA, which, in conjunction with a failure of the HSTA secondary nut, could result in loss of horizontal trim control and consequent reduced controllability of the airplane.

DATES: Effective June 1, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of June 1, 2005.

We must receive comments on this AD by July 18, 2005.

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

- 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 AD, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada.

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-2005-21204; the directorate identifier for this docket is 2005-NM-078-AD.

Examining the Docket

You can examine the AD docket on the Internet at <http://www.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 Docket Management System (DMS) receives them.

FOR FURTHER INFORMATION CONTACT:

Daniel Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE-172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228-7305; fax (516) 794-5531.

SUPPLEMENTARY INFORMATION: Transport Canada Civil Aviation, which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes. TCCA advises that a potential for failure of the secondary nut of the horizontal stabilizer trim actuator (HSTA), in conjunction with a latent failure of the HSTA primary load path, was discovered during HSTA sampling program activities. Failure of the HSTA secondary nut, in conjunction with a latent failure of the HSTA primary load path, if not corrected, could result in loss of horizontal trim control and consequent reduced controllability of the airplane.

Relevant Service Information

Bombardier has issued Canadair Regional Jet Temporary Revision 2A-8, dated December 10, 2003, to the Canadair Regional Jet Maintenance Requirements Manual (MRM), CSP A-053, Appendix A, "Certification Maintenance Requirements." This temporary revision incorporates Task C27-42-103-01, "Detailed Inspection of the HSTA Secondary Load Path Indicator," into the MRM. TCCA mandated the temporary revision and issued Canadian airworthiness directive CF-2005-04, dated February 14, 2005, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of This AD

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

certificated for operation in the United States.

Therefore, we are issuing this AD to require revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness of the Canadair Regional Jet MRM by incorporating new repetitive detailed inspections of the HSTA secondary load path indicator. This AD requires incorporating the actions specified in the temporary revision described previously into the Canadair Regional Jet MRM, except as discussed under "Difference Between the AD and Canadian Airworthiness Directive."

Difference Between the AD and Canadian Airworthiness Directive

The Canadian airworthiness directive gives operators credit for previously accomplished initial inspections of the HSTA secondary load path indicator done in accordance with Bombardier Alert Service Bulletin A601R-27-128, dated February 17, 2003; or Revision A, dated April 17, 2003. This AD also gives operators credit for initial inspections done before the effective date of this AD in accordance with Revision B of Bombardier Alert Service Bulletin A601R-27-128, dated March 2, 2005, which was issued after the Canadian airworthiness directive was issued. This difference has been coordinated with TCCA.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2005-21204; Directorate Identifier 2005-NM-078-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the 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 AD. Using the search function of our docket web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you can visit <http://dms.dot.gov>.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005-10-10 Bombardier, Inc. (Formerly Canadair): Amendment 39-14087.
Docket No. FAA-2005-21204;
Directorate Identifier 2005-NM-078-AD.

Effective Date

(a) This AD becomes effective June 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, having serial numbers 7003 and subsequent.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25-1529.

Unsafe Condition

(d) This AD is prompted by a report of a potential failure of the horizontal stabilizer trim actuator (HSTA) secondary nut in conjunction with a latent failure of the HSTA primary load path discovered during sampling program activities. We are issuing this AD to detect and correct latent failure of the primary load path of the HSTA, which, in conjunction with a failure of the HSTA secondary nut, could result in loss of horizontal trim control and consequent reduced controllability of 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.

Revision to the Airworthiness Limitations (AWL) Section

(f) Within 30 days after the effective date of this AD: Revise the AWL section of the Instructions for Continued Airworthiness of the Canadair Regional Jet Maintenance Requirements Manual (MRM), CSP A-053, Appendix A, "Certification Maintenance Requirements," by incorporating Task C27-42-103-01, "Detailed Inspection of the HSTA Secondary Load Path Indicator" of Canadair Regional Jet Temporary Revision 2A-8, dated December 10, 2003, into the AWL section. Thereafter, except as provided by paragraph (j) of this AD, no alternative structural inspection intervals may be approved for this HSTA secondary load path indicator.

(g) When the information in Canadair Regional Jet Temporary Revision 2A-8, dated December 10, 2003, is included in the general revisions of the MRM, the general revisions may be inserted into the AWL section of the Instructions for Continued Airworthiness and this temporary revision may be removed from the MRM.

Initial Inspection Phase-In Schedule

(h) Prior to accumulating 5,000 total flight hours on the HSTA or within 500 flight hours after the effective date of this AD, whichever occurs later: Do the initial inspection of the HSTA secondary load path indicator according to the task specified in paragraph (f) of this AD.

Initial Inspections According to Bombardier Service Bulletin A601R-27-128

(i) Inspections of the HSTA secondary load path indicator accomplished before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R-27-128, dated February 17, 2003; Revision A, dated April 17, 2003; or Revision B, dated March 2, 2005; are acceptable for compliance with the initial inspection requirement of paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(k) Canadian airworthiness directive CF-2005-04, dated February 14, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Canadair Regional Jet Temporary Revision 2A-8, dated December 10, 2003, to the Canadair Regional Jet Maintenance Requirements Manual, CSP A-053, Appendix A, "Certification Maintenance Requirements," to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation

by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on May 5, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-9553 Filed 5-16-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-20596; Directorate Identifier 2004-NM-113-AD; Amendment 39-14086; AD 2005-10-09]

RIN 2120-AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. That AD currently requires repetitive detailed inspections of the

windshield wiper assembly for discrepant conditions, and corrective actions if necessary. This new AD requires repetitive detailed inspections of the left and right wiper arm assemblies for damage, and corrective/related investigative actions if necessary. This AD is prompted by an additional incident of a windshield wiper blade separating from the wiper arm. We are issuing this AD to prevent separation of a wiper arm from the airplane, which could result in damage to the fuselage skin and propeller.

DATES: This AD becomes effective June 21, 2005.

The incorporation by reference of Saab Service Bulletin 340-30-088, dated October 7, 2003, listed in the AD, is approved by the Director of the Federal Register as of June 21, 2005.

On October 28, 1998 (63 FR 50753, September 23, 1998), the Director of the Federal Register approved the incorporation by reference of Saab Service Bulletin 340-30-081, dated November 14, 1997, including Attachment 1, Revision 1, dated September 14, 1997.

ADDRESSES: For service information identified in this AD, contact Saab Aircraft AB, SAAB Aircraft Product Support, S-581.88, Linköping, Sweden.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Washington, DC. This docket number is FAA-2005-20596; the directorate identifier for this docket is 2004-NM-113-AD.

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

SUPPLEMENTARY INFORMATION: The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an AD to supersede AD 98-20-11, amendment 39-10778 (63 FR 50755, September 23, 1998). The existing AD applies to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. The proposed AD was published in the **Federal Register** on March 15, 2005 (70 FR 12616), to continue to require repetitive detailed inspections of the left and right wiper arm assemblies for damage, and corrective/related investigative actions if necessary. The proposed AD would also require a detailed inspection of the left and right wiper arm assemblies for damage, and corrective/related investigative actions if necessary.

Comments

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

Conclusion

We have carefully reviewed the available data, including the comment that has been submitted, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection (required by AD 98-20-11).	1	\$65	\$65, per inspection cycle	170	\$11,050, per inspection cycle.
Extended Inspection (new action)	1	\$65	\$65, per inspection cycle	170	\$11,050 per inspection cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII,

Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701,

"General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for

safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39-10778 (63 FR 50755, September 23, 1998) and by adding the following new airworthiness directive (AD):

2005-10-09 Saab Aircraft AB: Amendment 39-14086. Docket No. FAA-2005-20596; Directorate Identifier 2004-NM-113-AD.

Effective Date

(a) This AD becomes effective June 21, 2005.

Affected ADs

(b) This AD supersedes AD 98-20-11, amendment 39-10778 (63 FR 50755, September 23, 1998).

Applicability

(c) This AD applies to Saab Model SAAB SF340A and SAAB 340B series airplanes, certificated in any category, as identified in Saab Service Bulletin 340-30-088, dated October 7, 2003.

Unsafe Condition

(d) This AD was prompted by an additional incident of a windshield wiper blade separating from the wiper arm. We are issuing this AD to prevent separation of a wiper arm from the airplane, which could result in damage to the fuselage skin and propeller.

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.

Requirements of AD 98-20-11

(f) For Model SAAB SF340A series airplanes, manufacturer serial number (S/Ns) 004 through 159 inclusive; and Model SAAB 340B series airplanes, manufacturer S/Ns 160 through 399 inclusive: Prior to the accumulation of 4,000 total flight hours, or within 3 months after October 28, 1998 (the effective date of AD 98-20-11), whichever occurs later, perform a detailed inspection of the windshield wiper assembly for discrepancies (corrosion; excessive wear; missing, loose, or broken parts; improper alignment; and insecure attachment), in accordance with Saab Service Bulletin 340-30-081, dated November 14, 1997, including Attachment 1, Revision 1, dated September 14, 1997.

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

(1) If no discrepancy is detected during the inspection, repeat the inspection thereafter at intervals not to exceed 4,000 flight hours until the inspection required by paragraph (g) of this AD is accomplished.

(2) If any discrepancy is detected during any inspection, prior to further flight, replace the windshield wiper assembly with a new or serviceable windshield wiper assembly, or repair in accordance with Saab Service Bulletin 340-30-081, dated November 14, 1997, including Attachment 1, Revision 1, dated September 14, 1997. Repeat the detailed inspection thereafter at intervals not to exceed 4,000 flight hours, until the inspection required by paragraph (g) of this AD is accomplished.

New Requirements of This AD

Detailed Inspection of Wiper Arm Assemblies

(g) For all airplanes: Within 6 months after the effective date of this AD, do a detailed inspection of the left and right wiper arm assemblies for damage and any applicable

corrective/investigative actions, by doing all of the actions specified in the Accomplishment Instructions of Saab Service Bulletin 340-30-088, dated October 7, 2003. Repeat the inspection thereafter at intervals not to exceed 800 flight hours.

Accomplishment of this inspection terminates the repetitive inspections required by paragraphs (f)(1) and (f)(2) of this AD.

(h) Airplanes on which the inspection required by paragraph (g) of this AD is done within the compliance time specified in paragraph (f) of this AD are not required to accomplish the inspection required by paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(j) Swedish airworthiness directive 1-193, dated October 8, 2003, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use Saab Service Bulletin 340-30-081, dated November 14, 1997, including Attachment 1, Revision 1, dated September 14, 1997; and Saab Service Bulletin 340-30-088, dated October 7, 2003; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approves the incorporation by reference of Saab Service Bulletin 340-30-088, dated October 7, 2003, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On October 28, 1998 (63 FR 50753), the Director of the Federal Register approved the incorporation by reference of Saab Service Bulletin 340-30-081, dated November 14, 1997, including Attachment 1, Revision 1, dated September 14, 1997.

(3) To get copies of the service information, contact Saab Aircraft AB, SAAB Aircraft Product Support, S-581.88, Linköping, Sweden. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Nassif Building, Washington, DC. To review copies of the service information, contact the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on May 5, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-9468 Filed 5-16-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2005-20481; Directorate Identifier 2004-NM-183-AD; Amendment 39-14085; AD 2005-10-08]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model DHC-8-102, -103, -106, -201, -202, -301, -311, and -315 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model DHC-8-102, -103, -106, -201, -202, -301, -311, and -315 airplanes. This AD requires operators to install torque tube catchers on the control columns of the flight controls. This AD is prompted by the discovery that a single malfunction of the torque tube could result in both flight control columns being supported by only one self-aligning bearing. We are issuing this AD to prevent the torque tube from fouling against the underfloor control cables, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective June 21, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of June 21, 2005.

ADDRESSES: For service information identified in this AD, contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW, room PL-401, Washington, DC. This docket number is FAA-2005-20481; the directorate identifier for this docket is 2004-NM-183-AD.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410,

Westbury, New York 11590; telephone (516) 228-7320; fax (516) 794-5531.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Bombardier Model DHC-8-102, -103, -106, -201, -202, -301, -311, and -315 airplanes. That action, published in the **Federal Register** on March 8, 2005 (70 FR 11168), proposed to require operators to install torque tube catchers on the control columns of the flight controls.

Comments

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

Conclusion

We have carefully reviewed the available data, including the comment that has been submitted, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD will affect about 160 airplanes of U.S. registry. The actions will take about 9 work hours per airplane, at an average labor rate of \$65 per work hour. Required parts will cost about \$490 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is \$172,000, or \$1,075 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will

not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005-10-08 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39-14085. Docket No. FAA-2005-20481; Directorate Identifier 2004-NM-183-AD.

Effective Date

- (a) This AD becomes effective June 21, 2005.

Affected ADs

- (b) None.

Applicability

- (c) This AD applies to Bombardier Model DHC-8-102, -103, -106, -201, -202, -301, -311, and -315 airplanes, serial numbers 003 through 584 inclusive; certificated in any category.

Unsafe Condition

- (d) This AD is prompted by the discovery that a single malfunction of the torque tube could result in both flight control columns being supported by only one self-aligning bearing. We are issuing this AD to prevent the torque tube from fouling against the

underfloor control cables, which could result in reduced controllability of 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.

Installation

(f) Within 5,000 flight hours after the effective date of this AD, install control column torque tube catchers on the control columns of the flight controls by incorporating Modsum 8Q101338 in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8-27-90, dated October 28, 2003.

Alternative Methods of Compliance

(g) The Manager, New York Aircraft Certification Office, FAA, 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

(h) Canadian airworthiness directive CF-2004-08, dated April 20, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Bombardier Service Bulletin 8-27-90, dated October 28, 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Nassif Building, Washington, DC. To review copies of the service information, contact the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on May 4, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 05-9467 Filed 5-16-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-20594; Directorate Identifier 2004-NM-213-AD; Amendment 39-14084; AD 2005-10-07]

RIN 2120-AA64

Airworthiness Directives; Fokker Model F.28 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Fokker Model F.28 series airplanes. This AD requires a one-time inspection of the area underneath the auxiliary power unit (APU) enclosure to determine if drain tubes in the area are correctly installed and to detect damaged wiring, and corrective action if necessary. This AD is prompted by a report of a fire under the APU enclosure. We are issuing this AD to prevent fuel from accumulating under the APU enclosure, which, in the presence of an ignition source, could result in a fire.

DATES: This AD becomes effective June 21, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of June 21, 2005.

ADDRESSES: For service information identified in this AD, contact Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Washington, DC. This docket number is FAA-2005-20594; the directorate identifier for this docket is 2004-NM-213-AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1137; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for all Fokker Model F.28 series airplanes. That action, published in the **Federal Register** on March 15, 2005 (70 FR 12612), proposed to require a one-time inspection of the area underneath the auxiliary power unit enclosure to determine if drain tubes in the area are correctly installed and to detect damaged wiring, and corrective action if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD will affect about 4 airplanes of U.S. registry. The required inspection will take about 1 work hour per airplane, at an average labor rate of \$65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is \$260, or \$65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

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

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005-10-07 Fokker Services B.V.:
Amendment 39-14084. Docket No. FAA-2005-20594; Directorate Identifier 2004-NM-213-AD.

Effective Date

(a) This AD becomes effective June 21, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Fokker Model F.28 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report of a fire under the auxiliary power unit (APU) enclosure. We are issuing this AD to prevent fuel from accumulating under the APU enclosure, which, in the presence of an ignition source, could result in a fire.

Compliance

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

Inspections

(f) Within 6 months after the effective date of this AD, perform a one-time general visual inspection of the area underneath the APU enclosure to determine if the left- and right-hand engine drain tubes and the APU enclosure drain tube are correctly installed, and to detect any damage, including, but not limited to, chafing of the wiring in the area. Do the inspection in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100-49-036 (for Fokker Model F.28 Mark 0070 and 0100 series airplanes); or F28/49-038 (for all other Fokker Model F.28 series airplanes); both dated April 26, 2004; as applicable.

(1) If any drain tube is not correctly installed: Before further flight, correctly install the drain tube and remove any fuel that has accumulated under the APU enclosure, in accordance with the Accomplishment Instructions of the applicable service bulletin.

(2) If any damaged wiring is found: Before further flight, repair the wiring in accordance with the Accomplishment Instructions of the applicable service bulletin.

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

Alternative Methods of Compliance (AMOCs)

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

Related Information

(h) Dutch airworthiness directive 2004-059, dated April 29, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Fokker Service Bulletin F28/49-038, dated April 26, 2004; or Fokker Service Bulletin SBF100-49-036 dated April 26, 2004; as applicable; to perform the actions that are required by this AD; unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Nassif Building, Washington, DC. To review copies of the service information, contact the

National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on May 4, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-9466 Filed 5-16-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-20293; Directorate Identifier 2004-SW-34-AD; Amendment 39-14091; AD 2005-10-14]

RIN 2120-AA64

Airworthiness Directives; Eurocopter France Model AS355E, F, F1, F2, and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters. That AD currently requires replacing certain main or combiner gearboxes with airworthy gearboxes. Further investigation has shown that the main gearbox is not affected, and this amendment requires replacing a certain combiner gearbox with a modified airworthy gearbox. This amendment is prompted by a report of a freewheel unit slipping resulting in an engine overspeed and shutdown. Also, this amendment is prompted by the conclusion of the investigation, which finds the freewheel slippage is due to the surface treatment applied to certain freewheel rollers in the combiner gearbox. The actions specified by this AD are intended to prevent an engine overspeed, an engine shutdown, and subsequent loss of control of the helicopter.

DATES: Effective June 21, 2005.

ADDRESSES: *Examining the Docket:* You may examine the docket that contains this AD, any comments, and other information on the Internet at <http://dms.dot.gov>, or at the Docket Management System (DMS), U.S. Department of Transportation, 400 Seventh Street SW., Room PL-401, on

the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193-0110, telephone (817) 222-5123, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION:

A proposal to amend 14 CFR part 39 by superseding AD 2004-01-51, Amendment 39-13495, Docket No. 2003-SW-56-AD (69 FR 9201, February 27, 2004), for the specified ECF model helicopters was published in the **Federal Register** on February 10, 2005 (70 FR 7059). The action proposed to require, before further flight, replacing each combiner gearbox pre-MOD 077212 that has logged 10 hours or less time-in-service with a combiner gearbox modified by replacing the free-wheel rollers.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on the specified model helicopters. The DGAC advises of a combiner gearbox freewheel slippage with resulting engine shutdown due to overspeed, which occurred during the single-engine phase of an acceptance flight at the Eurocopter works.

ECF has issued Alert Telex No. 63.00.21 R2, dated February 4, 2004 (AT 63.00.21 R2). The Alert Telex describes the conclusion of the investigation that the freewheel slippage is due to the surface treatment applied to freewheel rollers, pre-MOD 077212. The freewheel rollers are located in the combiner gearbox; therefore, the main gearbox has been eliminated as the cause of this unsafe condition. The results of the investigation led ECF to cancel the cleaning procedure described in Alert Telex No. 63.00.21 R1, dated December 19, 2003, but to extend the effectivity of their instructions to all combiner gearboxes. Also, Alert Telex 63.00.21 R2 specifies modifying the combiner gearboxes at an approved repair station by replacing the freewheel rollers and after that recording the modification on the Equipment Log Card. The DGAC classified AT 63.00.21 R2 as mandatory and issued AD F-2004-021, dated March 3, 2004, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept

the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that this AD will affect 104 helicopters of U.S. registry. The required actions will take about 1/2 work hour to determine applicability and 12 work hours to replace a gearbox at an average labor rate of \$65 per work hour per helicopter. Required parts will cost approximately \$97,000 per helicopter. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be \$981,180, assuming 10 gearboxes are replaced.

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD. See the DMS to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-13495 (69 FR 9201, February 27, 2004), and by adding a new airworthiness directive (AD), to read as follows:

2005-10-14 Eurocopter France:

Amendment 39-14091. Docket No. FAA-2005-20293; Directorate Identifier 2004-SW-34-AD. Supersedes AD 2004-01-51, Amendment 39-13495, Docket No. 2003-SW-56-AD.

Applicability: Model AS355E, F, F1, F2, and N helicopters with a pre-MOD 077212 combiner gearbox that has 10 or less hours time-in-service installed, certificated in any category.

Compliance: Before further flight, unless accomplished previously.

To prevent an engine overspeed, an engine shutdown, and subsequent loss of control of the helicopter, accomplish the following:

- (a) Before further flight, replace each pre-MOD 077212 combiner gearbox with a combiner gearbox modified by replacing the freewheel rollers in accordance with MOD 077212.

Note 1: Eurocopter France Alert Telex No. 63.00.21 R2, dated February 4, 2004, pertains to the subject AD.

- (b) Performing paragraph (a) of this AD is terminating action for the requirements of this AD.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, FAA, for information about previously approved alternative methods of compliance.

- (d) Special flight permits will not be issued.

(e) This amendment becomes effective on June 21, 2005.

Note 2: The subject of this AD is addressed in Direction Generale de L'Aviation Civile, France, AD No. F-2004-021, dated March 3, 2004.

Issued in Fort Worth, Texas, on May 9, 2005.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05-9766 Filed 5-16-05; 8:45 am]

BILLING CODE 4910-13-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038-AC15

Investment of Customer Funds and Record of Investments

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is amending its regulations regarding investment of customer funds and related recordkeeping requirements. The amendments address standards for investing in instruments with certain features, requirements for adjustable rate securities, concentration limits on reverse repurchase agreements ("reverse repos"), transactions by futures commission merchants ("FCMs") that are also registered as securities broker-dealers ("FCM/BDs"), rating standards and registration requirement for money market mutual funds ("MMMFs"), the auditability standard for investment records, and certain technical changes. Among those technical changes is an amendment to the Commission's recordkeeping rules in connection with repurchase agreements ("repos") and proposed transactions by FCM/BDs.

DATES: *Effective Date:* June 16, 2005.

FOR FURTHER INFORMATION CONTACT: Phyllis P. Dietz, Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418-5430.

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SUPPLEMENTARY INFORMATION:

I. Background

Commission Rule 1.25 (17 CFR 1.25) sets forth the types of instruments in which FCMs and derivatives clearing organizations ("DCOs") are permitted to invest customer assets that are required to be segregated under the Commodity Exchange Act ("Act").¹ Rule 1.25 was substantially amended in December 2000 to expand the list of permitted investments beyond the Treasury and municipal securities that are expressly permitted by the Act.² In connection with that expansion, the Commission added several provisions intended to control exposure to credit, liquidity, and market risks associated with the additional investments.

On June 30, 2003, the Commission published for public comment proposed amendments to two provisions of Rule 1.25, and it further requested comment

¹ Section 4d(a)(2) of the Act, 7 U.S.C. 6d(a)(2), requires segregation of customer funds. It provides, in relevant part, that customer-deposited "money, securities, and property shall be separately accounted for and shall not be commingled with the funds of [the FCM] or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held."

² See 65 FR 77993 (Dec. 13, 2000) (publishing final rules); and 65 FR 82270 (Dec. 28, 2000) (making technical corrections and accelerating effective date of final rules from February 12, 2001 to December 28, 2000).

(without proposing specific amendments) on several other provisions of the rule.³ In February 2004, the Commission adopted final rule amendments regarding repos with customer-deposited securities and modified time-to-maturity requirements for securities deposited in connection with certain collateral management programs of DCOs.⁴ The Commission did not, however, take any action on the other matters raised in its June 30, 2003 release.

On February 3, 2005, the Commission published for public comment proposed rule amendments related to the remaining issues raised in its June 30, 2003 request for comment. The Commission also solicited comment on additional proposed amendments to Rule 1.25 and Rule 1.27, including certain technical amendments.⁵

The Commission received comment letters from the Chicago Mercantile Exchange ("CME"), Joint Audit Committee ("JAC"), Futures Industry Association ("FIA"), National Futures Association ("NFA"), and Goodwin Proctor LLC, on behalf of Federated Investors, Inc. ("Federated").⁶ In general, the comments supported the Commission's efforts to expand the list of permitted investments for customer funds. In addition, each comment letter specifically addressed one or more of the following four topics: instruments with certain features, permitted benchmarks for adjustable rate securities, the auditability standard for investment records, and elimination of rating requirements for money market mutual funds. These comments will be discussed below in connection with each topic.

Taking into consideration the comments received, the Commission has determined to adopt amendments to Rule 1.25 and Rule 1.27, as proposed, with two exceptions. First, the Commission is modifying its revisions to Rule 1.25(b)(3)(iv) regarding permitted benchmarks for adjustable rate securities.⁷ Second, the Commission is modifying the language of the new auditability standard established under Rule 1.27(a)(8).⁸

The final rules, discussed in section II.A. through G. of this release, relate to standards for investing in instruments with certain features, permitted

³ 68 FR 38654 (June 30, 2003).

⁴ 69 FR 6140 (Feb. 10, 2004).

⁵ The proposed amendments to Rule 1.27 dealt with issues related to changes in Rule 1.25.

⁶ These letters are available in the comment file accompanying the February 3, 2005 release, at <http://www.cftc.gov>.

⁷ See section II.B.2. of this release.

⁸ See section II.G. of this release.

benchmarks for adjustable rate securities, concentration limits on reverse repos, permitted transactions ("in-house transactions") by FCM/BDs,⁹ elimination of the rating requirement for MMMFs, required registration for MMMFs under Securities and Exchange Commission ("SEC") Rule 2a-7, and an auditability standard for investment records.

Certain technical amendments to Rule 1.25 and Rule 1.27 are discussed in Section II.H. of this release. Those amendments clarify the following: (1) The next-day redemption requirement for MMMFs (also codifying previously published exceptions to that requirement); (2) the rating standards for certificates of deposit; (3) the permissibility of investing in corporate bonds; (4) the inapplicability of segregation rules to securities transferred pursuant to a repo; (5) payment and delivery procedures for repos and reverse repos; and (6) the distinction between investment of customer money and investment of customer-deposited securities. The Commission is also adopting technical amendments to conform references to applicable marketability standards, update and conform the terminology referring to a DCO, conform the terminology referring to a government sponsored enterprise ("GSE"), conform the terminology referring to an FCM, and clarify the meaning of the term "NRSRO."

II. Discussion of the Final Rules

A. Instruments With Certain Features

As originally adopted in 2000, Rule 1.25(b)(3)(i) expressly prohibited investment of customer funds in instruments with any embedded derivatives. At the request of market participants, in June 2003, the Commission requested comment on whether instruments with certain features should be permitted, notwithstanding the general prohibition of Rule 1.25(b)(3)(i). After considering the formal comments submitted by the FIA, as well as additional information provided during discussions with FIA representatives, the Commission proposed to amend Rule 1.25(b)(3)(i) to permit FCMs and DCOs to invest customer money in instruments with certain features, subject to certain express standards.

Proposed paragraph (b)(3)(i)(A) would permit an instrument to have a call

feature, in whole or in part, at par, on the principal amount of the instrument before its stated maturity date. Proposed paragraph (b)(3)(i)(B) would permit caps, floors, or collars on the interest paid pursuant to the terms of an adjustable rate instrument. Proposed paragraph (b)(3)(i) would further provide that the terms of the instrument must obligate the issuer to fully repay the principal amount of the instrument at not less than par value, upon maturity.

The Commission received three comment letters discussing these proposed amendments. In its comment letter, the CME stated that, as a clearinghouse, it would have to determine whether to accept as performance bond permitted instruments that "are illiquid or pose operational or risk management challenges to the clearing organization," listing as possible examples securities with embedded derivatives, variable rate securities, auction rate securities, and reverse repos.¹⁰ The CME did not specifically identify any operational or risk management challenges presented by instruments with the two types of features described in the request for comment.

In addition, the CME expressed concern about the ability of certain FCMs to adequately evaluate and manage investments in instruments with embedded derivatives generally, noting certain "complexities associated with evaluating [such] instruments."¹¹ The CME did not, however, identify any particular complexities associated with instruments with the two types of features described in the request for comment. The CME also noted that "if [it] is to accept instruments with embedded derivatives or auction rate securities, CME will continue to exercise its discretion and judgment to design a program that accepts and values these instruments in a manner that CME believes will ensure the safety and soundness of the customers and firms that use our markets."¹²

The JAC agreed with the CME, stating "we share the concern expressed by the [CME] in its comment letter that certain FCMs may not have the tools and systems needed to understand the risks and implications of the instruments they will be permitted to invest in."¹³ As with the CME, however, the JAC

comments appeared to refer to instruments with embedded derivatives generally and did not identify any particular risks or challenges presented by instruments with call features or adjustable rate instruments with caps, floors, or collars on their interest payments.

The FIA, in its comment letter, specifically responded to the CME's comment letter. It disagreed with the CME, stating that "we do not believe that the instruments authorized under the proposed rule will pose particular operational or risk management challenges."¹⁴ In support of its view, the FIA pointed to the Commission's requirements for instruments with embedded derivatives, adding that "securities with embedded derivatives often have similar or lower levels of risk than fixed-rate securities in which FCMs are currently authorized to invest under rule 1.25."¹⁵

With respect to the CME's concern that instruments with embedded derivatives might not be appropriate investments for all FCMs, the FIA stated that it did not anticipate that every FCM would want to take advantage of the added investment opportunities provided by the proposed amendments. The FIA further noted that "FCMs can obtain the necessary tools and systems to monitor compliance with rule 1.25 from third party providers and, therefore, will not necessarily have to incur the significant costs."¹⁶

The Commission has carefully considered the comment letters and has decided to adopt the amendments as proposed. The Commission believes that the final rules establish prudential standards by limiting the number and scope of acceptable features to call features and caps, floors, or collars on interest paid, as described above. The limitations imposed by paragraph (b)(3)(i), in combination with the other risk-limiting standards imposed by Rule 1.25, create an appropriate framework for protecting principal and maintaining an acceptable level of risk. Moreover, the Commission has not received any data that suggests that the price transparency of an instrument is reduced when it provides for a call feature or a cap, floor, or collar on interest paid.

As noted in the Commission's discussion of the proposed rules, the issuer's right to call an instrument prior to maturity does not jeopardize the principal amount, but merely

¹⁰ See letter from Craig S. Donohue, Chief Executive Officer, CME, dated March 7, 2005 ("CME Letter") at 2.

¹¹ *Id.*

¹² *Id.*

¹³ See letter from Joseph D. Sanguedolce, Chairman, JAC, dated March 7, 2005 ("JAC Letter") at 2.

¹⁴ See letter from John M. Damgard, President, FIA, dated March 7, 2005 ("FIA Letter") at 3.

¹⁵ *Id.*

¹⁶ *Id.* at 4, FN 6.

⁹ In connection with this amendment, the Commission is also adopting technical amendments to Rule 1.27 to clarify the recordkeeping requirements applicable to repos and in-house transactions by FCM/BDs.

accelerates the maturity of the instrument. Because the issuer of a callable instrument typically offers a higher return to investors in return for the right to call the issue if prevailing interest rates fall, or for other reasons, a callable instrument can afford its holders the opportunity to achieve a higher yield without exposing themselves to greater credit risk by seeking higher yields from other issuers that may be less creditworthy. Similarly, instruments with a cap, floor, or collar on the interest paid do not jeopardize the principal amount payable at maturity. The Commission further notes that the rules require that the terms of the instrument must obligate the issuer to fully repay the principal amount of the instrument at not less than par value, upon maturity.

The Commission agrees with the CME that DCOs have a duty to exercise discretion in determining what forms of collateral should be accepted at the clearinghouse level and how that collateral should be valued. DCOs perform an important risk management function and the Commission supports their efforts to exercise their judgment in maintaining high standards for risk management.

The Commission expects that FCMs will carefully evaluate the appropriateness of each permitted investment in terms of its investment objectives and compliance with the time-to-maturity, concentration limits, and other requirements of Rule 1.25.

DSROs also have a role to play in that they are responsible for seeing that adequate internal controls, risk management policies and practices, and other compliance procedures are adopted and followed by FCMs. The Commission considers a DSRO's examination of an FCM's investments of customer funds to be a critical part of the supervisory framework and notes that the Joint Audit Program utilized by the DSROs in examining member FCMs contains a module specifically addressing Rule 1.25 compliance.

The Commission did not receive any comments on its proposed technical amendment to expressly prohibit investing in any instrument that, itself, constitutes a derivative instrument. Accordingly, the Commission is amending paragraph (b)(3)(iii), as proposed, to provide that "No instrument may provide payments linked to a commodity, currency, reference instrument, index, or benchmark except as provided in paragraph (b)(3)(iv) of this section, and it may not otherwise constitute a derivative instrument."

B. Adjustable Rate Securities

Rule 1.25(b)(3)(iv) permits investment in "variable-rate securities," provided that the interest rates thereon correlate closely and on an unleveraged basis to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, or the one-month or three-month LIBOR rate. In its June 30, 2003 release, the Commission requested comment on whether the provision on permitted benchmarks should be amended and, if so, what the applicable standard should be.

The FIA submitted a comment letter recommending that the Commission expand the list of permitted benchmarks to include any fixed rate instrument that is a "permitted investment" under the rule. The FIA reasoned that, if an FCM is authorized to purchase a fixed rate instrument, e.g., a six-month Treasury bill, and continuously roll that instrument over, then it should be able to purchase an instrument benchmarked to that fixed rate security.

After considering the FIA's recommendation, the Commission proposed several amendments to paragraph (b)(3)(iv) for the purpose of refining its regulatory approach to variable rate securities, as well as responding specifically to the FIA's comment.

1. Revised Terminology

As a preliminary matter, the Commission proposed to distinguish between a "floating rate security" and a "variable rate security." A floating rate security, under proposed new paragraph (b)(3)(iv)(B)(2), would be defined as "a security, the terms of which provide for the adjustment of its interest rate whenever a specified interest rate changes and that, at any time until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost." A variable rate security, under proposed new paragraph (b)(3)(iv)(B)(3), would be defined as "a security, the terms of which provide for the adjustment of its interest rate on set dates (such as the last day of a month or calendar quarter) and that, upon each adjustment until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost." The term "adjustable rate security" would refer to either or both

of the foregoing, under proposed new paragraph (b)(3)(iv)(B)(1).

The definitions of floating rate security and variable rate security are the same as those contained in SEC Rule 2a-7,¹⁷ and their use is consistent with the Rule 1.25(b)(5) time-to-maturity provision.¹⁸ The introduction of these terms is intended to clarify, not change, the meaning of paragraph (b)(3)(iv).

The Commission did not receive any comments on these proposed changes in terminology and the Commission is adopting new paragraphs (b)(3)(iv)(B)(1), (2) and (3), as proposed.

2. Permitted Benchmarks

As noted above, the FIA recommended that Rule 1.25(b)(3)(iv) be amended to provide that permissible benchmarks can include any fixed rate instrument that is a "permitted investment" under the rule. The Commission agrees that it is appropriate to afford greater latitude in establishing benchmarks for permitted investments, thereby enabling FCMs and DCOs to more readily respond to changes in the market. In its February 3, 2005 release, the Commission proposed new paragraph (b)(3)(iv)(A)(2) which would provide that, in addition to the benchmarks already enumerated in the rule, floating rate securities could be benchmarked to rates on any fixed rate instruments that are "permitted investments" under Rule 1.25(a). The Commission did not, however, expand the list of permitted benchmarks for variable rate securities.

In its March 2005 comment letter, the FIA requested that the Commission expand the list of permitted benchmarks for all adjustable rate securities, stating that "we see no reason why the permitted benchmarks for variable rate securities cannot be identical to the expanded list of permitted benchmarks for floating rate securities."¹⁹

Similarly, the NFA encouraged the Commission to expand the permitted benchmarks for both floating rate and variable rate securities.²⁰

The Commission has considered the practical implications of limiting the permitted benchmarks as originally proposed, and it has decided to expand the list of permitted benchmarks to include the same reference instruments

¹⁷ See Rule 2a-7(a)(13), 17 CFR 270.2a-7(a)(13) (floating rate security); and SEC Rule 2a-7(a)(29), 17 CFR 270.2a-7(a)(29) (variable rate security).

¹⁸ Under Rule 1.25(b)(5), the portfolio time-to-maturity calculation is computed pursuant to SEC Rule 2a-7.

¹⁹ See FIA Letter at 2.

²⁰ See letter from Thomas W. Sexton, III, Vice President and General Counsel, NFA, dated March 7, 2005 ("NFA Letter") at 1.

for both floating rate and variable rate securities. As a result, the Commission is adopting a revised paragraph (b)(3)(iv)(A)(1) to provide that “the interest payments on variable rate securities must correlate closely and on an unleveraged basis to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, the one-month or three-month LIBOR rate, or the interest rate of any fixed rate instrument that is a permitted investment listed in paragraph (a)(1) of this section.” The Commission is adopting, as proposed, new paragraph (b)(3)(iv)(A)(2), which relates to permitted benchmarks for floating rate securities.

3. Supplemental Requirements

The Commission proposed to further amend paragraph (b)(3)(iv) by adding two supplemental requirements that it believes are prudent and necessary in light of the increasing number and complexity of adjustable rate securities that could qualify as permitted investments. Under proposed paragraph (b)(3)(iv)(A)(3), any benchmark rate would have to be expressed in the same currency as the adjustable rate security referencing it. This eliminates the need to calculate and account for changes in applicable currency exchange rates. Under proposed paragraph (b)(3)(iv)(A)(4), the periodic coupon payments could not be a negative amount. This is designed to prevent FCMs and DCOs from investing in instruments that the Commission believes do not reflect an acceptable level of risk.

The Commission did not receive any comments on these proposed new provisions and they are being adopted, as proposed.

C. Reverse Repos—Concentration Limits

Rule 1.25(b)(4)(iii) establishes concentration limits for reverse repos.²¹ These restrictions, which were adopted in response to public comment, as expressed at that time, take into consideration the identity of both the issuer of the securities and the counterparty to the reverse repo. Consideration as to counterparty was based on the counterparty having direct control over which specific securities would be supplied in a transaction.²²

²¹ As used in this release, the term “reverse repo” means an agreement under which an FCM or DCO buys a security that is a permitted investment from a qualified counterparty, with a commitment to resell that security to the counterparty at a later date. A “repo” is an agreement under which an FCM or DCO sells a security to a qualified counterparty, with a commitment to repurchase that security at a later date.

²² See 65 FR 77993, 78002 (Dec. 13, 2000).

Given industry experience over the past several years, however, it has been brought to the attention of the Commission that the ability of FCMs and DCOs to monitor compliance with this two-prong standard has proven to be operationally unworkable. As a result, in June 2003, the Commission requested comment on market participants’ experience with the current provisions relating to reverse repos and suggestions on how best to address the risks of these transactions.

In its February 3, 2005 release, the Commission, responding to an FIA recommendation, proposed to amend paragraph (b)(4)(iii) to make reverse repos subject to the concentration limits for direct investments under Rule 1.25(b)(4)(i). The Commission did not receive any comments addressing this proposed change and it is amending paragraph (b)(4)(iii), as proposed.

D. Transactions by FCM/BDs

In its letter responding to the Commission’s June 30, 2003 request for public comment, the FIA proposed adding a new provision to Rule 1.25, which would permit an FCM/BD to engage in transactions that involve the exchange of customer money or customer-deposited securities for securities that are held by the FCM in its capacity as a securities broker-dealer (“in-house transactions”).²³ The FIA proposed specific requirements for in-house transactions, many of which were similar to requirements already applicable to repos and reverse repos under Rule 1.25(d). Lehman Brothers also submitted a comment letter in support of the FIA’s proposal.

In its February 3, 2005 release, the Commission proposed to amend Rule 1.25 by adding new paragraphs (a)(3) and (e) to permit FCM/BDs to engage in in-house transactions subject to specified requirements. The authority granted under paragraph (a)(3) would be subject to the requirements of paragraph (e), which incorporates many of the same restrictions currently imposed on repo and reverse repo transactions under paragraph (d).

In considering issues related to the investment of customer money or securities by an FCM, the Commission’s primary interest is in preserving the integrity of the customer segregated account. This is important both for systemic integrity and customer protection reasons. Not only must there be sufficient value in the account at all

²³ After the submission of its comment letter, the FIA requested that the Commission also authorize transactions in which customer-deposited securities are exchanged for cash.

times, but the quality of investments must reflect an acceptable level of credit, market, and liquidity risk. In this regard, it is important that non-cash assets can be quickly converted to cash at a predictable value. As stated in its February 3, 2005 release, the Commission believes that the in-house transactions, which can provide the economic equivalent of repos and reverse repos, satisfy these standards. Moreover, the in-house transactions can assist an FCM both in achieving greater capital efficiency and in accomplishing important risk management goals, including internal diversification targets.

The Commission did not receive any comments addressing the proposed amendments regarding in-house transactions, including related technical amendments. Accordingly, the Commission is adopting new paragraphs (a)(3)(i), (a)(3)(ii), (a)(3)(iii), and (e), as proposed, and redesignating existing paragraph (e) as paragraph (f).

Under paragraph (a)(3)(i), customer money may be exchanged for securities that are permitted investments and are held by an FCM/BD in connection with its securities broker or dealer activities. Under paragraph (a)(3)(ii), securities deposited by customers as margin may be exchanged for securities that are permitted investments and are held by an FCM/BD in connection with its securities broker or dealer activities. Under paragraph (a)(3)(iii), securities deposited by customers as margin may be exchanged for cash that is held by an FCM/BD in connection with its securities broker or dealer activities.

Paragraph (e)(1) requires that the FCM, in connection with its securities broker or dealer activities, must own or have the unqualified right to pledge the securities that are exchanged for customer money or securities held in the customer segregated account. The securities may be held as part of the broker-dealer inventory or may have been deposited with the broker-dealer by its customers.

Paragraph (e)(2) requires that the transaction can be reversed within one business day or upon demand. This is the same standard that currently applies to repos and reverse repos under Rule 1.25(d)(5), with the goal of establishing investment liquidity.

Paragraph (e)(3) incorporates the Rule 1.25(d)(1) requirement that the securities transferred from and to the customer segregated account must be specifically identified by coupon rate, par amount, market value, maturity date, and CUSIP or ISIN number.

Paragraph (e)(4) establishes two general requirements for the types of

customer-deposited securities that may be used in the in-house transactions. Paragraph (e)(4)(i) requires that the securities be “readily marketable” as defined in SEC Rule 15c3–1.²⁴ Paragraph (e)(4)(ii) requires that the securities not be “specifically identifiable property” as defined in Rule 190.01(kk). These same requirements apply to customer-deposited securities used in repos under Rule 1.25(a)(2)(ii).

Paragraph (e)(5) establishes requirements for securities that will be transferred to the customer segregated account as a result of the in-house transaction, clarifying the treatment of these securities once they are held in the customer segregated account. Paragraph (e)(5)(i) requires that the securities be priced daily based on the current mark-to-market value. Paragraph (e)(5)(ii) provides that the securities will be subject to the concentration limit requirements applicable to direct investments. Paragraph (e)(5)(iii) provides that the securities transferred to the customer segregated account must be held in a safekeeping account with a bank, a DCO, or the Depository Trust Company in an account that complies with the requirements of Rule 1.26.²⁵ Paragraph (e)(5)(iv) incorporates the Rule 1.25(d)(7) restrictions on the subsequent use of the securities. It provides that the securities may not be used in another similar transaction and may not otherwise be hypothecated or pledged, except such securities may be pledged on behalf of customers at another FCM or a DCO. It further specifies requirements for permitted substitution of securities.

Paragraph (e)(6) sets forth the payment and delivery procedures for in-house transactions. Adapted from Rule 1.25(d)(8), the provisions are designed to ensure that in-house transactions are carried out in a manner that does not jeopardize the adequacy of funds held in the customer segregated account. Paragraph (e)(6)(i) governs transactions under paragraph (a)(3)(i), paragraph (e)(6)(ii) governs transactions under paragraph (a)(3)(ii), and paragraph (e)(6)(iii) governs transactions under paragraph (a)(3)(iii).

²⁴ 17 CFR 240.15c3–1.

²⁵ Note that the Commission has not included in this paragraph the FIA’s proposed one-day time-to-maturity treatment for securities transferred to the customer segregated account. Although an in-house transaction could be reversed within one day, the rule would not require that it be reversed within that time frame. Effectively, these instruments would be subject to the same risks associated with the price sensitivity of direct investments and, accordingly, should be subject to the same standards in order to maximize the protection of principal. Special treatment would undermine the purpose of the time-to-maturity requirement.

Paragraph (e)(7) provides that the FCM must maintain all books and records with respect to the in-house transactions in accordance with Rules 1.25, 1.27, 1.31, and 1.36, as well as the applicable rules and regulations of the SEC. This clarifies the pre-existing obligations of the FCM, and it is adapted from Rule 1.25(d)(10).

Paragraph (e)(8) incorporates the requirements of Rule 1.25(d)(11). It provides that an actual transfer of securities by book entry must be made consistent with Federal or State commercial law, as applicable. Moreover, at all times, securities transferred to the customer segregated account are to be reflected as “customer property.”

Paragraph (e)(9) provides that, for purposes of Rules 1.25, 1.26, 1.27, 1.28 and 1.29, securities transferred to the customer segregated account would be considered to be customer funds until the money or securities for which they were exchanged are transferred back to the customer segregated account. As a result, in the event of the bankruptcy of the FCM, any securities transferred to and held in the customer segregated account as a result of an in-house transaction could be immediately transferred to another FCM. This provision adapts, in part, the provisions set forth in Rule 1.25(d)(12).

Paragraph (e)(10) addresses the failure to return customer-deposited securities to the customer segregated account. Adapted from Rule 1.25(a)(2)(ii)(D), it provides that, in the event the FCM is unable to return to the customer any customer-deposited securities used in an in-house transaction, the FCM must act promptly to ensure that there is no resulting direct or indirect cost or expense to the customer.

The Commission is also adopting, as proposed, two amendments related to in-house transactions. First, the Commission is amending Rule 1.25(b)(4) by adding a new paragraph (iv) to provide that, for purposes of determining compliance with applicable concentration limits, securities transferred to a customer segregated account pursuant to Rule 1.25(a)(3) will be combined with securities held by the FCM as direct investments. In adding this new provision, the Commission is also redesignating existing paragraphs (b)(4)(iv) and (v) as (b)(4)(v) and (vi), respectively.

Second, the Commission is adopting a technical amendment to Rule 1.27 to clarify the applicability of recordkeeping requirements to securities transferred to and from the customer custodial account pursuant to repos and in-house transactions. In this

regard, Rule 1.27 provides that each FCM that invests customer funds and each DCO that invests customer funds of its clearing members’ customers or option customers must keep a record showing specified information. Among the items to be recorded are the amount of money so invested (paragraph (a)(3)) and the date on which such investments were liquidated or otherwise disposed of and the amount of money received of such disposition, if any (paragraph (a)(6)). The Commission is amending those provisions by adding, after the reference to “amount of money,” the phrase “or current market value of securities.” This clarifies that amounts recorded must include the value of securities, as well as cash.

E. Rating Standards for MMMFs

Rule 1.25 permits FCMs and DCOs to invest customer funds in MMMFs, subject to certain standards set forth in the rule. Among those standards is the requirement that MMMFs that are rated by a nationally recognized statistical rating organization (“NRSRO”) must be rated at the highest rating of the NRSRO.²⁶ While the rule does not permit investments in lower rated MMMFs, it does not prohibit investments in unrated MMMFs. As a result, a rated MMMF that does not have the highest rating is not acceptable as a permitted investment, but an unrated MMMF is acceptable.²⁷

By letter dated April 8, 2004, Federated Investors, Inc. (“Federated”) requested that the Commission eliminate the rating requirement for MMMFs.²⁸ Federated expressed the view that the rating requirement creates a competitive inequity for lower rated MMMFs that have yield and portfolio characteristics similar to the unrated funds that are commonly used by FCMs for investment of customer funds.

Recognizing the anomalous situation created by the rating requirement, and in light of the risk-limiting standards imposed by SEC Rule 2a–7²⁹ as well as Rule 1.25(c), the Commission proposed to eliminate the rating requirement. Federated submitted a comment letter in which it reiterated its support for the elimination of the rating requirement

²⁶ See Rule 1.25(b)(2)(i)(E).

²⁷ The Commission notes that a substantial percentage of customer money invested in MMMFs is invested in unrated funds.

²⁸ See letter from Melanie L. Fein, Goodwin Procter LLP, on behalf of Federated, dated April 8, 2004, available in the comment file accompanying this rulemaking, at <http://www.cftc.gov>.

²⁹ As discussed in Section II.F. of this release, the Commission is amending Rule 1.25(c)(1) to eliminate the possibility of a fund obtaining an exemption from the SEC Rule 2a–7 registration requirement.

and, among other things, emphasized the extensive investor protections of SEC Rule 2a-7 that it believes make the Commission's existing rating requirement for MMMFs unnecessary.³⁰ In this regard, Federated observed that SEC Rule 2a-7 imposes strict portfolio quality, diversification, and maturity standards, which greatly limit the possibility of significant deviation between the share price of a fund and its per share net asset value. Additionally, Federated noted that MMMFs are subject to board oversight regarding credit quality requirements and investment procedures. The Commission did not receive any other comments on this topic.

Accordingly, in consideration of the above, the Commission is eliminating the rating requirement for MMMFs, as proposed, by adopting two amendments to Rule 1.25(b)(2)(i). First, it is revising paragraph (b)(2)(i)(A) to read "U.S. government securities and money market mutual funds need not be rated." Second, it is eliminating the rating requirement for MMMFs contained in paragraph (b)(2)(i)(E).

F. Registration Requirement for MMMFs

Rule 1.25(c)(1) provides that, generally, an MMMF must be an investment company that is registered with the SEC under the Investment Company Act of 1940 and that holds itself out to investors as an MMMF in accordance with SEC Rule 2a-7. Paragraph (c)(1) further provides that an MMMF sponsor may petition the Commission for an exemption from this requirement, and the Commission may grant such an exemption if the MMMF can demonstrate that it will operate in a manner designed to preserve principal and to maintain liquidity. The exemption request must include a description of how the fund's structure, operations and financial reporting are expected to differ from the requirements in SEC Rule 2a-7 and applicable risk-limiting provisions contained in Rule 1.25. In addition, the MMMF must specify the information that it would make available to the Commission on an on-going basis.

As explained in the February 3, 2005 release, the Commission has received several informal inquiries regarding possible exemption requests. In evaluating these inquiries, Commission staff have explored alternative standards that could be used to ascertain whether an MMMF will operate in a manner designed to preserve principal and to

maintain liquidity and, therefore, could be exempted. As a result of this exercise, it has become apparent that establishing such standards presents substantial practical and policy issues.

For example, from a practical standpoint, granting an exemption would require that the Commission, on a case-by-case basis, review a particular MMMF's risk-limiting policies and procedures and determine that, notwithstanding deviations from the Rule 2a-7 requirements, those policies and procedures will operate to preserve principal and to maintain liquidity. Moreover, if an exemption were granted, Commission staff would have to maintain oversight over the exempt MMMF to ascertain that it continues to operate in accordance with the Commission's standards. The Commission believes that it would be inefficient to devote substantial resources to the exemption process. In addition, the Commission is concerned that this process could produce inconsistent results and give rise to an uncertain framework for regulatory oversight.

From a policy standpoint, the Commission is concerned that by granting an exemption, the Commission may be perceived as expressing a view about the adequacy of an MMMF's overall risk-limiting policies and procedures and, ultimately, upon the investment quality of any particular MMMF. The Commission does not wish to provide, or be perceived as providing, any such assurances to FCMs or DCOs that might be interested in investing customer money in an exempt MMMF.

The Commission did not receive any comments on this proposed action. Accordingly, the Commission is amending paragraph (c)(1) to eliminate the availability of an exemption for unregistered funds. While this removes the possibility of adding certain MMMFs to the pool of qualifying permitted investments, the Commission believes that this potential loss will be mitigated by the availability of additional MMMF investments as a result of the Commission's decision to eliminate the rating requirement for MMMFs.³¹ As a related matter, the Commission is also adopting a technical amendment that would delete the reference to "a fund exempted in accordance with paragraph (c)(1) of this section" at the end of paragraph (c)(2).

G. Auditability Standard for Investment Records

Rule 1.27 sets forth recordkeeping requirements for FCMs and DCOs in

connection with the investment of customer funds under Rule 1.25. More specifically, the rule lists the types of information that an FCM or DCO must retain, subject to the further recordkeeping requirements of Rule 1.31.

The Commission proposed to amend Rule 1.27 by adding a new provision to establish an auditability standard for pricing information related to all instruments acquired through the investment of customer funds. Such a standard is intended to facilitate the maintenance of reliable and readily available valuation information that can be properly audited. This is particularly important with respect to instruments for which historical valuation information may not be retrievable from third party sources at the time of an audit.

The Commission proposed to amend Rule 1.27 by adding a new paragraph (a)(8), to require FCMs and DCOs to maintain supporting documentation of the daily valuation of instruments acquired through the investment of customer funds, including the valuation methodology and third party information. Such supporting documentation would have to be sufficient to enable auditors to verify information to external sources and recalculate the valuation for a given instrument.

Several commenters provided particularly noteworthy insights on the issue of auditability standards. While supporting the adoption of a comprehensive auditability standard "given the ever-expanding population of complex investments which may become available"³² the Joint Audit Committee noted the importance under Generally Accepted Auditing Standards of an auditor's ability to independently verify valuation documents from third parties provided by an FCM. The JAC also requested guidance regarding the evaluation of internal models that certain FCMs may use to value investments of segregated funds.³³ Finally, the JAC also recommended that the auditability standard impose an obligation on FCMs and DCOs to maintain documentation supporting a particular instrument's compliance with all criteria set forth in Rule 1.25 for permitted investments.³⁴

In its comment letter, the FIA requested that the Commission, in adopting the final rules, confirm certain views expressed by Commission staff in conversations with FIA representatives.

³⁰ See letter from Melanie L. Fein, Goodwin Procter LLP, on behalf of Federated, dated February 28, 2005.

³¹ See discussion in Section II.E. of this release.

³² See JAC Letter at 2.

³³ *Id.* at 1.

³⁴ *Id.* at 2.

More specifically, the FIA sought clarification that (a) FCMs could rely on their custodian banks to provide valuations for securities that are held in the customer segregated account, and daily records of these valuations would be sufficient to comply with the auditability standard; (b) if an FCM used one or more dealers to value certain securities, the FCM would be required to maintain a record of the dealers used and the prices provided; and (c) if an FCM used internal models to value certain securities, the FCM would be required to maintain a daily record of the prices obtained from such models and, separately, be prepared to explain the models when subject to audit.³⁵

The NFA similarly encouraged the Commission "to clarify the proposal's recordkeeping obligations for FCMs to the extent that the valuation of the investments is performed by custodial banks, dealers and an FCM's internal models."³⁶

The proposed auditability standard was stated in broad terms to provide flexibility to FCMs and DSROs in establishing verification procedures for the valuation of instruments, particularly those for which historical valuation information may not be readily available from third party sources at the time of an audit. The Commission declined to propose prescriptive rules based on its belief that the broader standard would afford auditors greater latitude in determining what would be "sufficient" for their purposes. The auditability standard is not intended to be a substitute for properly designed and executed internal controls or proper oversight thereof by an FCM's DSRO. Rather, it is envisioned as a meaningful addition to the matrix of safeguards that are designed to minimize credit, liquidity and market risk in connection with investments of customer funds.

The Commission has decided to adopt the proposed auditability standard with revised language that is intended to clarify the Commission's intent. Accordingly, the Commission will add language to refer to "readily available" documentation to emphasize that the documentation must be made available to the auditor in a timely and convenient manner. The standard will provide that "[s]uch supporting documentation must be sufficient to enable auditors to verify the valuations and the accuracy of any information from external sources used in those valuations."

In response to the requests of the FIA and NFA, the Commission confirms that: (a) FCMs may rely on their custodian banks to provide valuations for securities that are held in the customer segregated account, and daily records of these valuations will be sufficient to comply with the auditability standard; (b) if an FCM uses one or more dealers to value certain securities, the FCM must maintain a record of the dealers used and the prices provided; and (c) if an FCM uses internal models to value certain securities, the FCM must maintain a daily record of the prices obtained from such models and, separately, be prepared to explain such models, inputs and assumptions thereto, and internal controls thereover.

The Commission acknowledges the JAC's suggestion that the Commission impose a separate obligation on FCMs and DCOs to maintain documentation that would affirmatively demonstrate the compliance of any investment with the various criteria of Rule 1.25, and it will consider whether to solicit public comment on this issue.

H. Additional Technical Amendments

1. Clarifying and Codifying MMMF Redemption Requirements

The Commission permits FCMs and DCOs to invest customer money in MMMFs in accordance with the standards set forth in Rule 1.25(c). Among those standards is the requirement that the MMMF be able to redeem the interest of the FCM or DCO by the business day following a redemption request. The Commission proposed to amend paragraph (c)(5) to clarify that the MMMF must be legally obligated to redeem the interest and make payment in satisfaction thereof by the business day following the redemption request. In addition, the Commission proposed a further amendment to codify previously articulated exceptions to the next-day redemption requirement.

(a) Next-Day Redemption Requirement

In response to inquiries from participants in the futures and mutual fund industries, the Commission proposed to amend paragraph (c)(5) to clarify that next-day redemption and payment is mandatory. To effect this, the Commission proposed to eliminate the language requiring that the MMMF "must be able to redeem an interest by the next business day following a redemption request" and to substitute in its place a provision that requires the fund to "be legally obligated to redeem an interest and make payment in

satisfaction thereof by the business day following a redemption request." The revised language unambiguously establishes the mandatory nature of the redemption obligation and also clarifies the distinction between redemption (valuation) of MMMF interests and actual payment for those redeemed interests. Thus, the next-day redemption requirement is not met even if an MMMF, as a matter of practice, offers same-day or next-day redemption, if there is no binding obligation to do so.

The second provision of paragraph (c)(5) suggests two ways in which an FCM or DCO may demonstrate compliance with the next-day redemption requirement, *i.e.*, an appropriate provision in the fund's offering memorandum or a separate side agreement between the fund and the FCM or DCO. In view of the revised articulation of the next-day redemption requirement, the Commission determined that it is not necessary to specify ways in which an FCM or DCO can demonstrate that the requirement has been met. The Commission therefore proposed to eliminate the second provision and to substitute in its place a provision that requires the FCM or DCO to retain documentation demonstrating compliance with the next-day redemption requirement. Such documentation can then be produced for audit purposes.

The Commission did not receive any comments on these changes and it is amending paragraph (c)(5), as proposed. This includes the redesignation of existing paragraph (c)(5), as amended, as paragraph (c)(5)(i).

(b) Exceptions to the Next-Day Redemption Requirement

In response to an inquiry from the Board of Trade Clearing Corporation in 2001, the Commission's Division of Trading and Markets issued a letter stating that it would raise no issue in connection with MMMFs that provide for certain exceptions to the practice of next-day redemption.³⁷

The letter specifically identified circumstances in which next-day redemption could be excused: (1) Non-routine closure of the Fedwire or applicable Federal Reserve Banks; (2) non-routine closure of the New York Stock Exchange or general market conditions leading to a broad restriction of trading on the New York Stock Exchange, *i.e.*, a restriction of trading due to market-wide events; or (3) declaration of a market emergency by

³⁵ FIA Letter at 2-3.

³⁶ NFA Letter at 1.

³⁷ See CFTC Staff Letter No. 01-31, [2000-2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,521 (Apr. 2, 2001).

the SEC. The letter also included a catch-all provision that included emergency conditions set forth in Section 22(e) of the Investment Company Act of 1940.³⁸

The Commission proposed to codify these exceptions in new paragraph (c)(5)(ii). The Commission recognizes that there is some overlap between the enumerated exceptions and those contained in Section 22(e), but it believes that this is appropriate given the need to provide for all relevant circumstances.

The Commission did not receive any comments on this issue and it is adopting paragraph (c)(5)(ii), as proposed.

2. Clarifying Rating Standards for Certificates of Deposit

Rule 1.25(b)(2)(i)(B) provides that “[m]unicipal securities, government sponsored agency securities, certificates of deposit, commercial paper, and corporate notes, except notes that are asset-backed, must have the highest short-term rating of an NRSRO or one of the two highest long-term ratings of an NRSRO.” The Commission notes that certificates of deposit, unlike the other instruments listed in that paragraph, are not directly rated by an NRSRO.

Because NRSRO ratings reflect the financial strength of the issuer of an instrument, they offer a useful standard, among others, for determining whether an instrument can be a permitted investment for customer money. Although certificates of deposit are not rated by NRSROs, it is possible to apply a rating standard by using, as a proxy, the ratings of other instruments issued by the issuers of certificates of deposit. For example, the Commission has previously taken this approach in establishing standards for foreign depository institutions that may hold customer funds. In this regard, Rule 1.49(d)(3)(i) provides that, in order to hold customer funds, a bank or trust company located outside the United States must satisfy either of the following requirements: (1) it must have in excess of \$1 billion of regulatory capital; or (2) the bank or trust company’s commercial paper or long-term debt instrument, or if the institution is part of a holding company system, its holding company’s commercial paper or long-term debt instrument, must be rated in one of the two highest rating categories by at least one NRSRO.

Consistent with this approach, the Commission believes that it is appropriate to use, as a proxy for a

certificate of deposit rating, NRSRO ratings for the commercial paper or long-term debt instrument of the issuer of the certificate of deposit or such issuer’s parent holding company. Accordingly, the Commission proposed to delete the reference to certificates of deposit in paragraph (b)(2)(i)(B) of Rule 1.25 and revise paragraph (b)(2)(i)(E) to apply the same standard contained in paragraph (b)(2)(i)(B) to the commercial paper or long-term debt instrument issued by the certificate of deposit issuer or its holding company.

The Commission did not receive any comments on this issue. Accordingly, it is amending paragraph (b)(2)(i)(B) and adding new paragraph (E), as proposed.³⁹

3. Clarifying Corporate Bonds as Permitted Investments

Paragraph (a)(vi) currently uses the term “corporate note,” which may be interpreted by some market participants to mean obligations whose original term to maturity does not exceed five years or perhaps ten years. The Commission proposed to clarify that this terminology should not be read to limit the duration of an instrument. It therefore proposed to amend paragraphs (a)(1)(vi), (b)(2)(i)(B) and (C), and (b)(4)(i)(C) to use the term “corporate notes or bonds.” Rather than constrain the types of permitted investments on the basis of their original term to maturity, the Commission has addressed the issue of the greater price sensitivity of longer-term and fixed rate instruments to changes in prevailing interest rates by adopting the portfolio time-to-maturity requirements of paragraph (b)(5); thus, it is the remaining term to maturity that is relevant.

The Commission did not receive any comments on this issue and it is amending paragraphs (a)(1)(vi), (b)(2)(i)(B) and (C), and (b)(4)(i)(C), as proposed.

4. Clarifying References to Transferred Securities

Rule 1.25(a)(2) permits FCMs and DCOs to enter into repos using customer-deposited securities and securities that are permitted investments purchased with customer money. Such transactions are subject to the provisions of paragraph (d) of Rule 1.25. Among those provisions is paragraph (d)(6), which requires that the “securities transferred under the agreement” must be held in a safekeeping account with a bank, a

DCO, or the Depository Trust Company in an account that complies with the requirements of Rule 1.26.

The Commission has been asked whether the reference to “securities transferred under the agreement” is intended to include not only in-coming securities, but out-going securities as well. Such an interpretation would mean that any out-going securities, in addition to any in-coming cash, would have to be held in a customer segregated account in accordance with Rule 1.26.⁴⁰ This is not the intended outcome, and the Commission therefore proposed to amend paragraph (d)(6) to clarify that Rule 1.26 applies only to securities transferred to (not from) an FCM or DCO.⁴¹

The Commission also proposed technical amendments to paragraphs (d)(3) and (d)(11) to similarly clarify that the securities referred to in those provisions are securities transferred to (not from) the customer segregated custodial account of an FCM or DCO.

The Commission did not receive any comments on this issue and it is amending paragraphs (d)(3), (d)(6), and (d)(11), as proposed.

5. Clarifying Payment and Delivery Procedures for Reverse Repos and Repos

The Commission proposed to amend paragraph (d)(8) to clarify payment and delivery procedures for reverse repos and repos. Paragraph (d)(8) provides that the “transfer of securities” must be made on a delivery versus payment basis in immediately available funds. The Commission proposed to amend this provision to clarify that the delivery versus payment requirement applies to the transfer of securities to (not from) the customer segregated custodial account, as would be the case in a reverse repo. The Commission further proposed to add a sentence clarifying that the transfer of funds to the customer segregated cash account, as would be the case in a repo, must be made on a payment versus delivery basis.

⁴⁰ Rule 1.26 addresses the treatment of instruments purchased with customer funds, but does not address the treatment of cash received by an FCM or DCO pursuant to a repo. The Commission believes that it is not necessary to specify in Rule 1.26 that cash acquired in exchange for securities under a repo must be held in a customer segregated cash account because this requirement is clear from the language of Section 4d(a)(2) of the Act.

⁴¹ The Commission notes that with respect to the in-house transactions discussed in Section II.D. of this release, proposed Rule 1.25(e)(5)(iii) specifically provides that securities transferred to the customer segregated account as a result of the transaction must be held in a safekeeping account with a bank, a DCO, or the Depository Trust Company in an account that complies with the requirements of Rule 1.26.

³⁹ Paragraph (b)(2)(i)(E) formerly set forth the rating requirement for MMMFs. See discussion in Section II.E. of this release.

³⁸ 15 U.S.C. 80a-22(e).

The Commission did not receive any comments on this issue and it is amending paragraph (d)(8), as proposed.

6. Changing Paragraph (a)(1) "Customer Funds" to "Customer Money"

Rule 1.25(a)(1) authorizes FCMs and DCOs to invest "customer funds" in enumerated permitted investments. Paragraph (a)(1) uses the term "customer funds" to describe customer money deposited with an FCM or a DCO to margin futures or options positions. Because the term "customer funds" is otherwise defined in Rule 1.3(gg) to include more than customer money, the Commission proposed to amend paragraph (a)(1) to substitute the term "customer money" for the term "customer funds."

The word "money" is used in Section 4d(a)(2) of the Act with reference to permitted investments, and the term "customer money" was originally used in Rule 1.25. The term was changed to "customer funds" in 1968 when the Commission's predecessor agency, the Commodity Exchange Authority, adopted revisions to conform the rule to amendments to Section 4d of the Act.⁴² No explanation was given for the change in terminology.

Subsequently, in 1981, the Commission adopted a definition of "customer funds" in Rule 1.3(gg), when it adopted rules related to futures options.⁴³ That term encompasses more than money, and includes securities and other property belonging to the customer.

Substituting the term "customer money" for the term "customer funds" in paragraph (a)(1) conforms the language of that paragraph to the language of Section 4d(a)(2) of the Act and clarifies the meaning of the term in relation to other provisions of Rule 1.25. The need for this proposed change in terminology arises in the context of distinguishing between customer money and customer-deposited securities, which are the subject of Rule 1.25(a)(2)(ii) (repos with customer-deposited securities) and new Rule 1.25(a)(3)(ii) and (iii) (in-house transactions with customer-deposited securities).

The Commission did not receive any comments on this issue and it is amending paragraph (a)(1), as proposed.

7. Conforming Reference to "Marketability" Requirement

Rule 1.25(a)(2)(ii), which permits FCMs and DCOs to sell customer-deposited securities pursuant to repos,

sets forth various requirements for such transactions. Among them is the requirement, under paragraph (a)(2)(ii)(A), that securities subject to repurchase must meet the marketability requirement contained in paragraph (b)(1) of Rule 1.25. Paragraph (b)(1), in turn, cross-references the marketability requirement contained in SEC Rule 15c3-1. For purposes of clarity, the Commission proposed to amend Rule 1.25(a)(2)(ii)(A) to eliminate the cross-reference to paragraph (b)(1) and substitute that paragraph's direct cross-reference to SEC Rule 15c3-1.

The Commission did not receive any comments on this issue and it is amending paragraph (a)(2)(ii)(A), as proposed.

8. Conforming Terminology for "Derivatives Clearing Organizations"

Rule 1.25 uses the term "clearing organization" to describe an entity that performs clearing functions. The Act, as amended by the Commodity Futures Modernization Act of 2000,⁴⁴ now provides that a clearing organization for a contract market must register as a "derivatives clearing organization" and must comply with core principles set forth in the statute.⁴⁵ The Commission proposed technical amendments to Rule 1.25 to change the term "clearing organization" to "derivatives clearing organization." This conforms the language of Rule 1.25 to the language of the Act, more accurately reflecting the current statutory framework.

As an additional matter, in connection with its proposed technical amendments to Rule 1.27,⁴⁶ the Commission also proposed to change the term "clearing organization" to "derivatives clearing organization" in that rule.

The Commission did not receive any comments on this issue and it is amending Rule 1.25 and Rule 1.27, as proposed.

9. Conforming Terminology for "Government Sponsored Enterprise"

The Commission also proposed a technical amendment to Rule 1.25 to change terminology referring to government sponsored "agency" securities to government sponsored "enterprise" securities. This would conform the language in the rule to the terminology commonly used in the marketplace. This change would be

reflected in the list of permitted investments (paragraph (a)(1)(iii)), the rating requirements (paragraph (b)(2)(i)(B)), and the concentration limits (paragraph (b)(4)(i)(B)).

The Commission did not receive any comments on this issue and it is amending paragraphs (a)(1)(iii), (b)(2)(i)(B), and (b)(4)(i)(B), as proposed.

10. Conforming Terminology for "Futures Commission Merchant"

The Commission proposed a technical amendment to Rule 1.25 to substitute the term "futures commission merchant" for the abbreviation, "FCM," as used in paragraph (c)(3). This would provide conformity in the use of the term futures commission merchant throughout the rule.

The Commission did not receive any comments on this issue and it is amending paragraph (c)(3), as proposed.

11. Clarifying the Meaning of "NRSRO"

Rule 1.25(b)(2) sets forth the rating requirements for permitted investments. The rule refers to ratings by an "NRSRO," the abbreviation for a "nationally recognized statistical rating organization." The Commission proposed to amend paragraph (b)(2)(i) to formally set forth the abbreviation as a defined term and to cross-reference the definition of that term contained in SEC Rule 2a-7.

Since the Commission issued its proposed technical amendment, the SEC published for public comment a proposed new rule defining the term "nationally recognized statistical rating organization."⁴⁷ The Commission continues to believe that it is appropriate to utilize the definition that is the industry standard, as articulated or otherwise applied by the SEC. Accordingly, the Commission will continue to cross-reference the SEC's usage. However, the text of paragraph (b)(2)(i) will be modified to accommodate future changes in SEC rule text or applicable statutes. Thus, the language will provide that "[i]nstruments that are required to be rated by this section must be rated by a nationally recognized statistical rating organization (NRSRO), as that term is defined in Securities and Exchange Commission rules or regulations, or in any applicable statute."

The Commission did not receive any comments on this issue and it is amending paragraph (b)(2)(i), as described above.

⁴⁴ Appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000).

⁴⁵ See Section 5b of the Act, 7 U.S.C. 7a-1. See also Section 1a(9) of the Act, 7 U.S.C. 1a(9) (defining the term "derivatives clearing organization").

⁴⁶ See Section I.L.D. of this release.

⁴⁷ See 70 FR 21306 (Apr. 25, 2005) (proposing new SEC Rule 3b-10, 17 CFR 240.3b-10).

⁴² 33 FR 14455 (Sept. 26, 1968).

⁴³ 46 FR 33312 (June 29, 1981).

III. Section 4(c)

Section 4(c) of the Act⁴⁸ provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission, by rule, regulation or order, after notice and opportunity for hearing, may exempt any agreement, contract, or transaction, or class thereof, that is otherwise subject to Section 4(a) of the Act, including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction, from the contract market designation requirement of Section 4(a) of the Act, or any other provision of the Act other than Section 2(a)(1)(C)(ii) or (D), if the Commission determines that the exemption would be consistent with the public interest.

The final rules are promulgated under Section 4d(a)(2) of the Act,⁴⁹ which governs investment of customer funds. Section 4d(a)(2) provides that customer money may be invested in obligations of the United States, in general obligations of any State or of any political subdivision thereof, and in obligations fully guaranteed as to principal and interest by the United States. It further provides that such investments must be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

The Commission is expanding the range of instruments in which FCMs may invest customer funds beyond those listed in Section 4d(a)(2) of the Act (*i.e.*, securities with embedded derivatives and MMMFs rated below the highest rating of an NRSRO), to enhance the yield available to FCMs, DCOs, and their customers without compromising the safety of customer funds. These rules should enable FCMs and DCOs to remain competitive globally and domestically, while maintaining safeguards against systemic risk.

The Commission did not receive any comments on the 4(c) exemption discussion in its February 3, 2005 release. Accordingly, in light of the foregoing, the Commission finds that the adoption of final rules that expand the scope of permitted investments of customer funds will promote responsible economic and financial innovation and fair competition, and is consistent with the "public interest," as that term is used in Section 4(c) of the Act.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")⁵⁰ requires federal agencies, in promulgating rules, to consider the impact of those rules on small businesses. The rule amendments adopted herein will affect FCMs and DCOs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.⁵¹ The Commission has previously determined that registered FCMs⁵² and DCOs⁵³ are not small entities for the purpose of the RFA. The Commission did not receive any comments on the Regulatory Flexibility Act in relation to the proposed rulemaking.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA") imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The final rules do not require a new collection of information on the part of any entities subject to them. Accordingly, for purposes of the PRA, the Commission certified that the proposed rules did not impose any new reporting or recordkeeping requirements.

C. Costs and Benefits of the Proposed Rules

Section 15(a) of the Act requires that the Commission, before promulgating a regulation under the Act or issuing an order, consider the costs and benefits of its action. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new rule or determine whether the benefits of the rule outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of the following considerations: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission could, in its discretion, give greater weight to any one of the five

considerations and could, in its discretion, determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission has evaluated the costs and benefits of the final rules in light of the specific considerations identified in Section 15(a) of the Act, as follows:

1. Protection of market participants and the public. The final rules facilitate greater capital efficiency for FCMs and DCOs, while protecting customers by establishing prudent standards for investment of customer funds. Several of the rule amendments narrow and refine earlier standards based on industry and Commission experience since the December 2000 rulemaking in which Rule 1.25 was substantially revised and expanded. In this regard, for example, the amendments relating to the mandatory registration requirement for MMMFs and auditability standard for investment records establish stricter standards. Similarly, amendments that expand investment opportunities for FCMs and DCOs, such as those permitting investment in instruments with embedded derivatives, carefully circumscribe the activity in order to protect the customer segregated account.

2. Efficiency, competitiveness, and financial integrity of futures markets. The final rules will facilitate greater efficiency and competitiveness for FCMs and DCOs, but they will not affect the efficiency and competitiveness of futures markets. The amendments will not affect the financial integrity of futures markets.

3. Price discovery. The amendments will not affect price discovery.

4. Sound risk management practices. The final rules impose sound risk management practices upon FCMs and DCOs that invest customer funds under the rules. They balance the need for investment flexibility with the need to preserve customer funds. For example, while permitting FCM/BDs to engage in in-house transactions, the Commission sets forth specific requirements for such transactions. These include standards relating to the type of securities that may be transferred to the customer segregated account, treatment of those securities when held in the account, and procedures for effecting transactions. Such requirements are designed to ensure that at no time will in-house transactions cause the customer segregated account to fall below a sufficient level. Certain other amendments, such as the registration

⁵⁰ 5 U.S.C. 601 *et seq.*

⁵¹ 47 FR 18618 (Apr. 30, 1982).

⁵² *Id.* at 18619.

⁵³ 66 FR 45604, 45609 (Aug. 29, 2001).

⁴⁸ 7 U.S.C. 6(c).

⁴⁹ 7 U.S.C. 6d(a)(2).

requirement for MMMFs and clarification as to mandatory next-day redemption and payment for MMMF interests, strengthen risk management standards that are already in place.

5. Other public considerations. The final rules amendments reflect industry and Commission experience with Rule 1.25 since the rule was expanded in December 2000. They provide FCMs and DCOs with greater flexibility in making investments with customer funds, while strengthening the rules that protect the safety of such funds and preserve the rights of customers. For example, the amendments governing in-house transactions provide FCM/BDs with an efficient and cost-effective method for maximizing investment opportunities within the confines of strict risk management requirements. Similarly, the amendments expand the range of investments to include certain instruments with embedded derivatives and MMMFs of any rating, and enable FCMs and DCOs to consider a broader range of investment possibilities within prescribed limitations.

The final rules are expected to enhance the available yield on customer funds invested by FCMs and DCOs, while maintaining safeguards against systemic risk. FCMs and DCOs choosing to make such investments will bear all costs associated with their investments.

Accordingly, after considering the five factors enumerated in the Act, the Commission has determined to adopt the rules and rule amendments set forth below.

Lists of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

■ In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, in particular, Sections 4d, 4(c), and 8a(5) thereof, 7 U.S.C. 6d, 6(c) and 12a(5), respectively, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000).

■ 2. Section 1.25 is revised to read as follows:

§ 1.25 Investment of customer funds.

(a) *Permitted investments.* (1) Subject to the terms and conditions set forth in this section, a futures commission merchant or a derivatives clearing organization may invest customer money in the following instruments (permitted investments):

- (i) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (U.S. government securities);
- (ii) General obligations of any State or of any political subdivision thereof (municipal securities);
- (iii) General obligations issued by any enterprise sponsored by the United States (government sponsored enterprise securities);
- (iv) Certificates of deposit issued by a bank (certificates of deposit) as defined in section 3(a)(6) of the Securities Exchange Act of 1934, or a domestic branch of a foreign bank that carries deposits insured by the Federal Deposit Insurance Corporation;
- (v) Commercial paper;
- (vi) Corporate notes or bonds;
- (vii) General obligations of a sovereign nation; and
- (viii) Interests in money market mutual funds.

(2)(i) In addition, a futures commission merchant or derivatives clearing organization may buy and sell the permitted investments listed in paragraphs (a)(1)(i) through (viii) of this section pursuant to agreements for resale or repurchase of the instruments, in accordance with the provisions of paragraph (d) of this section.

(ii) A futures commission merchant or a derivatives clearing organization may sell securities deposited by customers as margin pursuant to agreements to repurchase subject to the following:

(A) Securities subject to such repurchase agreements must be “readily marketable” as defined in § 240.15c3-1 of this title.

(B) Securities subject to such repurchase agreements must not be “specifically identifiable property” as defined in § 190.01(kk) of this chapter.

(C) The terms and conditions of such an agreement to repurchase must be in accordance with the provisions of paragraph (d) of this section.

(D) Upon the default by a counterparty to a repurchase agreement, the futures commission merchant or derivatives clearing organization shall act promptly to ensure that the default does not result in any direct or indirect cost or expense to the customer.

(3) In addition, subject to the provisions of paragraph (e) of this section, a futures commission merchant that is also registered with the Securities

and Exchange Commission as a securities broker or dealer pursuant to section 15(b)(1) of the Securities Exchange Act of 1934 may enter into transactions in which:

(i) Customer money is exchanged for securities that are permitted investments and are held by the futures commission merchant in connection with its securities broker or dealer activities;

(ii) Securities deposited by customers as margin are exchanged for securities that are permitted investments and are held by the futures commission merchant in connection with its securities broker or dealer activities; or

(iii) Securities deposited by customers as margin are exchanged for cash that is held by the futures commission merchant in connection with its securities broker or dealer activities.

(b) *General terms and conditions.* A futures commission merchant or a derivatives clearing organization is required to manage the permitted investments consistent with the objectives of preserving principal and maintaining liquidity and according to the following specific requirements:

(1) *Marketability.* Except for interests in money market mutual funds, investments must be “readily marketable” as defined in § 240.15c3-1 of this title.

(2) *Ratings.* (i) *Initial requirement.* Instruments that are required to be rated by this section must be rated by a nationally recognized statistical rating organization (NRSRO), as that term is defined in Securities and Exchange Commission rules or regulations, or in any applicable statute. For an investment to qualify as a permitted investment, ratings are required as follows:

(A) U.S. government securities and money market mutual funds need not be rated;

(B) Municipal securities, government sponsored enterprise securities, commercial paper, and corporate notes or bonds, except notes or bonds that are asset-backed, must have the highest short-term rating of an NRSRO or one of the two highest long-term ratings of an NRSRO;

(C) Corporate notes or bonds that are asset-backed must have the highest ratings of an NRSRO;

(D) Sovereign debt must be rated in the highest category by at least one NRSRO; and

(E) With respect to certificates of deposit, the commercial paper or long-term debt instrument of the issuer of a certificate of deposit or, if the issuer is part of a holding company system, its holding company's commercial paper or

long-term debt instrument, must have the highest short-term rating of an NRSRO or one of the two highest long-term ratings of an NRSRO.

(ii) *Effect of downgrade.* If an NRSRO lowers the rating of an instrument that was previously a permitted investment on the basis of that rating to below the minimum rating required under this section, the value of the instrument recognized for segregation purposes will be the lesser of:

(A) The current market value of the instrument; or

(B) The market value of the instrument on the business day preceding the downgrade, reduced by 20 percent of that value for each business day that has elapsed since the downgrade.

(3) *Restrictions on instrument features.*

(i) With the exception of money market mutual funds, no permitted investment may contain an embedded derivative of any kind, except as follows:

(A) The issuer of an instrument otherwise permitted by this section may have an option to call, in whole or in part, at par, the principal amount of the instrument before its stated maturity date; or

(B) An instrument that meets the requirements of paragraph (b)(3)(iv) of this section may provide for a cap, floor, or collar on the interest paid; *provided, however,* that the terms of such instrument obligate the issuer to repay the principal amount of the instrument at not less than par value upon maturity.

(ii) No instrument may contain interest-only payment features.

(iii) No instrument may provide payments linked to a commodity, currency, reference instrument, index, or benchmark except as provided in paragraph (b)(3)(iv) of this section, and it may not otherwise constitute a derivative instrument.

(iv) (A) Adjustable rate securities are permitted, subject to the following requirements:

(1) The interest payments on variable rate securities must correlate closely and on an unleveraged basis to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, the one-month or three-month LIBOR rate, or the interest rate of any fixed rate instrument that is a permitted investment listed in paragraph (a)(1) of this section.;

(2) The interest payment, in any period, on floating rate securities must be determined solely by reference, on an unleveraged basis, to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-

month Treasury Bill rate, the one-month or three-month LIBOR rate, or the interest rate of any fixed rate instrument that is a permitted investment listed in paragraph (a)(1) of this section;

(3) Benchmark rates must be expressed in the same currency as the adjustable rate securities that reference them; and

(4) No interest payment on an adjustable rate security, in any period, can be a negative amount.

(B) For purposes of this paragraph, the following definitions shall apply:

(1) The term *adjustable rate security* means, a floating rate security, a variable rate security, or both.

(2) The term *floating rate security* means a security, the terms of which provide for the adjustment of its interest rate whenever a specified interest rate changes and that, at any time until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(3) The term *variable rate security* means a security, the terms of which provide for the adjustment of its interest rate on set dates (such as the last day of a month or calendar quarter) and that, upon each adjustment until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(v) Certificates of deposit, if negotiable, must be able to be liquidated within one business day or, if not negotiable, must be redeemable at the issuing bank within one business day, with any penalty for early withdrawal limited to any accrued interest earned according to its written terms.

(4) *Concentration.* (i) *Direct investments.* (A) U.S. government securities and money market mutual funds shall not be subject to a concentration limit or other limitation.

(B) Securities of any single issuer of government sponsored enterprise securities held by a futures commission merchant or derivatives clearing organization may not exceed 25 percent of total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(C) Securities of any single issuer of municipal securities, certificates of deposit, commercial paper, or corporate notes or bonds held by a futures commission merchant or derivatives clearing organization may not exceed 5 percent of total assets held in segregation by the futures commission

merchant or derivatives clearing organization.

(D) Sovereign debt is subject to the following limits: a futures commission merchant may invest in the sovereign debt of a country to the extent it has balances in segregated accounts owed to its customers denominated in that country's currency; a derivatives clearing organization may invest in the sovereign debt of a country to the extent it has balances in segregated accounts owed to its clearing member futures commission merchants denominated in that country's currency.

(ii) *Repurchase agreements.* For purposes of determining compliance with the concentration limits set forth in this section, securities sold by a futures commission merchant or derivatives clearing organization subject to agreements to repurchase shall be combined with securities held by the futures commission merchant or derivatives clearing organization as direct investments.

(iii) *Reverse repurchase agreements.* For purposes of determining compliance with the concentration limits set forth in this section, securities purchased by a futures commission merchant or derivatives clearing organization subject to agreements to resell shall be combined with securities held by the futures commission merchant or derivatives clearing organization as direct investments.

(iv) *Transactions under paragraph (a)(3).* For purposes of determining compliance with the concentration limits set forth in this section, securities transferred to a customer segregated account pursuant to paragraphs (a)(3)(i) or (a)(3)(ii) of this section shall be combined with securities held by the futures commission merchant as direct investments.

(v) *Treatment of securities issued by affiliates.* For purposes of determining compliance with the concentration limits set forth in this section, securities issued by entities that are affiliated, as defined in paragraph (b)(6) of this section, shall be aggregated and deemed the securities of a single issuer. An interest in a permitted money market mutual fund is not deemed to be a security issued by its sponsoring entity.

(vi) *Treatment of customer-owned securities.* For purposes of determining compliance with the concentration limits set forth in this section, securities owned by the customers of a futures commission merchant and posted as margin collateral are not included in total assets held in segregation by the futures commission merchant, and securities posted by a futures commission merchant with a derivatives

clearing organization are not included in total assets held in segregation by the derivatives clearing organization.

(5) *Time-to-maturity.* (i) Except for investments in money market mutual funds, the dollar-weighted average of the time-to-maturity of the portfolio, as that average is computed pursuant to § 270.2a-7 of this title, may not exceed 24 months.

(ii) For purposes of determining the time-to-maturity of the portfolio, an instrument that is set forth in paragraphs (a)(1)(i) through (vii) of this section may be treated as having a one-day time-to-maturity if the following terms and conditions are satisfied:

(A) The instrument is deposited solely on an overnight basis with a derivatives clearing organization pursuant to the terms and conditions of a collateral management program that has become effective in accordance with § 39.4 of this chapter;

(B) The instrument is one that the futures commission merchant owns or has an unqualified right to pledge, is not subject to any lien, and is deposited by the futures commission merchant into a segregated account at a derivatives clearing organization;

(C) The derivatives clearing organization prices the instrument each day based on the current mark-to-market value; and

(D) The derivatives clearing organization reduces the assigned value of the instrument each day by a haircut of at least 2 percent.

(6) *Investments in instruments issued by affiliates.* (i) A futures commission merchant shall not invest customer funds in obligations of an entity affiliated with the futures commission merchant, and a derivatives clearing organization shall not invest customer funds in obligations of an entity affiliated with the derivatives clearing organization. An affiliate includes parent companies, including all entities through the ultimate holding company, subsidiaries to the lowest level, and companies under common ownership of such parent company or affiliates.

(ii) A futures commission merchant or derivatives clearing organization may invest customer funds in a fund affiliated with that futures commission merchant or derivatives clearing organization.

(7) *Recordkeeping.* A futures commission merchant and a derivatives clearing organization shall prepare and maintain a record that will show for each business day with respect to each type of investment made pursuant to this section, the following information:

(i) The type of instruments in which customer funds have been invested;

(ii) The original cost of the instruments; and

(iii) The current market value of the instruments.

(c) *Money market mutual funds.* The following provisions will apply to the investment of customer funds in money market mutual funds (the fund).

(1) The fund must be an investment company that is registered under the Investment Company Act of 1940 with the Securities and Exchange Commission and that holds itself out to investors as a money market fund, in accordance with § 270.2a-7 of this title.

(2) The fund must be sponsored by a federally-regulated financial institution, a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, an investment adviser registered under the Investment Advisers Act of 1940, or a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation.

(3) A futures commission merchant or derivatives clearing organization shall maintain the confirmation relating to the purchase in its records in accordance with § 1.31 and note the ownership of fund shares (by book-entry or otherwise) in a custody account of the futures commission merchant or derivatives clearing organization in accordance with § 1.26(a). If the futures commission merchant or the derivatives clearing organization holds its shares of the fund with the fund's shareholder servicing agent, the sponsor of the fund and the fund itself are required to provide the acknowledgment letter required by § 1.26.

(4) The net asset value of the fund must be computed by 9 a.m. of the business day following each business day and made available to the futures commission merchant or derivatives clearing organization by that time.

(5) (i) General requirement for redemption of interests. A fund shall be legally obligated to redeem an interest and to make payment in satisfaction thereof by the business day following a redemption request, and the futures commission merchant or derivatives clearing organization shall retain documentation demonstrating compliance with this requirement.

(ii) Exception. A fund may provide for the postponement of redemption and payment due to any of the following circumstances:

(A) Non-routine closure of the Fedwire or applicable Federal Reserve Banks;

(B) Non-routine closure of the New York Stock Exchange or general market conditions leading to a broad restriction of trading on the New York Stock Exchange;

(C) Declaration of a market emergency by the Securities and Exchange Commission; or

(D) Emergency conditions set forth in section 22(e) of the Investment Company Act of 1940.

(6) The agreement pursuant to which the futures commission merchant or derivatives clearing organization has acquired and is holding its interest in a fund must contain no provision that would prevent the pledging or transferring of shares.

(d) *Repurchase and reverse repurchase agreements.* A futures commission merchant or derivatives clearing organization may buy and sell the permitted investments listed in paragraphs (a)(1)(i) through (viii) of this section pursuant to agreements for resale or repurchase of the securities (agreements to repurchase or resell), provided the agreements to repurchase or resell conform to the following requirements:

(1) The securities are specifically identified by coupon rate, par amount, market value, maturity date, and CUSIP or ISIN number.

(2) Counterparties are limited to a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation, a securities broker or dealer, or a government securities broker or government securities dealer registered with the Securities and Exchange Commission or which has filed notice pursuant to section 15C(a) of the Government Securities Act of 1986.

(3) The transaction is executed in compliance with the concentration limit requirements applicable to the securities transferred to the customer segregated custodial account in connection with the agreements to repurchase referred to in paragraphs (b)(4)(ii) and (iii) of this section.

(4) The transaction is made pursuant to a written agreement signed by the parties to the agreement, which is consistent with the conditions set forth in paragraphs (d)(1) through (d)(12) of this section and which states that the parties thereto intend the transaction to be treated as a purchase and sale of securities.

(5) The term of the agreement is no more than one business day, or reversal of the transaction is possible on demand.

(6) Securities transferred to the futures commission merchant or derivatives clearing organization under the agreement are held in a safekeeping account with a bank as referred to in paragraph (d)(2) of this section, a

derivatives clearing organization, or the Depository Trust Company in an account that complies with the requirements of § 1.26.

(7) The futures commission merchant or the derivatives clearing organization may not use securities received under the agreement in another similar transaction and may not otherwise hypothecate or pledge such securities, except securities may be pledged on behalf of customers at another futures commission merchant or derivatives clearing organization. Substitution of securities is allowed, *provided, however*, that:

(i) The qualifying securities being substituted and original securities are specifically identified by date of substitution, market values substituted, coupon rates, par amounts, maturity dates and CUSIP or ISIN numbers;

(ii) Substitution is made on a "delivery versus delivery" basis; and

(iii) The market value of the substituted securities is at least equal to that of the original securities.

(8) The transfer of securities to the customer segregated custodial account is made on a delivery versus payment basis in immediately available funds. The transfer of funds to the customer segregated cash account is made on a payment versus delivery basis. The transfer is not recognized as accomplished until the funds and/or securities are actually received by the custodian of the futures commission merchant's or derivatives clearing organization's customer funds or securities purchased on behalf of customers. The transfer or credit of securities covered by the agreement to the futures commission merchant's or derivatives clearing organization's customer segregated custodial account is made simultaneously with the disbursement of funds from the futures commission merchant's or derivatives clearing organization's customer segregated cash account at the custodian bank. On the sale or resale of securities, the futures commission merchant's or derivatives clearing organization's customer segregated cash account at the custodian bank must receive same-day funds credited to such segregated account simultaneously with the delivery or transfer of securities from the customer segregated custodial account.

(9) A written confirmation to the futures commission merchant or derivatives clearing organization specifying the terms of the agreement and a safekeeping receipt are issued immediately upon entering into the transaction and a confirmation to the futures commission merchant or

derivatives clearing organization is issued once the transaction is reversed.

(10) The transactions effecting the agreement are recorded in the record required to be maintained under § 1.27 of investments of customer funds, and the securities subject to such transactions are specifically identified in such record as described in paragraph (d)(1) of this section and further identified in such record as being subject to repurchase and reverse repurchase agreements.

(11) An actual transfer of securities to the customer segregated custodial account by book entry is made consistent with Federal or State commercial law, as applicable. At all times, securities received subject to an agreement are reflected as "customer property."

(12) The agreement makes clear that, in the event of the bankruptcy of the futures commission merchant or derivatives clearing organization, any securities purchased with customer funds that are subject to an agreement may be immediately transferred. The agreement also makes clear that, in the event of a futures commission merchant or derivatives clearing organization bankruptcy, the counterparty has no right to compel liquidation of securities subject to an agreement or to make a priority claim for the difference between current market value of the securities and the price agreed upon for resale of the securities to the counterparty, if the former exceeds the latter.

(e) *Transactions by futures commission merchants that are also registered securities brokers or dealers.* A futures commission merchant that is also registered with the Securities and Exchange Commission as a securities broker or dealer pursuant to section 15(b)(1) of the Securities Exchange Act of 1934 may enter into transactions pursuant to paragraph (a)(3) of this section, subject to the following requirements:

(1) The futures commission merchant, in connection with its securities broker or dealer activities, owns or has the unqualified right to pledge the securities that are exchanged for customer money or securities held in the customer segregated account.

(2) The transaction can be reversed within one business day or upon demand.

(3) Securities transferred from the customer segregated account and securities transferred to the customer segregated account as a result of the transaction are specifically identified by coupon rate, par amount, market value, maturity date, and CUSIP or ISIN number.

(4) Securities deposited by customers as margin and transferred from the customer segregated account as a result of the transaction are subject to the following requirements:

(i) The securities are "readily marketable" as defined in § 240.15c3-1 of this title.

(ii) The securities are not "specifically identifiable property" as defined in § 190.01(kk) of this chapter.

(5) Securities transferred to the customer segregated account as a result of the transaction are subject to the following requirements:

(i) The securities are priced each day based on the current mark-to-market value.

(ii) The securities are subject to the concentration limit requirements set forth in paragraph (b)(4)(iv) of this section.

(iii) The securities are held in a safekeeping account with a bank, as referred to in paragraph (d)(2) of this section, a derivatives clearing organization, or the Depository Trust Company in an account that complies with the requirements of § 1.26.

(iv) The securities may not be used in another similar transaction and may not otherwise be hypothecated or pledged, except such securities may be pledged on behalf of customers at another futures commission merchant or derivatives clearing organization. Substitution of securities is allowed, *provided, however*, that:

(A) The qualifying securities being substituted and original securities are specifically identified by date of substitution, market values substituted, coupon rates, par amounts, maturity dates and CUSIP or ISIN numbers;

(B) Substitution is made on a "delivery versus delivery" basis; and

(C) The market value of the substituted securities is at least equal to that of the original securities.

(6) The transactions are carried out in accordance with the following procedures:

(i) With respect to transactions under paragraph (a)(3)(i) of this section, the transfer of securities to the customer segregated custodial account shall be made simultaneously with the transfer of money from the customer segregated cash account. In no event shall money held in the customer segregated cash account be disbursed prior to the transfer of securities to the customer segregated custodial account. Any transfer of securities to the customer segregated custodial account shall not be recognized as accomplished until the securities are actually received by the custodian of such account. Upon unwinding of the transaction, the

customer segregated cash account shall receive same-day funds credited to such account simultaneously with the delivery or transfer of securities from the customer segregated custodial account.

(ii) With respect to transactions under paragraph (a)(3)(ii) of this section, the transfer of securities to the customer segregated custodial account shall be made simultaneously with the transfer of securities from the customer segregated custodial account. In no event shall securities held in the customer segregated custodial account be released prior to the transfer of securities to that account. Any transfer of securities to the customer segregated custodial account shall not be recognized as accomplished until the securities are actually received by the custodian of the customer segregated custodial account. Upon unwinding of the transaction, the customer segregated custodial account shall receive the securities simultaneously with the delivery or transfer of securities from the customer segregated custodial account.

(iii) With respect to transactions under paragraph (a)(3)(iii) of this section, the transfer of money to the customer segregated cash account shall be made simultaneously with the transfer of securities from the customer segregated custodial account. In no event shall securities held in the customer segregated custodial account be released prior to the transfer of money to the customer segregated cash account. Any transfer of money to the customer segregated cash account shall not be recognized as accomplished until the money is actually received by the custodian of the customer segregated cash account. Upon unwinding of the transaction, the customer segregated custodial account shall receive the securities simultaneously with the disbursement of money from the customer segregated cash account.

(7) The futures commission merchant maintains all books and records with respect to the transactions in accordance with §§ 1.25, 1.27, 1.31, and 1.36 and the applicable rules and regulations of the Securities and Exchange Commission.

(8) An actual transfer of securities by book entry is made consistent with Federal or State commercial law, as applicable. At all times, securities transferred to the customer segregated account are reflected as "customer property."

(9) For purposes of §§ 1.25, 1.26, 1.27, 1.28 and 1.29, securities transferred to the customer segregated account are considered to be customer funds until

the customer money or securities for which they were exchanged are transferred back to the customer segregated account. In the event of the bankruptcy of the futures commission merchant, any securities exchanged for customer funds and held in the customer segregated account may be immediately transferred.

(10) In the event the futures commission merchant is unable to return to the customer any customer-deposited securities exchanged pursuant to paragraphs (a)(3)(ii) or (a)(3)(iii) of this section, the futures commission merchant shall act promptly to ensure that such inability does not result in any direct or indirect cost or expense to the customer.

(f) *Deposit of firm-owned securities into segregation.* A futures commission merchant shall not be prohibited from directly depositing unencumbered securities of the type specified in this section, which it owns for its own account, into a segregated safekeeping account or from transferring any such securities from a segregated account to its own account, up to the extent of its residual financial interest in customers' segregated funds; provided, however, that such investments, transfers of securities, and disposition of proceeds from the sale or maturity of such securities are recorded in the record of investments required to be maintained by § 1.27. All such securities may be segregated in safekeeping only with a bank, trust company, derivatives clearing organization, or other registered futures commission merchant. Furthermore, for purposes of §§ 1.25, 1.26, 1.27, 1.28 and 1.29, investments permitted by § 1.25 that are owned by the futures commission merchant and deposited into such a segregated account shall be considered customer funds until such investments are withdrawn from segregation.

■ 3. Section 1.27 is amended as follows:

■ A. By inserting the word "derivatives" before the term "clearing organization" in paragraphs (a) and (b);

■ B. By inserting the phrase "or current market value of securities" after the phrase "The amount of money" in paragraph (a)(3);

■ C. By inserting the phrase "or current market value of securities" after the phrase "the amount of money" in paragraph (a)(6);

■ D. By deleting "and" at the end of paragraph (a)(6);

■ E. By changing the period to a semi-colon at the end of paragraph (a)(7) and inserting "and" at the end of that paragraph; and

■ F. By adding paragraph (a)(8) to read as follows:

§ 1.27 Record of investments.

(a) * * *

(8) Daily valuation for each instrument and readily available documentation supporting the daily valuation for each instrument. Such supporting documentation must be sufficient to enable auditors to verify the valuations and the accuracy of any information from external sources used in those valuations.

* * * * *

Issued in Washington, DC on May 11, 2005, by the Commission.

Catherine D. Daniels,

Assistant Secretary of the Commission.

[FR Doc. 05-9794 Filed 5-16-05; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96-1-026]

Standards for Business Practices of Interstate Natural Gas Pipelines

Issued May 9, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations governing standards for conducting business practices with interstate natural gas pipelines. The Commission is incorporating by reference the most recent version of the standards, Version 1.7, promulgated December 31, 2003, by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB); the standards ratified by NAESB on June 25, 2004 to implement Order No. 2004; the standards ratified by NAESB on May 3, 2005 to implement Order No. 2004-A; and the standards implementing gas quality reporting requirements ratified by NAESB on October 20, 2004. These standards can be obtained from NAESB at 1301 Fannin, Suite 2350, Houston, TX 77002, 713-356-0060, <http://www.naesb.org>.

EFFECTIVE DATES: The rule will become effective June 16, 2005. Pipelines are required to comply with this rule by making a compliance filing on or before July 1, 2005 with an effective date of September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, DC 20426; 202-502-8292.

Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; 202-502-6507.

Jamie Chabinsky, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; 202-502-6040.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suede G. Kelly; ORDER NO. 654

1. The Federal Energy Regulatory Commission (Commission) is amending § 284.12 of its open access regulations governing standards for conducting business practices and electronic communications with interstate natural gas pipelines.¹ The Commission is incorporating by reference the most recent version, Version 1.7, of the consensus standards promulgated by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB). The Commission is also incorporating by reference the standards ratified by NAESB on June 25, 2004 to implement Order No. 2004,² the standards ratified by NAESB on May 3, 2005 to implement Order No. 2004-A, and the standards to implement gas quality reporting requirements ratified by NAESB on October 20, 2004, in Recommendation R03035A, which NAESB intends to include in its next version of standards (Version 1.8). This rule is intended to benefit the public by adopting the most recent and up-to-date standards governing business practices and electronic communication.

I. Background

2. Since 1996, in the Order No. 587 series,³ the Commission has adopted

regulations to standardize the business practices and communication methodologies of interstate pipelines in order to create a more integrated and efficient pipeline grid. In this series of orders, the Commission incorporated by reference consensus standards developed by the WGQ (formerly the Gas Industry Standards Board or GISB), a private consensus standards developer composed of members from all segments of the natural gas industry. NAESB is an accredited standards organization under the auspices of the American National Standards Institute (ANSI).

3. On April 14, 2004 NAESB filed with the Commission a report informing the Commission that the WGQ had adopted a new version of its standards, Version 1.7. NAESB reports that Version 1.7 includes standards for partial day recalls which were requested in Order No. 587-N. The Commission previously incorporated these standards by reference in Order No. 587-R.⁴ Version 1.7 also contains ten standards regarding creditworthiness⁵ which the Commission proposed to adopt in a Notice of Proposed Rulemaking (NOPR) in Docket No. RM04-4-000.⁶ Version

FERC Stats. & Regs. Regulations Preambles [July 1996-December 2000] ¶ 31,050 (Mar. 4, 1997), Order No. 587-G, 63 FR 20072 (Apr. 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996-December 2000] ¶ 31,062 (Apr. 16, 1998), Order No. 587-H, 63 FR 39509 (July 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996-December 2000] ¶ 31,063 (July 15, 1998); Order No. 587-I, 63 FR 53565 (Oct. 6, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996-December 2000] ¶ 31,067 (Sept. 29, 1998), Order No. 587-K, 64 FR 17276 (Apr. 9, 1999), FERC Stats. & Regs. Regulations Preambles [July 1996-December 2000] ¶ 31,072 (Apr. 2, 1999); Order No. 587-M, 65 FR 77285 (Dec. 11, 2000), FERC Stats. & Regs. Regulations Preambles [July 1996-December 2000] ¶ 31,114 (Dec. 11, 2000); Order No. 587-N, 67 FR 11906 (Mar. 18, 2002), III FERC Stats. & Regs. Regulations Preambles ¶ 31,125 (Mar. 11, 2002), Order No. 587-O, 67 FR 30788 (May 8, 2002), III FERC Stats. & Regs. Regulations Preambles ¶ 31,129 (May 1, 2002); Order No. 587-R, 68 FR 13813 (Mar. 21, 2003), III FERC Stats. & Regs. Regulations Preambles ¶ 31,141 (Mar. 12, 2003).

⁴ Order No. 587-R, 68 FR 13813 (Mar. 21, 2003), III FERC Stats. & Regs. Regulations Preambles & 31,141 (Mar. 12, 2003).

⁵ The credit-related standards in Version 1.7, which we are incorporating by reference, are designated as Standards 0.3.3 through 0.3.10, 5.3.59 and 5.3.60. They include procedures for the following practices: requesting additional information for credit evaluation; acknowledging and responding to requests and receipt of information; notice regarding creditworthiness and notice regarding contract termination due to credit-related issues; forms of communication; reevaluation of determinations that a Service Requester is not creditworthy; and awarding capacity release offers only after a service requester has been determined to meet the creditworthiness requirements applicable to all services.

⁶ Creditworthiness Standards for Interstate Natural Gas Pipeline, Notice of Proposed Rulemaking (NOPR), 69 FR 8587 (Feb. 25, 2004), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,573 (Feb. 12, 2004).

1.7 contains revisions that more accurately reflect the workings of the market including the definition of transaction types, charge types, Service Codes, and Reduction Reason Codes. Other revisions update standards that contained outmoded references, make the naming conventions more uniform, and permit use of proprietary entity codes when D-U-N-S® numbers are not available. In addition, the Version 1.7 standards update the treatment of allocations as well as requests for information on scheduled quantities, allocations, and shipper imbalances.

4. On August 6, 2004, NAESB filed with the Commission a report informing the Commission that on June 25, 2004 the WGQ membership ratified a package of modifications to the Version 1.7 standards to implement Order No. 2004 (2004 Annual Plan Item 2 FERC Order 2004). These standards modify the Informational Posting requirements for pipeline web sites to reflect the information required to be posted pursuant to Order No. 2004 and will be included as part of the WGQ's Version 1.8 standards.

5. On October 1, 2004, NAESB filed a report with the Commission informing the Commission that errata to Version 1.7 of the NAESB WGQ standards were adopted by the Executive Committee on August 26, 2004 and, following a member comment period, the errata would be applied to Version 1.7 on October 15, 2004. The errata contain minor corrections which remove the table of code values for Bidder Affiliate from Standard 5.4.13 and correct the Transaction Status Code data element in the Code Values Dictionary of Standard 1.4.2.

6. On November 1, 2004, NAESB filed a report with the Commission informing the Commission that on October 20, 2004 the WGQ membership ratified standards to implement gas quality reporting requirements (Recommendation R03035A).⁷ These standards require a pipeline to provide a link on its Informational Posting Web Site to its gas quality tariff provisions, or a simple reference guide to such information. In addition, a pipeline is required to provide on its Informational Postings Web site, in a downloadable format, daily average gas quality information for prior day(s) to the extent available for locations(s) that are

⁷ The standards ratified October 20, 2004 modified Standard 4.3.23 and added Principle 4.1.p1 and Standards 4.3.s1, 4.3.s2, 4.3.s3, and 4.3.s4. On March 18, 2005, NAESB filed a report informing the Commission that the added Principle and Standards have been assigned the following permanent numbers: Principle 4.1.40 and Standards 4.3.89, 4.3.90, 4.3.91, and 4.3.92, respectively.

¹ 18 CFR 284.12 (2004).

² Order No. 2004, 68 FR 69134 (Dec. 11, 2003), III FERC Stats. & Regs. Regulations Preambles ¶ 31,155 (Nov. 25, 2003); Order No. 2004-A, 69 FR 23562 (Apr. 29, 2004), III FERC Stats. & Regs. Regulations Preambles ¶ 31,161 (Apr. 16, 2004); Order No. 2004-B, 69 FR 48371 (Aug. 10, 2004) III FERC Stats. & Regs. Regulations and Preambles ¶ 31,166 (Aug. 2, 2004), Order No. 2004-C, 70 FR 284 (Jan. 4, 2005), III FERC Stats. & Regs. Regulations Preambles ¶ 31,172 (Dec. 21, 2004); Order No. 2004-D, FERC Stats. & Regs. Regulations Preambles ¶ 61,320 (Mar. 23, 2005).

³ Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (July 26, 1996), FERC Stats. & Regs. Regulations Preambles [July 1996-December 2000] ¶ 31,038 (July 17, 1996), Order No. 587-B, 62 FR 5521 (Feb. 6, 1997), FERC Stats. & Regs. Regulations Preambles [July 1996-December 2000] ¶ 31,046 (Jan. 30, 1997), Order No. 587-C, 62 FR 10684 (Mar. 10, 1997),

representative of mainline gas flow for the most recent three-month period.

7. On December 21, 2004, the Commission issued a NOPR⁸ that proposed to adopt Version 1.7 of the consensus standards, the standards ratified by NAESB on June 24, 2004 to implement Order No. 2004 and the standards to implement gas quality reporting requirements ratified by NAESB in Recommendation R03035A.⁹ Five comments and one reply comment were filed.¹⁰ The comments generally support adoption of the standards, although some comments raise issues regarding the gas quality standards, creditworthiness standards, and implementation date.

8. On April 12, 2005, NAESB notified the Commission that the Executive Committee adopted errata to be applied to Version 1.7 on April 1, 2005. The errata correct certain errors in the validation codes in the Code Values Dictionary of NAESB WGQ Standards 1.4.2 (Nomination Quick Response) and 1.4.7 (Confirmation Quick Response).¹¹

9. On April 22, 2005 NAESB notified the Commission that a modification to Standard 4.3.23 was approved by the NAESB WGQ Executive Committee on April 4, 2005 and distributed for WGQ member ratification, with ballots due on May 3, 2005. The modification to the standard specifies a location for posting voluntary consent to information disclosure by non affiliated customers as required by § 358 of the Commission's regulations.¹²

II. Discussion

10. The Commission is incorporating by reference Version 1.7 of the NAESB consensus standards; the standards to implement Order No. 2004 ratified by NAESB on June 25, 2004 (2004 Annual

Plan Item 2 FERC Order 2004); the standards to implement Order No. 2004—A ratified by NAESB on May 3, 2005 (2005 Annual Plan Item 8 FERC Order 2004); and the standards governing gas quality reporting ratified by NAESB on October 20, 2004 (Recommendation R03035A).¹³ Pipelines will be required to implement the standards by September 1, 2005, which is the first day of the month following 90 days after the issuance of this rule.¹⁴

11. The adoption of Version 1.7¹⁵ of the NAESB WGQ standards will help continue the process of updating and improving the current standards. In adopting the Version 1.7 standards, the Commission is adopting the new "Additional Standards" implementation guide that contains standards generally applicable to all the business processes. The Additional Standards include standards governing the use of common codes to identify entities in transactions and the creditworthiness standards.

12. The Commission is also adopting the NAESB standards related to gas quality in WGQ Recommendation R03035A. These standards require a pipeline to provide a link on its Informational Posting Web Site to its gas quality tariff provisions, or a simple reference guide to such information. In addition, a pipeline is required to provide on its Informational Postings Web site, in a downloadable format, daily average gas quality information for prior day(s) to the extent available for location(s) that are representative of mainline gas flow for the most recent three-month period. Adoption of these standards will provide greater transparency to shippers with respect to the gas quality requirements of interstate pipelines and available information on gas quality on such pipelines' systems.

13. The NAESB WGQ approved the standards under NAESB's consensus procedures.¹⁶ As the Commission found

in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In section 12(d) of the National Technology Transfer and Advancement Act of 1995, Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as means to carry out policy objectives or activities.¹⁷

14. The Comments addressing various aspects of the standards will be addressed below.

A. Implementation Date

15. INGAA requests that the Commission implement the standards on the first day of the month following 180 days after issuance of a final rule. INGAA maintains that a transition to the new standards and the business requirements supported by those standards will be coordinated most effectively and seamlessly with the existing accounting, billing and nomination processes if such a transition is implemented at the beginning of a month. INGAA also states that delaying the required implementation date to 180 days after issuance of the final rule will allow time for interstate pipelines to make necessary changes in systems and procedures to implement the posting of gas quality criteria and data.

16. The Commission agrees that requiring implementation on the first of the month allows for a more effective transition, and will therefore grant INGAA's request. However, we will not grant the requested 180-day delay in implementation. The pipelines have been on notice of the consensus standards since the standards were ratified and adopted. Also, the request relates principally to the gas quality standards, and thus does not justify a 180-day delay for implementing all the standards. We recognize that individual pipelines may have more difficulty in

Committee with support from at least two members from each of the five industry segments—interstate pipelines, local distribution companies, gas producers, end-users, and services (including marketers and computer service providers). For final approval, 67 percent of the WGQ's general membership must ratify the standards.

¹⁷ Pub. L. 104-113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

⁸ Standards for Business Practices of Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 70 FR 319 (Jan. 4, 2005), FERC Stats. & Regs. Proposed Regulations ¶ 32,578 (Dec. 21, 2004).

⁹ Section 284.12(a)(2) also is revised to reflect NAESB's current address.

¹⁰ Those filing comments are: American Gas Association (AGA); BP America Production Company and BP Energy Company (jointly "BP"); Florida Power and Light Company (FPL); the Interstate Natural Gas Association of America (INGAA); Tennessee Valley Authority (TVA); and Total Peaking Services, LLC (Total Peaking). On March 14, 2005, INGAA filed reply comments.

¹¹ Additionally, the errata correct the definition of Monthly Allocation in 2.2.4 in the NAESB WGQ Standards Book 1 of 2. The correct definition was originally adopted prior to publication of Version 1.7, but during publication of Version 1.7 the definition was captured incorrectly. However, the definition is correct in the NAESB WGQ Flowing Gas Related Standards book.

¹² 18 CFR 358 (2004). NAESB states that it made the modification in response to paragraph 10 of the NOPR in this proceeding.

¹³ Pursuant to the regulations regarding incorporation by reference, copies of Version 1.7 are available from NAESB. 5 U.S.C. 552(a)(1); 1 CFR 51 (2001).

¹⁴ The Commission is also revising § 284.12(a)(2) to reflect NAESB new address.

¹⁵ In Version 1.7 the NAESB WGQ made the following changes to its standards, including the creditworthiness standards. It revised Standards 1.3.32, 2.3.21, 4.3.1, 4.3.2, 5.3.2, 5.3.7, 5.3.41, and 5.3.42, and Datasets 1.4.1 through 1.4.7, 2.4.1 through 2.4.16, 3.4.1 through 3.4.4, and 5.4.1 through 5.4.22. It added Principles 1.1.22, 2.1.6, 5.1.2, 5.1.3, and 5.1.4, Definitions 2.2.4, 2.2.5 and 5.2.3, and Standards 0.3.2, 0.3.3 through 0.3.10, 2.3.51 through 2.3.64, and 5.3.44 through 5.3.60. It deleted Principles 1.1.6, 1.1.8, 1.1.19, and 4.1.14, and Standards 1.3.78, 2.3.24, 2.3.36 through 2.3.39, and 5.3.6.

¹⁶ This process first requires a super-majority vote of 17 out of 25 members of the WGQ's Executive

implementing some of the standards, and the Commission has in the past been willing to grant extensions of time for implementation when pipelines have justified such requests. Accordingly, the Commission is requiring implementation on the first of the month, following 90 days after issuance of this final rule.

B. Gas Quality Standards

1. Tariff Provisions Regarding Gas Quality Standards

17. The gas quality standards ratified by NAESB include Standard 4.3.89 (formerly 4.3.s1), which states a pipeline should provide, on its Web site, a link to the natural gas quality tariff provisions or, where no tariff exists in the general terms and conditions, a simple reference guide to such information. FPL maintains that merely providing a link to the existing tariff provision will not necessarily provide clarity for end users or operational personnel unless the Commission encourages development of more clearly written and presented tariff language. FPL states that additional progress towards gas quality measurement standardization should be made. Specifically, FPL states that the absence of a consistent definition of the chemical characteristics of natural gas can cause problems for end users. FPL also states that standardized assumptions upon which chemical characteristics or physical properties are determined are needed.¹⁸ AGA requests that the Commission confirm the reporting standard does not relieve pipelines of their responsibility to ensure adherence to the gas quality specifications in their tariffs.

18. These requests go beyond the scope of this rule, which addresses only the posting requirements for standards. Issues as to the clarity and substance of tariff provisions should be addressed in individual pipeline proceedings in which these issues are raised. The Commission has recognized that the issue of how to measure gas quality is of importance to the industry and has established a Natural Gas Interchangeability proceeding in Docket No. PL04-3-000 to address these substantive issues.¹⁹ The issues raised

¹⁸ FPL states that the Environmental Protection Agency defines standard conditions as 68 degrees Fahrenheit at 1 atmosphere of pressure, but pipelines generally define and measure the volume of gas transported at 60 degrees Fahrenheit and an absolute pressure of 14.73 pounds per square inch absolute, and variances exist from this measure.

¹⁹ The Commission held a technical conference on these issues on February 18, 2004, and on March 2, 2005 issued a request for comment on two papers filed by the Natural Gas Council: *White Paper on*

by FPL and AGA are more appropriately considered in that proceeding.

2. Information Posting

19. Standard 4.3.90 (formerly 4.3.s2) states that pipelines should provide information "to the extent available, for location(s) that are representative of mainline gas flow." BP states that this standard does not specify the data to be included in the operational posting, and the Commission's requirements in Natural²⁰ are appropriate and should be incorporated into this rule. BP contends that the Natural standards include the requirement that the pipeline must post on its Internet Web site every receipt point dewpoint value it calculates, along with the method by which the dewpoint was calculated, and every blended dewpoint and blended BTU value it calculates for a line segment of its system. In Natural, the Commission required that the information must be posted within 24 hours of completion of the calculations.

20. The Commission is incorporating the standards as developed by the WGQ. These standards represent a consensus of the industry as to the minimum posting requirements for information on gas quality that are applicable to all pipelines. In individual pipeline cases, such as in Natural, the Commission may have specified additional information be posted.²¹ Pipelines that are required to comply with such requirements must continue to do so, and the WGQ standards accommodate such postings. However, whether such requirements developed in individual cases should be extended to the entire industry is beyond the scope of this proceeding. Such issues can be raised in the proceeding in Docket No. PL04-3-000 that the Commission has instituted. Regarding BP's concern with the timeliness of posting, we expect that pipelines will promptly post their information.

Liquid Hydrocarbon Drop Out in Natural Gas Infrastructure and White Paper on Natural Gas Interchangeability and Non-Combustion End Use. On April 13, 2005, the Commission issued a notice of a technical conference to be held May 17, 2005, to consider further comments on the NGC reports and recommendations for Commission action on natural gas quality and liquefied natural gas interchangeability issues.

²⁰ Natural Gas Pipeline Co., 102 FERC ¶ 61,234, order on reh'g, 104 FERC ¶ 61,322 (2003) (Natural).

²¹ The procedures developed in Natural were the result of problems Natural experienced during the winter of 2000-2001 when gas prices were so high that liquefiable hydrocarbons had a greater value to shippers as constituents of the gas stream than as extracted liquids. Shippers ceased their common practice of extracting the liquefiable hydrocarbons before tendering the gas to Natural, and this caused the closing of two gas processing plants that normally would tender processed residue gas.

21. Additionally, BP states that pipelines should not be able to avoid compliance with the data posting requirements by claiming that the data are not available at a specific location, and that the rule should provide that all pipelines must develop the means, to the extent they do not already have equipment in place, to measure gas quality at key points. TVA states that consumers should have access to documented information on the quality of the product being received, and that information should include measurements against a well-defined, documented formula and be publicly posted. INGAA states such a requirement would involve pipelines installing additional gas quality equipment, thus imposing on pipelines and their ratepayers millions of dollars of investment for new equipment. INGAA maintains the installation of additional equipment at each receipt point would add little or no value in improving safety and/or efficiency of pipeline operations.

22. These standards involve only the posting of information obtained by the pipeline and require only that the pipeline post information it already has obtained. Issues relating to the development of additional information or other substantive questions are beyond the scope of this proceeding and should be addressed in individual cases or in the Commission's generic proceeding on gas quality.

23. AGA states that, in adopting the NAESB gas quality standards, the Commission should include direction to the pipelines that in implementing the standards they should consult with their customers to determine which points are "representative of mainline gas flow" on its system. AGA states that the pipelines should provide meaningful indication of gas quality at all major delivery points. The Commission agrees that the pipelines should post information relevant to their shippers and consult with shippers in determining the information posted.

3. Exemption

24. Total Peaking proposes an exemption from the gas quality posting requirements for natural gas companies that do not physically deliver natural gas into the facilities of an interstate pipeline. Total Peaking states it is a liquid natural gas storage company subject to Natural Gas Act jurisdiction and is required to have a tariff on file with the Commission. It states that the purpose of gas quality reporting cannot be served by imposing additional gas quality and measurement and reporting obligations on entities such as Total

Peaking, which do not physically deliver natural gas into the facilities of an interstate pipeline.

25. We decline to grant a generic waiver of the standards as proposed by Total Peaking. The standards are intended to provide information regarding the quality of a particular pipeline or storage facility's system. Even though Total Peaking may not deliver gas to an interstate pipeline, the gas quality information may be useful to its customers. Although we decline to grant the generic exemption Total Peaking requests, entities such as Total Peaking may request a waiver of the requirements in their individual compliance filings where justified.

C. Creditworthiness

26. In the NOPR, we proposed to incorporate by reference the creditworthiness standards adopted by NAESB that had previously been noticed in the creditworthiness rulemaking in Docket No. RM04-4-000.²² In the NOPR in this proceeding, the Commission stated it would address the comments filed on these standards before the issuance of a final rule adopting these standards.²³

27. The ten WGQ standards on creditworthiness provide procedural rules by which pipelines should deal with their customers with respect to credit issues, such as providing shippers with the reasons a pipeline is requesting credit information, procedures for communications between pipelines and customers, and the timeline for providing responses to requests for credit reevaluation.

28. Commenters in Docket No. RM04-4-000 generally support, or do not oppose, the consensus standards on creditworthiness. Many shippers urge the Commission to adopt the ten creditworthiness consensus standards.²⁴ Several pipelines also support the incorporation of the ten NAESB standards into the Commission's regulations.²⁵ Commenters, however, raise several issues which will be discussed below.

²² Creditworthiness Standards for Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 69 FR 8587 (Feb. 25, 2004), FERC Stats. & Regs. Regulations Preambles ¶ 32,573 (Feb. 12, 2004).

²³ We are addressing the comments filed in Docket No. RM04-4-000 regarding creditworthiness here.

²⁴ See, e.g., Northwest Industrial Gas Users at 7; Process Gas Consumers Group, *et al.* at 9-13; Calpine Corporation at 18; Encana Marketing (USA) Inc. at 4, 9-10.

²⁵ National Fuel at 2; Vector at 2-3; Williston Basin at 3; INGAA at 42.

1. Notice to Releasing Shippers

29. Standard 5.3.60 provides that a pipeline should provide the original releasing shipper with Internet E-mail notification "reasonably proximate in time" of the following events: (1) Notice to the replacement shipper regarding the replacement shipper's past due, deficiency, or default status pursuant to the pipeline's tariff; (2) notice to the replacement shipper regarding the replacement shipper's suspension of service notice; (3) notice to the replacement shipper regarding the replacement shipper's contract termination notice due to default or credit-related issues; and (4) notice to the replacement shipper that the replacement shipper(s) is no longer creditworthy and has not provided credit alternative(s) pursuant to the pipeline's tariff.

30. Several commenters point out that in creditworthiness orders, the Commission required pipelines to provide simultaneous notice to a releasing shipper and a replacement shipper upon determining that a replacement shipper is not creditworthy.²⁶ Commenters argue that the standard of "simultaneous notice" is preferable to the standard of "reasonably proximate in time" in Standard 5.3.60 (formerly 5.3.zF) given the importance of timely notice of credit-related events, since notice need only be sent to a small list of parties (the original releasing shipper(s)), since simultaneity is unambiguous, and since releasing shippers could be liable for unpaid reservation charges if a replacement shipper defaults.²⁷ If the Commission retains the "reasonably proximate" standard, Peoples requests a limitation in the rule clarifying that no more than one business day constitutes "reasonably proximate."²⁸ Moreover, Peoples requests clarification that given the time sensitivity associated with credit related information, the requirement is not that the releasing shipper receive the notice that the pipeline sent to the replacement shipper, but only that the releasing shipper receive notice that such a notice was sent.²⁹

31. Alliance, however, contends that requiring the pipeline to provide the releasing shipper with notice regarding the replacement shipper's financial

²⁶ See, e.g., *Tennessee Gas Pipeline Co.*, 102 FERC ¶ 61,075 at P 78 (2003); *Northern Natural Gas Co.*, 103 FERC ¶ 61,276 at P 43 (2003).

²⁷ AGA at 10-11, Dominion at 6-7, Peoples at 6-8.

²⁸ Peoples at 6-7.

²⁹ See Peoples at 8 (suggesting revised regulatory language).

performance could expose the pipeline to claims of liability, particularly where the replacement shipper has not defaulted on its contractual obligations, but is merely past due or deficient, or in situations where the replacement shipper has not authorized the release of confidential information to third parties.³⁰ Alliance argues that, if the releasing shipper wants to require the replacement shipper to provide the releasing shipper with notice of any changes in its financial performance, the releasing shipper should make such a requirement a condition of the release. Alliance contends that the pipeline should not be required to keep the releasing shipper apprised of the replacement shipper's performance.

32. The Commission will adopt the standard as proposed by the WEQ since this standard reflects the consensus of the industry. Providing simultaneous notice is not necessary, as long as the notice to the releasing shipper is provided promptly, such as on the same day as the notice to the replacement shipper.

33. Nor does the Commission see a need to revise Standard 5.3.60 to respond to the comments filed by Peoples and Alliance. The standard does not require the pipeline to provide an identical notice to the releasing shipper, only that the releasing shipper should receive notice that one of the events has occurred. With respect to Alliance's concerns, we find that it is a reasonable default provision for the pipeline to notify the releasing shipper of conditions that may affect the replacement shipper's ability to perform under its release. Such information is relevant, for example, to the releasing shipper's decision whether to recall capacity. Further, replacement shippers that object to this condition can seek to obtain agreement from the releasing shipper that the releasing shipper will not receive such a notice. Alliance has not shown that liability will attach to the pipeline in such a case.

34. Alliance suggests that such notice only be provided when the releasing shipper includes the provision in the terms and conditions of the release. However, given the comments by releasing shippers on the proposed standard and in many of the creditworthiness cases, it appears that, in the majority of cases, the releasing shipper will insist on such a provision in a release, and, therefore, we find the inclusion of this standard reasonable as the default provision. However, we clarify that if the releasing and replacement shippers agree that such

³⁰ Alliance at 15-17.

notice not be provided, that agreement can be included in the terms and conditions of the release, in which case the pipeline will not provide the notice.

2. Publishing the Standards in the Regulations

35. NiSource contends the Commission should restate the ten consensus standards in the regulations since the standards are a critically important component of this rulemaking. NiSource states that restating the standards in the regulations will facilitate the interpretation and implementation of the rules.

36. As the Commission has explained in previous orders, the Freedom of Information Act and implementing regulations establish that the proper method of adopting private sector standards is to incorporate those standards by reference into the agency's regulations.³¹ Because these standards are copyrighted, reproducing them in the regulations is not appropriate.³² However, the standards are available on compact disc from NAESB at the reasonable price of \$100.³³

D. 2004 Standards

37. As the Commission stated in the NOPR, the NAESB standards with respect to the Order No. 2004 affiliate standards establish uniform posting requirements for the Commission requirements. However, the NAESB standards were developed prior to the issuance of Order No. 2004-A, and revised Standard 4.3.23 did not specify a location for posting voluntary consent to information disclosure by non

affiliated customers as required by § 358 of the Commission's regulations.³⁴ The Commission noted that electric utilities and pipelines have been posting this information as a separate category from other non-discrimination requirements, and that posting this information as a separate category represents a better practice, since it will make it easier for the Commission as well as other parties to find and access this information. The Commission stated that it expects pipelines and electric utilities to post this information as a separate category.

38. On May 3, 2005, the NAESB membership ratified a revision to Standard 4.3.23 to provide for a separate category for posting voluntary consent information consistent with the Commission's policy, and the Commission will incorporate this modification into its regulations.

Notice of Use of Voluntary Consensus Standards

39. Office of Management and Budget Circular A-119 (§ 11) (February, 10, 1998) provides that when a Federal agency issues or revises a regulation containing a standard, the agency should publish a statement in the final rule stating whether the adopted standard is a voluntary consensus standard or a government-unique standard. In this rulemaking, the Commission is incorporating by reference voluntary consensus standards developed by the WGQ.

Information Collection Statement

40. The Office of Management and Budget's (OMB) regulations in 5 CFR 1320.11 (2005) require that it approve

certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

41. The final rule will affect the following existing data collections: FERC-545 "Gas Pipeline Rates: Rate Change (Non-Formal)" (OMB Control No. 1902-0154) and FERC-549C "Standards for Business Practices of Interstate Natural Gas Pipelines" (OMB Control No. 1902-0174). The following burden estimates are related only to this rule and include the costs of complying with Version 1.7 of the WGQ's consensus standard as modified by the standards ratified by the WGQ on June 25, 2004, to implement Order No. 2004 and the standards to implement gas quality reporting requirements ratified by the WGQ on October 20, 2004, in Recommendation R03035A. The burden estimates for the FERC-545 data collection are related to the tariff filings required to implement these standards. The burden estimates for the FERC-549C data collection are related to implementing the latest version of the business practice standards and related data sets. The costs for both of these data collections are primarily related to start-up and will not be on-going costs.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total annual hours
FERC-545	93	1	38	3,534
FERC-549C	93	1	2,614	243,102

The total annual hours for collection is 246,636 hours.

	FERC-549C	FERC-545
Annualized Capital/Startup Costs	\$12,691,327	\$184,495
Annualized Costs (Operations & Maintenance)	0	0
Total Annualized Costs	12,691,327	184,495

³¹ Standards for Business Practices of Interstate Natural Gas Pipeline, 95 FERC ¶ 61,127, at 61,400-01 (2001); Standards for Business Practices of Interstate Natural Gas Pipelines, 77 FERC ¶ 61,061, at 61,232-33 (1996).

³² 5 U.S.C. 553 (a)(1) (2000); 1 CFR 51.7(4) (2005). See 28 U.S.C. 1498 (2000) (government liability for patent and copyright infringement).

³³ NAESB Home Page, <http://www.naesb.org/pdf/ordrform.pdf>.

³⁴ 18 CFR 358 (2004).

The cost per respondent is \$138,450 (rounded off).

42. The Commission sought comments to comply with these requirements. Comments were received from six entities. No comments addressed the reporting burden imposed by these requirements. The substantive issues raised by the commenters are addressed in this preamble.

43. The Commission's regulations adopted in this rule are necessary to further the process begun in Order No. 587 of creating a more efficient and integrated pipeline grid by standardizing the business practices and electronic communication of interstate pipelines. Adoption of these regulations will update the Commission's regulations relating to business practices and communication protocols to conform to the latest version, Version 1.7, of the WGQ's consensus standards and the standards to implement Order No. 2004 and gas quality reporting requirements.

44. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The information required in this final rule will help the Commission carry out its responsibilities under the Natural Gas Act and conforms to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

45. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer, CI-1, (202) 502-8415, or michael.miller@ferc.gov] or the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Energy Regulatory Commission, 725 17th Street, NW., Washington, DC 20503. The Desk Officer can also be reached at (202) 395-7856, or fax: (202) 395-7285.

Environmental Analysis

46. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.³⁵ The Commission has categorically excluded certain actions

from these requirements as not having a significant effect on the human environment.³⁶ The actions adopted here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.³⁷

Regulatory Flexibility Act Certification

47. The Regulatory Flexibility Act of 1980 (RFA)³⁸ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations adopted here impose requirements only on interstate pipelines, the majority of which are not small business, and, these requirements are, in fact, designed to benefit all customers, including small business. Accordingly, pursuant to § 605(b) of the RFA, the Commission hereby certifies that the regulations adopted herein will not have a significant adverse impact on a substantial number of small entities.

Document Availability

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

49. From FERC's Home Page on the Internet, this information is available in eLibrary. The full text of this document is available in eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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

Implementation Dates And Procedures

51. Pipelines are required to file tariff sheets to reflect the changed standards

on or before July 1, 2005, with an effective date of September 1, 2005. Pipelines incorporating the Version 1.7 standards into their tariffs must include the standard number and Version 1.7. Pipelines incorporating by reference the gas quality standards must refer to the standard number (e.g. 4.3.89) and the Recommendation number in which the standard is adopted (R03035A). Pipelines incorporating the standards adopted by NAESB to implement Order No. 2004 must refer to the standard as 2004 Annual Plan Item 2 FERC Order 2004 and 2005 Annual Plan Item 8 (May 3, 2005) (Affiliate Order standards).

Effective Date

52. These regulations are effective June 16, 2005. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,
Secretary.

■ In consideration of the foregoing, the Commission amends part 284, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

■ 1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352; 43 U.S.C. 1331-1356.

■ 2. Section 284.12 is amended as follows:

■ a. In paragraph (a)(2), the reference to "1100 Louisiana, Suite 3625" is revised to read "1301 Fannin, Suite 2350".

■ b. Paragraphs (a)(1)(i) through (v) are revised and a new paragraph (a)(1)(vi) is added to read as follows:

§ 284.12 Standards for pipeline business operations and communications.

(a) * * *
(1) * * *

(i) Additional Standards (General Standards and Creditworthiness Standards) (Version 1.7, December 31, 2003);

³⁵ Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

³⁶ 18 CFR 380.4 (2004).

³⁷ See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27) (2004).

³⁸ 5 U.S.C. 601-612 (2000).

(ii) Nominations Related Standards (Version 1.7, December 31, 2003, including errata, October 15, 2004 and April 1, 2005);

(iii) Flowing Gas Related Standards (Version 1.7, December 31, 2003);

(iv) Invoicing Related Standards (Version 1.7, December 31, 2003);

(v) Electronic Delivery Mechanism Related Standards (Version 1.7, December 31, 2003) with the exception of Standard 4.3.4, and including the standards contained in 2004 Annual Plan Item 2 (June 25, 2004) (Order No. 2004 standards) and the standard contained in 2005 Annual Plan Item 8 (May 3, 2005) (Affiliate Order standards), and the standards contained in Recommendation R03035A (October 20, 2004) (gas quality reporting); and

(vi) Capacity Release Related Standards (Version 1.7, December 31, 2003, including errata, October 15, 2004).

* * * * *

[FR Doc. 05-9803 Filed 5-16-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9198]

RIN 1545-AY42

Guidance Under Section 355(e); Recognition of Gain on Certain Distributions of Stock or Securities in Connection With an Acquisition; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations and removal of temporary regulations.

SUMMARY: This document corrects final regulations and removal of temporary regulations (TD 9198), that were published in the **Federal Register** on Tuesday, April 19, 2005 (70 FR 20279) that relate to the recognition of gain on certain distributions of stock or securities of a controlled corporation in connection with an acquisition.

DATES: This correction is effective April 19, 2005.

FOR FURTHER INFORMATION CONTACT: Amber R. Cook, (202) 622-7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations and removal of temporary regulations (TD 9198), which

is the subject of this correction are under section 355(e) of the Internal Revenue Code.

Need for Correction

As published, the final regulations and removal of temporary regulations (TD 9198) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations and removal of temporary regulations (TD 9198), which was the subject of FR. Doc. 05-7811, is corrected as follows:

1. On page 20280, column 2, in the preamble, under the paragraph heading "New Safe Harbor for Acquisitions Before a Pro Rata Distribution", line 9, the language "discussions regarding the acquisition" is corrected to read "discussions with the acquirer regarding a distribution".

2. On page 20280, column 2, in the preamble, under the paragraph heading "New Safe Harbor for Acquisitions Before a Pro Rata Distribution", lines 15 and 16, the language "prior to discussions regarding the acquisition and that the acquisition was" is corrected to read "prior to discussions regarding a distribution and that the acquisition was".

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures and Administration).

[FR Doc. 05-9615 Filed 5-16-05; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9196]

RIN 1545-BE21

Withholding Exemptions: Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting Amendment.

SUMMARY: This document corrects final and temporary regulations (TD 9196) that were published in the **Federal Register** on Thursday, April 14, 2005 (70 FR 19694). The document contains regulations providing guidance under section 3402(f) of the Internal Revenue Code (Code) for employers and employees relating to the Form W-4, "Employee's Withholding Allowance Certificate."

DATES: This document is effective on April 14, 2005.

FOR FURTHER INFORMATION CONTACT: Margaret A. Owens, (202) 622-0047 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9196) that are the subject of these corrections are under section 3402 of the Internal Revenue Code.

Need for Correction

As published, TD 9196 contains errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

Correction of Publication

■ Accordingly, 26 CFR part 31 is corrected by making the following correcting amendment:

PART 31—EMPLOYMENT TAXES

■ **Paragraph 1.** The authority citation for part 31 continues to read in part as follows:

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

§ 31.3402(f)(2)-1T [Corrected]

■ 1. Section 31.3402(f)(2)-1T(g)(4), the second sentence is amended by removing the date "April 14, 2008." and adding "April 11, 2008." in its place.

§ 31.3402(f)(5)-1T [Corrected]

■ 2. Section 31.3402(f)(5)-1T(a)(2), the second sentence is amended by removing the date "April 14, 2008." and adding "April 11, 2008." in its place.

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 05-9610 Filed 5-16-05; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF TRANSPORTATION**Saint Lawrence Seaway Development Corporation****33 CFR Part 402**

[Docket No. SLSDC 2005-20518]

RIN 2135-AA21

Tariff of Tolls**AGENCY:** Saint Lawrence Seaway Development Corporation, DOT.**ACTION:** Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC is revising its regulations to reflect the fees and charges levied by the SLSMC in Canada starting in the 2005 navigation season, which are effective only in Canada. An amendment to increase the charge per pleasure craft per lock transited for full or partial transit of the Seaway will apply in the United States.

DATES: This rule is effective June 16, 2005.

FOR FURTHER INFORMATION CONTACT: Craig H. Middlebrook, Acting Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-0091.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls (Schedule of Fees and Charges in Canada) in their respective jurisdictions.

The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the

SLSDC and the SLSMC. The SLSDC is revising 33 CFR 402.8, "Schedule of Tolls", to reflect the fees and charges levied by the SLSMC in Canada beginning in the 2005 navigation season. With one exception, the changes affect the tolls for commercial vessels and are applicable only in Canada. The collection of tolls by the SLSDC on commercial vessels transiting the U.S. locks is waived by law (33 U.S.C. 988a(a)).

The SLSDC is amending 33 CFR 402.8 to increase the charge per pleasure craft per U.S. lock transited from \$20 to \$25 U.S., or \$30 Canadian. This increase is needed due to higher operating costs at the locks. The per lock charge for pleasure craft transiting the Canadian locks will remain \$20 Canadian, to be collected in Canadian dollars. No comments were received regarding this amendment.

Regulatory Notices: Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

Regulatory Evaluation

This regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

I certify this regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Regulations and Rules primarily relate to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et reg.*) because it is not a major federal action significantly affecting the quality of the human environment.

Federalism

The Corporation has analyzed this rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this rule does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

■ Accordingly, the Saint Lawrence Seaway Development Corporation is amending 33 CFR Part 402, Tariff of Tolls, as follows:

PART 402—TARIFF OF TOLLS

■ 1. The authority citation for Part 402 continues to read as follows:

Authority: 33 U.S.C. 983(a), 984(a)(4) and 988, as amended; 49 CFR 1.52.

■ 2. Section 402.8 is revised to read as follows:

§ 402.8 Schedule of tolls.

Item	Description of chargers Column 1	Rate (\$) Montreal to or from Lake Ontario (5 locks) Column 2	Rate (\$) Welland Canal— Lake Ontario to or from Lake Erie (8 locks) Column 3
1.	Subject to item 3, for complete transit of the Seaway, a composite toll, comprising: (1) a charge per gross registered ton of the ship, applicable whether the ship is wholly or partially laden, or is in ballast, and the gross registered tonnage being calculated according to prescribed rules for measurement in the United States or under the International Convention on Tonnage Measurement of Ships, 1969, as amended from time to time. (2) a charge per metric ton of cargo as certified on the ship's manifest or other document, as follows: (a) bulk cargo (b) general cargo (c) steel slab (d) containerized cargo (e) government aid cargo (f) grain (g) coal (3) a charge per passenger per lock (4) a charge per lock for transit of the Welland Canal in either direction by cargo ships: (a) loaded (b) in ballast	0.0928 0.9624 2.3187 2.0985 0.9624 N/A 0.5912 0.5681 1.3680 N/A N/A	0.1507. 0.6376. 1.0204. 0.7305. 0.6376. N/A. 0.6376. 0.6376. 1.3680. 509.22. 376.23.
2.	Subject to item 3, for partial transit of the Seaway	20 per cent per lock of the applicable charge under items 1(1) and (2) plus the applicable charge under items 1(3) and (4).	13 per cent per lock of the applicable charge under items 1(1) and (2) plus the applicable charge under items 1(3) and (4).
3.	Minimum charge per ship per lock transited for full or partial transit of the Seaway.	20.00	20.00.
4.	A rebate applicable to the rates of item 1 to 3	N/A	N/A.
5.	A charge per pleasure craft per lock transited for full or partial transit of the Seaway, including applicable federal taxes ¹ .	20.00	20.00.
6.	In lieu of item 1(4), for vessel carrying new cargo or returning ballast after carrying new cargo, a charge per gross registered ton of the ship, the gross registered tonnage being calculated according to item 1 ¹ : (a) loaded (b) in ballast	N/A N/A	0.1500. 0.1100.

¹ The applicable charge at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) for pleasure craft is \$25 U.S., or \$30 Canadian per lock. The applicable charge under item 3 at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) will be collected in U.S. dollars. The other amounts are in Canadian dollars and are for the Canadian Share of tolls. The collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 988a(a)).

Issued at Washington, DC on May 11, 2005.
Saint Lawrence Seaway Development Corporation.
Albert S. Jacquez,
Administrator.
[FR Doc. 05-9799 Filed 5-16-05; 8:45 am]
BILLING CODE 4910-61-P

POSTAL SERVICE
39 CFR Part 254
USPS Standards for Facility Accessibility
AGENCY: Postal Service

ACTION: Final rule.
SUMMARY: Pursuant to the Architectural Barriers Act of 1968, 42 U.S.C. 4151 *et seq.* (2000), the United States Postal Service is revising its standards for facility accessibility and adding them to the CFR. These revisions are made in response to the Americans with Disabilities Act/Architectural Barriers Act Guidelines (ADAAG/ABAAG) recently published by the U.S. Architectural and Transportation Barriers Compliance Board (US Access Board).
DATES: Effective: October 1, 2005, with applicability dates as follows:

- For owned facilities, these standards are applicable effective on October 1, 2005 for all Postal Service facility designs that have not reached 30% design completion by October 1, 2005 and for all design/build contracts for which the solicitation is issued after October 1, 2005.
- For leased facilities, these standards are applicable effective on October 1, 2005 for new construction, additions, and alterations and alternate quarters with designs that have not reached 30% completion by October 1, 2005.
- For all existing leased facilities, these standards are applicable effective on October 1, 2005 for all new leases

signed on or after October 1, 2005. The unilateral exercise of a previously negotiated lease option is not considered a new lease for purposes of these standards.

FOR FURTHER INFORMATION CONTACT: Susan Koetting, Attorney, U.S. Postal Service, (202) 268-4818.

SUPPLEMENTARY INFORMATION: The US Access Board recently adopted Guidelines to implement the Americans with Disabilities Act and the Architectural Barriers Act at 69 FR 44084, July 23, 2004, codified at 36 CFR part 1191. It is the Postal Service's intent to adopt the Guidelines pertaining to the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*), which are found in 36 CFR Part 1191, with the exception of the Advisory Notes. As a matter of policy, the Advisory Notes will be included in the Postal Service's revised Handbook RE-4, "Standards for Facility Accessibility," which is an internal guidance document published for the benefit of Postal Service employees.

List of Subjects in 39 CFR Part 254

Buildings and Facilities, Individuals with Disabilities, Postal Service

■ For the reasons set forth in the preamble, the Postal Service amends 39 CFR chapter 1 by adding a new part 254 to read as follows:

PART 254—POSTAL SERVICE STANDARDS FOR FACILITY ACCESSIBILITY PURSUANT TO THE ARCHITECTURAL BARRIERS ACT

Sec.

254.1 Adoption of U.S. Access Board Standards as Postal Service Standards of Facility Accessibility

254.2 Definition of primary function area and criteria used to determine whether an alteration has an effect on an area containing a primary function that is disproportionate to the overall alterations.

Authority: 39 U.S.C 101, 401, 403; 29 U.S.C. 792(b)(3) and 42 U.S.C. 12204.

§ 254.1 Adoption of U.S. Access Board Standards as Postal Service Standards of Facility Accessibility.

(a) The United States Postal Service adopts as its Architectural Barriers Act (ABA) "Standards for Facility Accessibility," the following sections of 36 CFR part 1191:

Appendix A to Part 1191, Table of Contents for apps. C, D, and E.

Appendix C to Part 1191, Architectural Barriers Act, Scoping (which contains ABA Chapter 1, Application and Administration, and ABA Chapter 2, Scoping requirements); pertinent parts of Appendix D to Part

1191, Technical (which includes Chapters 3 through 10).

Appendix E to Part 1191, List of Figures and Index.

(b) These sections listed in paragraph (a) of this section are adopted verbatim, with the exception of the Advisory Notes, which are expressly excluded.

§ 254.2 Definition of primary function area and criteria used to determine whether an alteration has an effect on an area containing a primary function that is disproportionate to the overall alterations.

(a) *Terminology.* The new accessibility guidelines require that certain terms be defined by the participating federal agencies. In the U.S. Access Board's 36 CFR part 1191, Appendix C, ABA chapter 2, section F202.6.2 requires that "primary function areas" be defined and Section F202.4 contains requirements for alterations affecting "primary function areas" stating, "* * * an alteration that affects or could affect the usability of or access to an area containing a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area, including the rest rooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, unless such alterations are disproportionate to the overall alterations in terms of cost and scope as determined under criteria established by the Administrator of * * * the United States Postal Service."

(b) *Primary function areas.* For purposes of this part, the primary function of the Postal Service is to provide mail service for its customers, that is to accept, distribute, transport and deliver the mail. Two essential facilities for fulfilling these functions are customer lobby areas where customers conduct their retail transactions, access mail depositories and post office boxes and work room areas where postal employees distribute the mail and perform other core postal operations. Therefore, for purposes of the accessibility guidelines applicable to the Postal Service under the Architectural Barriers Act, two primary function areas are identified: Customer Lobbies and Workroom Areas.

(c) *Disproportionality.* (1) According to Section F202.6.2, "alteration" of elements in a primary function area can trigger a requirement to make accessibility improvements along the path of travel to the area and improvements to rest rooms, telephones, and drinking fountains that serve the altered area if the alteration "affects or could affect the usability of or access to an area containing a primary function."

It is conceivable that almost any repair or alteration project in a "primary function area" could affect the usability of the area. Therefore a literal interpretation of this provision could require an expansion of the scope of virtually any alteration in a primary function area, regardless of the size and scope of the original project. According to Section F202.6.2, accessibility improvements must be made to the path of travel to the altered area and to rest rooms, telephones, and drinking fountains that serve the altered area "unless such alterations are disproportionate to the overall alterations in terms of cost and scope".

(2) For purposes of the accessibility guidelines applicable to the Postal Service under the Architectural Barriers Act, two criteria must be considered in making a determination whether accessibility improvements are disproportionate to the cost and scope of the original alteration: a magnitude threshold for the original alteration and a maximum "percentage threshold" for the accessibility alteration.

(d) *Magnitude threshold.* It is anticipated that, in most cases, a significant additional effort would be required to assess physical conditions along the path of travel and for rest rooms, telephones, and drinking fountains that serve the altered area, and to determine the scope, budget and appropriate design requirements for any corrective alterations. Unless the original alteration is of substantial magnitude, a disproportionate effort would be devoted to such investigation, design, and administration leaving few, if any funds to accomplish corrective work. Accordingly, a "magnitude threshold" is established such that no accessibility improvements to the path of travel, nor to any associated facilities, shall be required under F202.6.2 for alterations that have an estimated total cost less than 20 percent of the fair market value of the facility.

(e) *Percentage threshold.* For alterations subject to F202.6.2 that meet or exceed the "magnitude threshold," the maximum cost for accessibility improvements to the path of travel, including all costs for accessibility improvements to rest rooms, telephones, and drinking fountains that serve the altered area, shall not exceed 20 percent of the total cost of the original alteration. Costs for accessibility improvements in excess of the 20

percent threshold shall be deemed “disproportionate.”

Neva Watson,

Attorney, Legislative.

[FR Doc. 05–9745 Filed 5–16–05; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–VA–0006; FRL–7913–5]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Emission Standards for Solvent Cleaning Operations Using Non-Halogenated Solvents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Virginia State Implementation Plan (SIP). The revision consists of regulatory modifications intended to clarify the applicability of the solvent metal cleaning operations using non-halogenated solvents provisions. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on July 18, 2005, without further notice, unless EPA receives adverse written comment by June 16, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the *Federal Register* and inform the public that the rule will not take effect.

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

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

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

C. E-mail: campbell.dave@epa.gov.

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

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

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

Docket: All documents in the electronic docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, or by e-mail at wentworth.ellen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 24, 2003 (68 FR 3410), EPA reclassified the Metropolitan Washington, DC ozone nonattainment area (DC area) from “serious” to “severe” for the one-hour ozone standard. As a severe nonattainment area, the DC area, which comprises the states of Maryland, portions of Virginia and the District of Columbia, is now required to meet the requirements of section 182(d) of the CAA and attain the standard by November 15, 2005. As a result of the reclassification to severe nonattainment, the DC area must implement additional control measures and submit SIP revisions for post-1999 rate of progress (ROP) plans, revisions to contingency measures and revisions to the area’s attainment demonstration.

As a part of Virginia’s strategy to meet its portion of the necessary emission reductions, the Commonwealth adopted new measures to control volatile organic compound (VOC) emissions from four additional source categories, including a regulation to control emissions from solvent metal cleaning operations.

II. Summary of SIP Revision

On February 23, 2004, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision consisted of four new regulations added to 9 VAC 5, Chapter 40, amendments to one existing article of 9 VAC 5 Chapter 20, and amendments to 9 VAC 5, Chapter 20 to incorporate by reference additional test methods and procedures. The revision also included amendments to section B of 9 VAC 5–40–3260 (Rule 4–24) pertaining to emissions standards for solvent metal cleaning operations using non-halogenated solvents. This action addresses Rule 4–24 only. The remaining portions of the submittal have been the subject of separate rulemaking actions.

On June 9, 2004 (69 FR 32277), EPA published a direct final rulemaking action approving the Commonwealth’s solvent metal cleaning operations regulation for the Northern Virginia portion of the Metropolitan DC ozone nonattainment area (Northern Virginia Area) into the SIP. This regulation was based on the Ozone Transport Commission’s (OTC) model rule. The Virginia solvent metal cleaning regulation entitled, “Emission Standards for Solvent Metal Cleaning Operations in the Northern Virginia VOC Emission Control Area” (Rule 4–

47), applies to solvent metal cleaning operations in the Northern Virginia Area only.

As a part of the February 23, 2004, submittal, the Commonwealth of Virginia amended the applicability provisions in section B of 9 VAC 5-40-3260, "Emission Standards for Solvent Metal Cleaning Operations Using Halogenated Solvents" (Rule 4-24), to clarify that this regulation does not apply to sources in the Northern Virginia Area. Sources located in the Northern Virginia Area are subject to the provisions found in "Emission Standards for Solvent Metal Cleaning Operations in the Northern Virginia VOC Emission Control Area" (Rule 4-47).

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information: (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information

"required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *" The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving the Commonwealth of Virginia's amendment to the regulations pertaining to solvent metal cleaning operations using non-halogenated solvents, submitted on February 23, 2004. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and

anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on July 18, 2005, without further notice unless EPA receives adverse comment by June 16, 2005. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Statutory and Executive Order Reviews

A. General Requirements

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

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and

shall not postpone the effectiveness of such rule or action. This action, regarding amendments to the Commonwealth of Virginia's solvent metal cleaning operations using non-halogenated solvents, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 6, 2005.

Donald S. Welsh,
Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entry for "5-40-3260" under Chapter 40, Part II, Article 24 to read as follows:

§ 52.2420 Identification of plan.

* * * * *
(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* * * * *				*
Chapter 40 Existing Stationary Sources				
* * * * *				*
Part II Emission Standards				
* * * * *				*
Article 24 Emission Standards for Solvent Metal Cleaning Operations Using Non-Halogenated Solvents (Rule 4-24)				
5-40-3260	Applicability and Designation of Affected Facility	3/24/04	5/17/05 [Insert page number where the document begins]	*
* * * * *				*

* * * * *

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No.050228049–5122–02; I.D. 021105C]

RIN 0648–AT05

Atlantic Highly Migratory Species; Lifting Trade Restrictive Measures

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

ACTION: Final rule.

SUMMARY: NMFS is amending the regulations governing the trade of tuna and tuna-like species in the North and South Atlantic Ocean to implement recommendations adopted at the 2004 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT). This final rule lifts the trade restrictions on importing bigeye tuna (BET) from Cambodia; BET and bluefin tuna (BFT) from Equatorial Guinea; and BET, BFT, and swordfish (SWO) from Sierra Leone. Additionally, the final rule corrects section reference conflicts between two rules that were published in the **Federal Register** on November 17, 2004, and December 6, 2004.

DATES: Effective July 2, 2005.

ADDRESSES: Copies of the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks and other relevant documents are available from the Highly Migratory Species Management Division website at www.nmfs.noaa.gov/sfa/hms.

FOR FURTHER INFORMATION CONTACT: Megan Gamble by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish and tuna fisheries are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and regulations at 50 CFR part 635 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* The ATCA authorizes the promulgation of regulations as may be necessary and appropriate to carry out ICCAT recommendations. Trade-related ICCAT recommendations from 2004 include, but are not limited to, 04–13, 04–14, and 04–15. NMFS issued a proposed rule on March 8, 2005 (70 FR

11190), to implement these recommendations. Details regarding the recommendations and the section reference corrections are described in the proposed rule and are not repeated in this final rule.

Response to Comments

NMFS received a comment from one individual prior to the closing date of the comment period for the proposed rulemaking, which ended on April 7, 2005. This individual's comments are summarized below with the response.

Comment: The United States should not encourage overfishing anywhere in the world. All tuna quotas should be reduced by 50 percent this year and by ten percent each year thereafter.

Response: The United States works closely with ICCAT to develop science-based management advice to rebuild all stocks of Atlantic tuna and tuna-like species. The United States implements quotas for Atlantic tuna and tuna-like species that are consistent with ICCAT recommendations. Additionally, the United States has measures in place to address any overharvest of the annual quotas for Atlantic tunas.

Changes from the Proposed Rule

There are no changes from the proposed rule (March 8, 2005, 70 FR 11190).

Classification

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.* The Assistant Administrator for Fisheries has determined that the regulations contained in this final rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic highly migratory species fisheries.

NMFS has determined that this final rule would not have significant economic, environmental, or social impacts as defined in the National Environmental Policy Act (NEPA). Therefore, it is categorically excluded from the need to prepare an Environmental Assessment.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS has determined that these regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable provisions of the coastal zone management programs of those Atlantic, Gulf of Mexico, and Caribbean states. The proposed regulations were submitted to the responsible state agencies for their review under Section

307 of the Coastal Zone Management Act. All of the states that responded (Delaware, New Hampshire, Pennsylvania, Texas, and Virginia) found NMFS' proposed actions to be consistent with their coastal zone management programs. Concurrence is presumed for those states that did not respond.

This action does not contain policies with federalism implications under Executive Order 13132.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

The NMFS has determined that fishing activities conducted under this rule will have no adverse impact on marine mammals.

The fishing activities conducted pursuant to this rule will not affect endangered or threatened species or critical habitat under the Endangered Species Act. This action is not likely to result in any significant changes to the quantity of BET, BFT, and SWO imported from Cambodia, Equatorial Guinea, and Sierra Leone, as past import levels of these fish species from these countries are low or nonexistent.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: May 11, 2005.

Rebecca Lent,

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

■ For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.41, paragraphs (a) and (b) are removed; paragraphs (c) through (g) are redesignated as paragraphs (a) through (e); and newly redesignated paragraph (a) is revised to read as follows:

§ 635.41 Products denied entry.

(a) All shipments of Atlantic bigeye tuna, or its products, in any form,

harvested by a vessel under the jurisdiction of Bolivia or Georgia will be denied entry into the United States.

* * * * *

■ 3. In § 635.71, paragraphs (b)(26) and (e)(16) are removed; paragraphs (b)(27) through (b)(30) are redesignated as paragraphs (b)(26) through (b)(29); and paragraphs (a)(24), (a)(45) through (a)(47), and newly redesignated paragraph (b)(29) are revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(24) Import, or attempt to import, any fish or fish products regulated under

this part in a manner contrary to any import requirements or import restrictions specified at § 635.40 or 635.41.

* * * * *

(45) Import or attempt to import tuna or tuna-like species harvested from the ICCAT convention area by a fishing vessel that is not listed in the ICCAT record of authorized vessels as specified in § 635.41(b).

(46) Import or attempt to import tuna or tuna-like species harvested by a fishing vessel on the ICCAT illegal, unreported, and unregulated fishing list as specified in § 635.41(c).

(47) Import or attempt to import tuna or tuna-like species, placed in cages for farming and/or transshipment, harvested in the ICCAT convention area and caught by a fishing vessel included on the ICCAT list as engaged in illegal, unreported, and unregulated fishing as specified in § 635.41(d).

(b) * * *

(29) Import a bigeye tuna or bigeye tuna product into the United States from Bolivia or Georgia as specified in § 635.41.

* * * * *

[FR Doc. 05-9793 Filed 5-16-05; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 70, No. 94

Tuesday, May 17, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-21230; Directorate Identifier 2004-SW-51-AD]

RIN 2120-AA64

Airworthiness Directives; Bell Helicopter Textron Model 206A and 206B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Bell Helicopter Textron (Bell) Model 206A and 206B helicopters modified by Aeronautical Accessories, Inc. Supplemental Type Certificate (STC) SH1392SO with certain part-numbered high crosstubes. The AD would require inspecting at specified time intervals and replacing any cracked crosstubes. This proposal is prompted by the discovery of a cracked high forward crosstube. The actions specified by the proposed AD are intended to detect a crack in the crosstube which could lead to failure of the crosstube, collapse of the landing gear, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before July 18, 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;

- Fax: 202-493-2251; or
- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this proposed AD from Aeronautical Accessories, Inc., P.O. Box 3689, Bristol, Tennessee 37625-3689, telephone (423) 538-5151 or (800) 251-7094, fax (423) 538-8469, or e-mail at sales@aero-access.com.

You may examine the comments to this proposed AD in the AD docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Marc Belhumeur, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193-0170, telephone (817) 222-5177, fax (817) 222-5783.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number "FAA-2005-21230, Directorate Identifier 2004-SW-51-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received 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 rulemaking. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://dms.dot.gov>.

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in

person at the Docket Management System (DMS) Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5227) is located at the plaza level of the Department of Transportation NASSIF Building in Room PL-401 at 400 Seventh Street, SW., Washington, DC. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We recently determined that we needed to issue an AD for Bell 206 helicopters that have Aeronautical Accessories, Inc. (AAI) crosstubes installed. This determination was made after receipt of a Malfunction or Defect Report (FAA Form 8010-4) from an operator after the discovery of a cracked crosstube. The crack was discovered during a routine inspection after the landing gear was removed from the aircraft and was not visible while installed on the aircraft, although 50% of the crosstube's diameter was cracked. The cracking occurred in an older AAI crosstube that had been modified from rivet-on supports to the current clamp-on supports.

We have reviewed AAI Alert Service Bulletin (ASB) No. AA-03121, dated October 25, 2004, which describes procedures for inspecting each high fwd crosstube, part number (P/N) 206-321-001 (serial number (S/N) 1001-1152) and each high aft crosstube, P/N 206-321-002 (S/N 2001-2152) for a crack within 300 flight-hours but not later than April 15, 2005.

After reviewing the Malfunction or Defect Report, and the AAI ASB, we have determined that AD action is necessary to mandate recurring inspections of the crosstube and to detect a crack in the crosstube that could lead to failure of the crosstube, collapse of the landing gear, and subsequent loss of control of the helicopter.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs modified with STC SH1392SO. Therefore, the proposed AD would require the following within 300 hours time-in-service (TIS) or 60 days, whichever occurs first, and after that at intervals not to exceed 300 hours TIS or 12 months, whichever occurs first:

- Inspecting each forward crosstube, P/N 206-321-001 with S/N 1001

through 1152, for a crack and replacing any cracked crosstube with an airworthy crosstube before further flight; and

- Inspecting each high aft crosstube, P/N 206-321-002, with S/N 2001 through 2152, for a crack and replacing any cracked crosstube with an airworthy crosstube before further flight.

We estimate that this proposed AD would affect 150 helicopters of U.S. registry. Inspecting both crosstubes on each helicopter would take approximately 3 work hours and replacing both crosstubes, if necessary, would also take approximately 3 work hours. The average labor rate is \$65 per work hour. Required parts would cost approximately \$2,260 per crosstube. Based on these figures, the total cost impact of the proposed AD on U.S. operators would be \$736,500 (\$4,910 per helicopter, assuming one inspection and one forward and one aft crosstube replacement on the entire fleet).

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. Additionally, 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 draft economic evaluation of the estimated costs to comply with this proposed AD. See the DMS to examine the draft economic evaluation.

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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron: Docket No. FAA-2005-21230; Directorate Identifier 2004-SW-51-AD.

Applicability: Model 206A and 206B helicopters modified by Aeronautical Accessories, Inc. Supplemental Type Certificate SH1392SO, with high forward crosstube, part number (P/N) 206-321-001 with serial number (S/N) 1001 through 1152, and high aft crosstube, P/N 206-321-002 with S/N 2001 through 2152, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect a crack in the crosstube, which could lead to failure of the crosstube, collapse of the landing gear, and subsequent loss of control of the helicopter, accomplish the following:

- (a) Within 300 hours time-in-service (TIS) or 60 days, whichever occurs first, and after that at intervals not to exceed 300 hours TIS or 12 months, whichever occurs first, remove each crosstube and inspect it for cracks. Replace any cracked crosstube with an airworthy crosstube before further flight.

Note: Aeronautical Accessories, Inc. Alert Service Bulletin No. AA-03121, dated October 25, 2004, pertains to the subject of this AD.

- (b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Rotorcraft Certification Office, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

Issued in Fort Worth, Texas, on May 9, 2005.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05-9762 Filed 5-16-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35, 131, 154, 157, 250, 281, 284, 300, 341, 344, 346, 347, 348, 375, and 385

[Docket No. RM01-5-000]

Electronic Tariff Filings

May 10, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of technical conference date change.

SUMMARY: The date of the staff technical conference on the electronic tariff and rate case filing software has been changed to June 1, 2005. This conference will address issues relating to the Commission's July 8, 2004 Notice of Proposed Rulemaking requiring electronic tariff filings (69 FR 43929).

DATES: June 1, 2005 Technical conference.

ADDRESSES: The meeting will be held at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in Hearing Room 1.

FOR FURTHER INFORMATION CONTACT: H. Keith Pierce (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502-8525. Keith.Pierce@ferc.gov.

SUPPLEMENTARY INFORMATION:

Notice of Technical Conference Date Change to June 1, 2005

Take notice that the date of the staff technical conference in this docket has been changed to June 1, 2005. The conference will address the electronic tariff and rate case filing software that has been developed in connection with the Commission's Notice of Proposed Rulemaking requiring electronic tariff filings. *Electronic Tariff Filings, Notice of Proposed Rulemaking*, 69 FR 43929 (July 23, 2004) FERC Stats. & Regs., Proposed Regulations ¶ 32,575 (July 8, 2004).

The date of the technical conference has been changed to June 1 because

certain interest group members would not be able to attend the previously scheduled May 24, 2005 conference¹ and requested that the conference be rescheduled. All major trade associations for the gas, electric, and oil industries have been contacted and are comfortable with the June 1 date. The technical conference will be held from 9 a.m. until 4 p.m. (EST) at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in Hearing Room 1.

The Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julie Morelli at the Capitol Connection ((703) 993-3100) as soon as possible or visit the Capitol Connection Web site at <http://www.capitolconnection.gmu.edu> and click on "FERC".

The conference is open to the public to attend, and pre-registration is not required.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to accessibility@ferc.gov or call toll free 1-866-208-3372 (voice) or (202) 208-1659 (TTY), or send a fax to (202) 208-2106 with the required accommodations.

For more information about this conference, please contact Keith Pierce, Office of Markets, Tariffs and Rates at (202) 502-8525 or Keith.Pierce@ferc.gov.

Linda Mitry

Deputy Secretary

[FR Doc. 05-9802 Filed 5-16-05; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35, 37, and 38

[Docket No. RM05-5-000]

Standards for Business Practices and Communication Protocols for Public Utilities

May 9, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to

amend its regulations to incorporate by reference standards promulgated by the North American Energy Standards Board's (NAESB's) Wholesale Electric Quadrant (WEQ) dealing with: Open Access Same-Time Information Systems (OASIS) business practice standards, including posting requirements for Order No. 2003 generator interconnection agreements and procedures; OASIS Standards and Communication Protocols and Data Dictionary; and business practice standards for Coordinate Interchange, Area Control Error (ACE) Equation Special Cases, Manual Time Error Correction, and Inadvertent Interchange Payback.

Incorporating these standards by reference into the Commission's regulations is intended to benefit wholesale electric customers by streamlining utility business practices and transactional processes and OASIS procedures and by adopting a formal ongoing process for reviewing and upgrading the Commission's OASIS standards and other electric industry business practices that would benefit from the implementation of generic industry standards. In addition, the proposal to adopt business practice standards for Coordinate Interchange, ACE Equation Special Cases, Manual Time Error Correction, and Inadvertent Interchange Payback are intended to complement the Version 0 Reliability Standards of the North American Electric Reliability Council.

DATES: Comments on the proposed rule are due July 1, 2005.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC, 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg (technical issues), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 502-8292.

Kay Morice (technical issues), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 502-6507.

Gary D. Cohen (legal issues), Office of the General Counsel, Federal Energy

Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 502-8321.

SUPPLEMENTARY INFORMATION:

1. The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations under the Federal Power Act to incorporate by reference certain standards promulgated by the North American Energy Standards Board's (NAESB's) Wholesale Electric Quadrant (WEQ) that implement, with modifications, the Commission's existing Open Access Same-Time Information Systems (OASIS) Business Practice Standards and OASIS Standards and Communication Protocols and Data Dictionary requirements. In addition, the Commission proposes to incorporate by reference NAESB's business practice standards on Coordinate Interchange, Area Control Error (ACE) Equation Special Cases, Manual Time Error Correction, and Inadvertent Interchange Payback that complement the Version 0 Reliability Standards of the North American Electric Reliability Council (NERC).

2. Incorporating these standards by reference into the Commission's regulations is intended to benefit wholesale electric customers by streamlining utility business practices and transactional processes and OASIS procedures and by adopting a formal ongoing process for reviewing and upgrading the Commission's OASIS standards as well as other electric industry business practices that would benefit from the implementation of generic industry standards.

I. Background

3. When the Commission developed its OASIS regulations, OASIS Standards and Communication Protocols, Data Dictionary, and Business Practice Standards, it relied heavily on the assistance provided by all segments of the wholesale electric power industry and its customers in the ad hoc working groups that came together and offered consensus proposals for the Commission's consideration. While this process was very successful, it became apparent to the Commission that ongoing issues remained that would be better addressed by an ongoing industry group dedicated to drafting consensus industry standards to implement the Commission's OASIS-related policies and policies on other industry business practices that would benefit from the implementation of generic industry standards rather than by continued reliance on an ad hoc approach.

¹ See 70 FR 23945 (May 6, 2005).

4. On December 19, 2001, the Commission issued an order¹ asking the wholesale electric power industry to develop business practice standards and communication protocols by establishing a single consensus, industry-wide standards organization for the wholesale electric industry, to complement the market design principles the Commission was developing.

5. Subsequently, in 2002, the Gas Industry Standards Board (GISB) stepped forward and volunteered to play this role by modifying its organization to broaden the scope of its activities to address electric power standards. The result of this reorganization has been the emergence of NAESB's WEQ, a non-profit, industry-driven organization working to reach consensus on standards to streamline the business practices and transactional processes within the wholesale electric industry and proposing and adopting voluntary communication standards and model business practices.

6. As we have previously stated, we consider "coordination between business practice standards and reliability standards to be critical to the efficient operation of the market."² Thus, we urged the industry to "expeditiously establish the procedures for ensuring such coordination after the NAESB WEQ [was] formalized, and request[ed] NAESB and others to file an update on the progress on coordination between it and NERC, 90 days after the formation of the WEQ."³

7. In response to the Commission's request, NAESB and NERC filed a joint letter, on December 16, 2002, explaining that both organizations had signed a memorandum of understanding (MOU) "designed to ensure that the development of wholesale electric business practices and reliability standards are harmonized and that every practicable effort is made to eliminate overlap and duplication of efforts between the two organizations." The MOU describes, among other coordination procedures, the establishment of a Joint Interface Committee that will review all standards development proposals received by either organization and determine which organization should be assigned to draft the relevant standards.

8. On January 18, 2005, NAESB filed a report with the Commission detailing

the WEQ's activities over the past two years since the group's inception. This filing represents NAESB's first filing with the Commission reporting on wholesale electric business practices. NAESB reports that the WEQ has adopted business practices standards and communication protocols for the wholesale electric industry. These standards (Version 000 Standards) include the following OASIS-related business practice standards and communication protocols: (1) OASIS Business Practice Standards; (2) OASIS Standards and Communication Protocols; and (3) an OASIS Data Dictionary.

9. NAESB also reports that, to complement NERC's Version 0 Reliability Standards, the WEQ has adopted business practice standards for: (1) Coordinate Interchange; (2) ACE Equation Special Cases; (3) Manual Time Error Correction; and (4) Inadvertent Interchange Payback. Further, NAESB states that the WEQ has adopted business practice standards for Standards of Conduct to implement the Commission's requirements in Order Nos. 2004, 2004-A, and 2004-B.⁴

10. According to NAESB, the WEQ has adopted the Commission's OASIS Business Practice Standards, OASIS Standards and Communication Protocols, and OASIS Data Dictionary to reflect the business practice standards and communication protocol standards adopted by the Commission in Order Nos. 605, 638, and 889.⁵ NAESB states that the WEQ then adopted modifications to these standards to: (1) Facilitate the redirection of transmission service;⁶ (2) address multiple

submissions of identical transmission requests/queuing issues;⁷ (3) address OASIS posting requirements under Order No. 2003 (the Large Generator Interconnection rule);⁸ and (4) provide non-substantive editing to improve the formatting, organization, and clarity of the text.⁹

11. NAESB also reports that the development of the WEQ business practices standards on Coordinate Interchange, ACE Equation Special Cases, Manual Time Error Correction, and Inadvertent Interchange Payback was part of a joint effort with NERC where the existing NERC operating policies were divided into reliability standards for development by NERC and business practices standards for development by NAESB. The Commission endorsed this cooperative division of labor between NERC and NAESB in the May 2002 Order.¹⁰

II. Discussion

A. Standards Development and Incorporation by Reference

12. As we have previously stated, we are pleased that the industry has reached a broad consensus that the WEQ will be the single organization to develop business practice and electronic communication standards on behalf of the entire wholesale electric power industry.¹¹ Coordinating these efforts within a single organization will make the process of developing standards more efficient, which benefits the entire industry. NAESB is an accredited American National Standards Institute Standards Development Organization, and, thus, the standards development process will ensure due process and assure that all industry members may participate in drafting the standards. The Commission's confidence in the ability of the WEQ to fill this role successfully is justified by the positive contributions NAESB and its predecessor, GISB, have already made

¹ *Id.* at 20.

² See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs., Regulations Preambles ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs., Regulations Preambles ¶ 31,171 (2004), *reh'g pending*.

³ One of these edits was to delete Standard 1.4 of the WEQ's OASIS Business Practice Standards governing compliance with the OASIS Standards of Conduct (which is now governed by the Commission's regulations at 18 CFR part 358, which superseded the Commission's former regulation at 18 CFR 37.4) because the provision to which it related has now been superseded.

⁴ 99 FERC ¶ 61,171 at P 22.

⁵ *Id.* at P 3.

¹ See *Electricity Market Design and Structure*, 97 FERC ¶ 61,289 (2001) (December 2001 Order), 99 FERC ¶ 61,171 (May 2002 Order), *reh'g denied*, 101 FERC ¶ 61,297 (2002) (December 2002 Order).

² May 2002 Order, 99 FERC ¶ 61,171 at P 22.

³ *Id.* at P 22.

⁴ *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003) (Order No. 2004), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs., Regulations Preambles ¶ 31,161 (2004), *order on reh'g and clarification*, Order No. 2004-B, FERC Stats. & Regs., Regulations Preambles ¶ 31,166 (2004), *order on reh'g and clarification*, Order No. 2004-C, FERC Stats. & Regs., Regulations Preambles ¶ 31,172 (2005), *order on reh'g and clarification*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *appeal pending sub nom. American Gas Association v. FERC*, No. 04-1178, *et al.* (DC Cir. filed June 9, 2004 and later). NAESB reports that it is currently engaged in priority efforts to make any necessary modifications to the Standards of Conduct business practice standards to ensure they adequately address the requirements of Order No. 2004-C.

⁵ *Open Access Same-Time Information Systems*, Order No. 605, FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,075 (1999); *Open Access Same-Time Information Systems*, Order No. 638, FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,093 (2000); *Open Access Same-Time Information Systems*, Order No. 889, FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 31,35 (1996), Order No. 889-A, FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,049 (1997).

⁶ NAESB Comments at 21.

in developing consensus standards applicable to the natural gas industry

13. The WEQ's standards were developed under a voluntary consensus process. Under this process, to be approved a standard must receive a super-majority vote of 67 percent of the members of the WEQ's Executive Committee with support from at least 40 percent from each of the five industry segments—transmission, generation, marketer/brokers, distribution/load serving entities, and end users. For final approval, 67 percent of the WEQ's general membership must ratify the standards.

14. As we found with respect to the natural gas industry, adoption of consensus standards is appropriate because the consensus process assists the Commission in determining the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support.

15. In section 12(d) of the National Technology Transfer and Advancement Act of 1995, Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB's WEQ, as means to carry out policy objectives or activities.¹² As the Commission has pointed out on several occasions,¹³ incorporation by reference is the appropriate, and indeed the required, method for adopting copyrighted standards material.¹⁴ As required, the WEQ standards are reasonably available from NAESB. Members can access these materials at no additional charge from the NAESB Web site or can pay \$50 for the booklet or CD rom. Because

¹² Pub L. No. 104–113, section 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

¹³ See, e.g., *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587–R, FERC Stats. & Regs., Regulation Preambles ¶ 31,141 at P 29–37 (2003).

¹⁴ Order No. 587–A, 61 FR 55208, 77 FERC ¶ 61,061, at p. 61,232 (1996); Order No. 587–K, FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,072 at 30,775 (1999). See 5 U.S.C. 552 (a)(1) (2000); 1 CFR 51.7(4) (requirements established for incorporation by reference); Federal Participation in the Development and Use of Voluntary Standards, OMB Circular A–119, at 6 (a)(1) (Feb. 10, 1998), <http://www.whitehouse.gov/omb/circulars/a119/a119.html> (incorporation by reference appropriate means of adopting private sector standards under the National Technology Transfer and Advancement Act). Indeed, the Commission could not reproduce the WEQ standards in violation of the NAESB copyright. See 28 U.S.C. 1498 (government not exempt from patent and copyright infringement).

standards development is of importance to the entire industry, the Commission strongly encourages all companies to become members and to participate actively in the NAESB process.

However, non-members can obtain the standards booklet or CD rom for \$100. In addition, as required by the regulations, copies of the standards are also available for inspection in the Commission's Public Reference Room.¹⁵

16. Consistent with our practice for the natural gas industry, the Commission is proposing to incorporate by reference (in part 38 of our regulations under the Federal Power Act, 18 CFR part 38) most of the standards developed by the WEQ. Once the Commission incorporates the WEQ's standards into its regulations, all public utilities subject to the Commission's authority will be required to comply with the incorporated standards, as would non-jurisdictional entities voluntarily following Commission's open access requirements under reciprocity. As NAESB revises these standards in the future, the Commission will review NAESB's revisions and consider incorporating such changes through a notice and comment rulemaking.¹⁶

17. The Commission is also proposing, similar to what we have done with respect to the gas standards, to require each electric utility to revise its open access transmission tariff (OATT) to include the applicable WEQ standards.¹⁷ For standards that do not require implementing tariff provisions, the Commission is proposing to permit the utility to incorporate the WEQ standard by reference in its OATT.¹⁸

¹⁵ 5 U.S.C. 552 (a)(1); 1 CFR 51.

¹⁶ Entities are required to abide by only the version of the standards adopted by the Commission. Compliance with subsequent revisions will not be required unless the Commission has through a notice and comment rulemaking proceeding incorporated by reference any such revisions.

¹⁷ Thus, when the Commission incorporates by reference updated standards, each utility will be required to make a filing updating its tariff accordingly.

¹⁸ When making such a tariff filing, the following nomenclature should be used:

- OASIS Business Practice Standards (WEQBPS–001–000, January 15, 2005) including the Definitions of “Capacity Available to Redirect”, “Commission”, “Denial of Service”, “Identical Service Requests”, “Parent Reservation”, “Queue Flooding”, and “Queue Hoarding”, Standards 2 through 10 with subsections except Standard 9.7, Appendix—Standard 8 Examples, and Appendix B;
- OASIS Standards and Communication Protocols (WEQSCP–001–000, January 15, 2005) including Standards 1 through 5 with subsections;
- OASIS Data Dictionary (WEQDD–001–000, January 15, 2005);
- Coordinate Interchange Standards (WEQBPS–002–000, January 15, 2005) including Purpose,

Thus, we are proposing to revise our regulation at 18 CFR 35.28(c) to include this requirement.

18. Specifically, the Commission proposes to incorporate by reference the standards adopted by NAESB's WEQ that include: (1) OASIS Business Practice Standards; (2) OASIS Standards and Communication Protocols; and (3) an OASIS Data Dictionary, with the exception of standards that duplicate the Commission's regulations, all as modified to address: (1) Redirect of transmission service;¹⁹ (2) multiple submissions of identical transmission requests/queuing issues; (3) OASIS posting requirements under Order No. 2003 (the Large Generator Interconnection rule); and (4) maintenance of the OASIS standards. Thus, we are proposing to revise our regulations to add 18 CFR part 38, where we would specifically enumerate each set of standards adopted by the WEQ that we are incorporating by reference.

19. Further, the Commission proposes to incorporate by reference the WEQ business practice standards to complement NERC's Version 0 Reliability Standards including: (1) Coordinate Interchange; (2) ACE Equation Special Cases; (3) Manual Time Error Correction; and (4) Inadvertent Interchange Payback. Thus, as discussed above, we propose to include the incorporation by reference of these standards in a new 18 CFR part 38, where we would specifically enumerate each set of standards adopted by the WEQ that we are incorporating by reference. However, the Commission is not proposing to incorporate by reference the NAESB Standards of Conduct-related business practice standards.

20. We are proposing to incorporate by reference NAESB's OASIS standards because we believe that this will create: (1) A body of business practices standards and communication protocol standards that the industry can use as a foundation for addressing emerging

Applicability, Definitions, Standards 1 through 13 with subsections, and Appendices A through D;

- ACE Equations Special Cases Standards (WEQBPS–003–000, January 15, 2005) including Purpose, Applicability, Definitions, Standards 1 through 3 with subsections, and Appendix A;
- Manual Time Error Correction Standards (WEQBPS–004–000, January 15, 2005) including Purpose, Applicability, Definitions, and Standards 1 through 12 with subsections; and
- Inadvertent Interchange Payback Standards (WEQBPS–005–000, January 15, 2005) including Purpose, Applicability, Definitions, Standard 1 with subsections, and Appendix A.

¹⁹ As further discussed below, we are not proposing to incorporate by reference OASIS Business Practice Standard 9.7, as this appears to conflict with provisions of the pro forma tariff.

business issues; (2) business practices and communication protocols modifying the Commission's standards to accommodate new market operations; and (3) business practices standards and communication protocols to assist the wholesale electric industry in complying with the Commission's OASIS posting requirements under Order No. 2003 (Standardization of Generator Interconnection Agreements and Procedures).

21. We also believe that incorporating the NAESB business practice standards identified above by reference will create business practices that support NERC's Version 0 Reliability Standards and functional model.

B. OASIS Standards

22. The WEQ's OASIS standards are based on the Commission's existing standards on this topic. First, the WEQ adopted baseline OASIS standards to reflect the Commission's existing OASIS standards. Then the WEQ modified its baseline OASIS standards to facilitate the redirect of transmission reservations to alternate receipt and delivery points, to address multiple submissions of identical transmission requests and queuing issues, and to address OASIS posting requirements under Order No. 2003, based on industry requests for enhancements to the OASIS standards. The WEQ also performed maintenance on the baseline OASIS standards to improve their format, organization, and clarity.

23. On April 19, 2005, NAESB reported that the WEQ made modifications to the Commission's OASIS Standards and Communication Protocols (V1.4), OASIS Data Dictionary (V1.41) and the OASIS Business Practices Standards (V1.2), as follows:

New OASIS Business Practice Standards

- Standard 1: Provision of Open Access Transmission Service
- Standard 8: Requirements for dealing with multiple, identical transmission service requests.
- Standard 9: Requirements for dealing with Redirects on a Firm basis.
- Standard 10: Requirements for dealing with Redirects on a Non-Firm basis.

New OASIS Business Practice Standards Definitions

- Commission
- Denial of Service
- Identical Service Requests
- Queue Flooding
- Queue Hoarding
- Capacity Available to Redirect
- Parent Reservation

Miscellaneous Changes to OASIS Business Practice Standards

• The OASIS Business Practice Standards contained numerous internal references. Since the NAESB standards are based on the current OASIS Business Practices, references were changed to reflect the correct NAESB standard, or section of regulation, as appropriate.²⁰

• In several instances references to specific regulations were replaced with a general reference to currently applicable regulations. These instances included the following standards: Applicability; 1.6(d)(1); 1.6(d)(5); 1.6(e)(1)(i).

• In Standards 1.5 (b)(2) and (3) the information detailing how to obtain the OASIS Business Practice Standards and Standards and Communication Protocols (OASIS S&CP) from the Commission was deleted.

• In Standard 2.4 the specific reference to "NERC [Transmission Line Loading Relief] Procedures for NERC CURTAILMENT PRIORITY (1-7)" was replaced with a general reference to those procedures.

• In Standard 7.2 the specific reference to "NERC [Electronic Tagging] Specification 1.6" was replaced with a reference to the current version of the NERC [Electronic Tagging] Specifications.

• In Standards 7.9, 7.10, and 7.14 language referencing the IMPLEMENT or CONDITIONAL status has been changed to the more generic phrase "become implemented."

• In Standards 7.12 and 7.13 the reference to "NERC Operating Policy 3 and associated Appendices" was replaced with "NERC and/or NAESB Standards."

Changes to OASIS S&CP Standard 4.5

• The phrase "[I]nformation that must be posted on INFO.HTM, as per Section 3.4 b, includes" was deleted and replaced with the following language:

When a regulatory order requires informational postings on OASIS and there is no OASIS S&CP template to support the postings or it is deemed inappropriate to use a template, there shall be a reference in INFO.HTM to the required information, including, but not limited to, references to the following:

²⁰ Changes of this nature are found in the following standards: Applicability; Purpose; definition of Affiliate; 1.5(a); 1.5(b); 1.5(c); 1.6 (b)(3)(i)(B); 1.6 (b)(3)(i)(C) (1); 1.6 (c)(4); 1.6 (d)(3); 1.6 (e)(1)(iv); 1.6 (g)(3); 1.6 (g)(4); 1.7(a); 2.0; Table 2-1 note 1; 2.1; 2.2; 2.3; 2.4; 2.5; 2.5.1; 2.5.3; 2.5.4; 2.5.5; 2.5.6; introductory paragraph under "Process to Register Non-Standard Service Attribute Values" header; introductory paragraph under "Phase IA Negotiation Process State Transition Diagram" header; 4.4; 4.5; 5.0; 6.0.

• The phrase "[T]here shall be a reference in INFO.HTM to" was deleted from each of the bullets.

• The following new language was added below the bullets:

For the purposes of this section, any link to required informational postings that can be accessed from INFO.HTM would be considered to have met the OASIS posting requirements, provided that the linked information meets all other OASIS accessibility requirements.

Miscellaneous Changes to the OASIS Data Dictionary

• *Element Name "INITIATING PARTY"*: The phrase "Transmission Provider (TP), Security Coordinator (SC) or Control Area (CA)" replaced the phrase "Transmission Provider, Security Coordinator or Control Area" under the Restricted Values column so that the abbreviations could be used in Element Name "RESPONSIBLE PARTY".

24. NAESB also reports that it has made the following modifications to the OASIS baseline standards to enhance their format, organization, and clarity:

• Consolidation of Standards 8-21, with exceptions for Standards 15-16, as subsections 1.1-1.8 of Standard 1;

• Deletion of Standards 15 and 16, but retention of the information as introductory material for Standard 1;

• Deletion of Standard 22 as not applicable;

• Modification of external references, where appropriate, to be internal references (e.g., references to "Section 37" changed to "Standard 1");

• Minor, non material reformatting;

• Modification of portions of Standards 1.1-1.7 to reflect the standards as contained in the current CFR, as consistent with the intention of Request No. R04005; and

• Deletion of Standard 1.4, Standards of Conduct.

1. OASIS Business Practice Standards

25. With the exception of standards, discussed below, involving standards that duplicate the requirements in our regulations (OASIS Business Practice Standard 1, including Standards 1.1 through 1.8, and in the Definitions of "Affiliate," "Responsible party," "Reseller," "Transmission Provider," "Transmission Customer," and "Wholesale merchant function"), we believe that the WEQ's OASIS Business Practice Standards are consistent with the Commission's existing standards on this topic.²¹ Thus, our current view is

²¹ In addition, although we are proposing to incorporate by reference OASIS Business Practice

that incorporating the WEQ's OASIS Business Practice Standards by reference in our regulations will further the current requirement for standardization of OASIS across the industry. In addition, it will permit the industry to use the NAESB consensus process to suggest further modifications and enhancements to the OASIS Business Practice Standards as it deems necessary, subject to the Commission's approval.

26. Thus, with the exceptions referenced above and discussed below, we are proposing to incorporate the WEQ's OASIS Business Practice Standards by reference in a new 18 CFR part 38. If commenters discover any inconsistencies between the WEQ's OASIS Business Practice Standards we propose to incorporate by reference and the Commission's existing OASIS Business Practice Standards, this should be brought to our attention in their comments on this NOPR.

a. Standards for Redirects of Transmission Service

27. In sections 22.1 and 22.2 of the pro forma tariff,²² the OATT permits redirects of transmission reservations to alternate receipt and delivery points. As discussed above, one of the modifications that the WEQ made to its baseline OASIS Business Practice Standards was to include standards intended to facilitate the redirect of transmission services. However, we have concern about Standards 9.7 and 10.6 in relation to the policies we have adopted in the pro format OATT. As discussed further below, based on these inconsistencies we are not proposing to adopt Standard 9.7, and we are inviting comment on our understanding of Standard 10.6.

28. The WEQ's Standard 9.7 provides that, unless otherwise mutually agreed to by the primary provider and original customer, a request for redirect on a firm basis does not impact the transmission customer's long term firm renewal rights (e.g., rollover or evergreen rights) on the original path, nor does it confer any renewal rights on the redirected path. This provision implies that the parties to any agreement can mutually agree to eliminate rollover rights, even though the Commission has found that

agreements cannot eliminate rollover rights.²³ In providing that rollover rights cannot be eliminated by agreement, the Commission was concerned about transmission owners unfairly inducing customers to give up their renewal rights.

29. In addition, the language at the end of Standard 9.7, which states "nor does it confer any renewal rights on the redirected path," also appears to be inconsistent with the pro forma tariff. Under section 22.2 of the pro forma tariff, a request for a redirect is to be treated as a new request for service. Such a request is governed by procedures in section 17.1 of the pro forma tariff and if the request is granted, it is entitled to the reservation priority afforded by section 2.2 of the pro forma tariff.

30. As redirect service is treated as a new service, to be consistent with the OATT, once the parties agree to revise the contract to provide service to a redirected point of receipt or delivery, the customer should receive any renewal rights that go with the new service at the revised receipt and delivery points, including rollover rights afforded under section 2.2.

31. Since this standard appears to conflict with Commission policy, and NAESB has not explained the benefits of such a change, we are not proposing to incorporate Standard 9.7. However, we request comments on whether such a change is appropriate. We also request comment on whether, if the Commission determines this standard conflicts with its policies, there is an immediate need for a standard on this issue or whether we can wait for NAESB to reconsider this issue and develop alternate language.

32. We also are concerned about some vague language in Standard 10.6, which states that "for the purposes of curtailment and other capacity reductions, confirmed Redirects on a Non-Firm basis shall be treated comparably to all other types of Non-Firm Secondary Point-to-Point Service." The phrase "all other types" is not defined. We interpret this phrase to apply only to services that are comparable to non-firm secondary point-to-point service, and propose to accept the standard based on this interpretation. We request comments on

whether this reflects the intent of this standard.

b. Standards That Duplicate the Requirements in Our Regulations

33. In adopting its OASIS Business Practice Standards, the WEQ has included language that duplicates language already set out in part 37 of our regulations.²⁴ This is not appropriate for business practice standards we would incorporate by reference. For this purpose, we incorporate by reference standards that implement our regulations and policies, and operate in concert with our regulations and policies.

34. Incorporating by reference standards that duplicate Commission regulations could result in inconsistent regulations in the event that the Commission revises its regulations before the WEQ has issued revised standards and because the Commission's regulations stand on their own. Thus, to prevent these problems, we are not proposing to incorporate by reference the WEQ's standards (enumerated below) that duplicate our regulations.

35. To further the industry's progress toward achieving standardized OASIS reporting and business practices across the industry, we are proposing to incorporate by reference the WEQ's OASIS Business Practice Standards in a new 18 CFR part 38, with the two exceptions noted above, one involving standards for redirects of transmission service (OASIS Business Practice Standard 9.7), and the other involving standards that duplicate the requirements in our regulations (OASIS Business Practice Standard 1, including Standards 1.1 through 1.8, and in the Definitions of "Affiliate," "Responsible party," "Reseller," "Transmission Provider," "Transmission Customer," and "Wholesale merchant function.")

2. OASIS Standards and Communication Protocols and Data Dictionary

36. We believe that the OASIS Standards and Communication Protocols, as modified by the WEQ, are consistent with the Commission's existing standards on this topic. Thus, our view is that incorporating the WEQ's OASIS Standards and Communication Protocols by reference in our regulations will further the current requirement for standardization

Standard 10.6, we have problems with this provision that we are asking commenters to address in their comments on this NOPR.

²² See *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities*, Order No. 888, FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 31,036 (1996), Order No. 888-A, FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,048 at 30,528 (1997).

²³ See *Southern Company Services, Inc.*, 108 FERC ¶61,174 at P 42-45 (2004) where the Commission denied a request for rehearing challenging the Commission's finding that parties entering contracts for transmission service must remove provisions they inserted in the contracts that would have restricted future rollover transmission rights contrary to Commission policy.

²⁴ The language that duplicates our regulations (at 18 CFR part 37) is found in Standard 1, including Standards 1.1 through 1.8, and in the Definitions of "Affiliate," "Responsible party," "Reseller," "Transmission Provider," "Transmission Customer," and "Wholesale merchant function."

of OASIS across the industry. In addition, it will permit the industry to use the NAESB consensus process to suggest further modifications and enhancements to the OASIS Standards and Communication Protocols as it deems necessary, subject to the Commission's approval.

37. Thus, we are proposing to incorporate the WEQ's OASIS Standards and Communication Protocols by reference in a new 18 CFR part 38. If commenters discover any inconsistencies between the WEQ's OASIS Standards and Communication Protocols and the Commission's existing OASIS Standards and Communication Protocols, this should be brought to our attention in their comments on this NOPR.

38. We believe that the OASIS Data Dictionary, as modified by the WEQ, is consistent with the Commission's existing OASIS Data Dictionary. Incorporating the WEQ's OASIS Data Dictionary by reference in our regulations would continue the requirement for standardization of OASIS across the industry. In addition, it would permit the industry to use the NAESB consensus process to suggest further modifications and enhancements to the OASIS standards as it deems necessary, subject to the Commission's approval. Thus, we are proposing to incorporate by reference the WEQ's OASIS Data Dictionary in a new 18 CFR part 38. If commenters discover any inconsistencies between the WEQ's OASIS Data Dictionary and the Commission's existing OASIS Data Dictionary, this should be brought to our attention in their comments on this NOPR.

3. Deleting Superseded Requirements

39. In addition, we propose to delete the current requirement in 18 CFR part 37, found at 18 CFR sections 37.5(b)(2) and (b)(3) to comply with the Commission's existing OASIS Standards and Communication Protocols and OASIS Business Practice Standards, which would be superseded by the WEQ-developed OASIS Business Practice Standards and OASIS Standards and Communication Protocols that we are proposing to incorporate by reference.

40. By contrast, with the exception of sections 37.5(b)(2) and (b)(3), we are retaining the OASIS regulations adopted by the Commission in part 37 of our regulations because these regulations set forth the Commission's policies. The WEQ standards now cover the technical aspects of OASIS compliance, and we fully expect that in the future the WEQ will continue to upgrade and improve

the standards. If in the future the Commission determines that changes in OASIS are needed for policy reasons, the Commission will use its own processes to consider and implement such changes to OASIS policy.

41. After reviewing the WEQ standards, we believe that they reflect the Commission's OASIS policies and are consistent with the OASIS technical standards we previously adopted. However, we invite commenters to address whether there are important discrepancies between the WEQ's OASIS Business Practice Standards and OASIS Standards and Communication Protocols and Data Dictionary and the Commission's existing standards.

C. Business Practice Standards To Complement the NERC Version 0 Reliability Standards

1. Standards the Commission Proposes To Incorporate by Reference

42. The WEQ's business practice standards addressing Coordinate Interchange, ACE Equation Special Cases, Manual Time Error Correction, and Inadvertent Interchange Payback were developed to support NERC's Version 0 Reliability standards. On February 8, 2005 the NERC Board of Trustees approved the Version 0 Reliability Standards to become effective April 1, 2005. Incorporation of the WEQ's business practice standards addressing Coordinate Interchange, ACE Equation Special Cases, Manual Time Error Correction, and Inadvertent Interchange would complement the NERC Version 0 Reliability Standards. Thus, we are proposing to incorporate these standards by reference in a new 18 CFR part 38. When these business practices were NERC policies, compliance with them was voluntary. However, once they are incorporated by reference into the Commission's regulations, compliance with them will be mandatory.

2. Standards Being Developed on Transmission Load Relief and Coordinate Interchange Business Practices

43. NAESB states that two sets of business practices that complement NERC's reliability standards—Transmission Load Relief (TLR) and enhancements to Coordinate Interchange Business Practices—were adopted by the WEQ but not described in its report. NAESB states that the business practices for TLR duplicates NERC's reliability standards,²⁵ as both

²⁵ The Commission accepted NERC's TLR procedures for filing, to be effective April 1, 2005.

NERC and NAESB agreed that there was insufficient time to adequately review and separate the business practices from the reliability standards and complete the effort in 2004 for "Version 0." NAESB states that it has been working with NERC to separate the business practices from the reliability standards.

44. We applaud the efforts of NAESB and NERC to coordinate their standard development efforts and NAESB's priority efforts to adopt business practices that complement NERC's reliability standards.

D. Standards of Conduct Standards

45. One of the revisions the WEQ made to the OASIS Business Practice Standards was to delete Standard 1.4 dealing with Standards of Conduct. The WEQ deleted this standard because the Commission's OASIS Standards of Conduct, previously governed by the Commission's regulation at 18 CFR 37.4, was superseded by the Commission's regulations at 18 CFR part 358. In conjunction with deleting Standard 1.4 from the OASIS Business Practice Standards, the WEQ adopted separate stand-alone Standards of Conduct standards developed to implement the Standards of Conduct requirements detailed in the Commission's Order Nos. 2004, 2004-A, and 2004-B as they apply to wholesale electric entities. Moreover, in its filing, NAESB states that priority efforts are underway to make necessary modifications to address Order No. 2004-C. As discussed further below, the Commission is not proposing to incorporate by reference the WEQ's Standards of Conduct standards at the current time. However, we are proposing to incorporate the WEQ Standards and Communication Protocols that govern the posting on OASIS of the information required in the Standards of Conduct in a new part 38 of the Commission's regulations.²⁶

46. We are not proposing to incorporate the WEQ's stand-alone Standards of Conduct by reference because these standards merely adopt the language in the Commission's regulations promulgated by Order Nos. 2004, 2004-A, and 2004-B and contain no further standards addressing the implementation of these regulations. In addition, the WEQ has edited the Commission's language to delete

North American Electric Reliability Council, 110 FERC ¶ 61,388 (2005).

²⁶ The WEQ's standards we are proposing to incorporate by reference on the posting of information required in the Standards of Conduct are found at Standards 4.3.1, 4.3.10.6, 4.3.1.1, and 4.5 of the WEQ OASIS Standards and Communications Protocols and the definition of "STANDARDS_OF_CONDUCT_ISSUES" in the OASIS Data Dictionary.

references to natural gas and natural gas pipelines to limit the applicability of its standard to public utilities. However, in their editing, the WEQ has changed the meaning of the Commission's language (see, e.g., the definition of Energy Affiliate). If we were to incorporate these standards by reference, we would have conflicting regulations, since the WEQ's standards duplicate language already in our regulations, but with errors.

47. As we stated above, in considering what WEQ standards to incorporate by reference, we are looking for the development of standards to implement, and operate in concert with, our regulations. If the WEQ was to adopt a set of standards that is consistent with, but not duplicative of, our regulations at 18 CFR part 358, Standards of Conduct for Transmission Providers, we would consider incorporating those standards by reference. In this regard, it would be useful if the WEQ would adopt

standards comparable to those NAESB adopted regarding standards of conduct on the gas side.²⁷

III. Notice of Use of Voluntary Consensus Standards

48. Office of Management and Budget Circular A-119 (section 11) (February 10, 1998) provides that Federal Agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation proposing to adopt a voluntary consensus standard or a government-unique standard. In this NOPR, the Commission is proposing to incorporate by reference voluntary consensus standards developed by the WEQ.

IV. Information Collection Statement

49. The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the

Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimates include the costs to implement the WEQ's OASIS Business Practice Standards, OASIS Standards and Communication Protocols, OASIS Data Dictionary, Coordinate Interchange Standards, ACE Equation Special Cases Standards, Manual Time Error Correction Standards, and Inadvertent Interchange Payback Standards. The burden estimates are primarily related to start-up to implement these standards and regulations and will not result in on-going costs.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC-516	220	1	6	1,320
FERC-717	220	1	24	5,280
Totals	30	6,600

Total Annual Hours for Collection (Reporting and Recordkeeping, (if appropriate)) = 6,600.

Information Collection Costs: The Commission seeks comments on the costs to comply with these

requirements. It has projected the average annualized cost for all respondents to be the following:²⁸

	FERC-516	FERC-717
Annualized Capital/Startup Costs	\$198,000	\$792,000
Annualized Costs (Operations & Maintenance)	N/A	N/A
Total Annualized Costs	\$198,000	\$792,000

50. OMB regulations²⁹ require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB. These information collections are mandatory requirements.

Title: Electric Rate Schedule Filings (FERC-516) Standards for Business Practices and Communication Protocols for Public Utilities (FERC-717) (formerly Open Access Same Time Information System).

Action: Proposed collections.

OMB Control No.: 1902-0096 and 1902-0173.

Respondents: Business or other for profit, (Public Utilities (Not applicable to small business.))

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

Necessity of Information: This proposed rule, if implemented, would upgrade the Commission's current business practice and communication standards to include standardized practices and address currently unresolved issues. The implementation of these standards and regulations is necessary to increase the efficiency of the wholesale electric power grid.

51. The information collection requirements of this proposed rule are based on the transition from transactions being made under the Commission's existing OASIS posting requirements and business practice standards to conducting transactions under the proposed standards. The NOPR proposes that the standards be incorporated into utility's tariffs and that OASIS postings be reported where it is directly accessible by industry users. The implementation of these data requirements will help the Commission carry out its responsibilities under the Federal Power Act of promoting the

²⁷ See NAESB's report filed on August 6, 2004, in Docket No. RM96-1, on standards adopted by its Wholesale Gas Quadrant to implement the Commission's Order No. 2004.

²⁸ The total annualized costs for the two information collections is \$198,000 + \$792,000 = \$990,000. This number is reached by multiplying the total hours to prepare a response (6600 hours)

by an hourly wage estimate of \$150 (a composite estimate that includes legal, technical and support staff rates, \$90+\$35+\$25). \$990,000 = \$150 x 6600.

²⁹ 5 CFR 1320.11.

efficiency of the electric industry's operations. The Commission's Office of Markets, Tariffs and Rates will use the data in rate proceedings to review rate and tariff changes by public utilities, for general industry oversight, and to supplement the documentation used during the Commission's audit process.

52. *Internal Review:* The Commission has reviewed the requirements pertaining to business practices and electronic communication of public utilities and made a preliminary determination that the proposed revisions are necessary to establish a more efficient and integrated wholesale electric power grid. Requiring such information ensures both a common means of communication and common business practices which provide participants engaged in the wholesale transmission of electric power with timely information and uniform business procedures across multiple transmission providers. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the electric power industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

53. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426, Tel: (202) 502-8415/Fax: (202) 273-0873, Email: michael.miller@ferc.gov.

54. Comments concerning the collection of information(s) and the associated burden estimate(s), should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395-7856, fax: (202) 395-7285].

V. Environmental Analysis

55. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.³⁰ The Commission has categorically excluded certain actions from these requirements as not having a

significant effect on the human environment.³¹ The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of electric power that requires no construction of facilities.³² Therefore, an environmental assessment is unnecessary and has not been prepared in this NOPR.

VI. Regulatory Flexibility Act Certification

56. The Regulatory Flexibility Act of 1980 (RFA)³³ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations proposed here impose requirements only on public utilities, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses.

57. The Commission has followed the provisions of both the RFA and the Paperwork Reduction Act on potential impact on small business and other small entities. Specifically, the RFA directs agencies to consider four regulatory alternatives to be considered in a rulemaking to lessen the impact on small entities: tiering or establishment of different compliance or reporting requirements for small entities, classification, consolidation, clarification or simplification of compliance and reporting requirements, performance rather than design standards, and exemptions. As the Commission originally stated in Order No. 889, the OASIS regulations now known as Standards for Business Practices and Communication Protocols for Public Utilities, apply only to public utilities that own, operate, or control transmission facilities subject to the Commission's jurisdiction and should a small entity be subject to the Commission's jurisdiction, it may file for waiver of the requirements.³⁴ This is

³¹ 18 CFR 380.4 (2004).

³² See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27) (2004).

³³ 5 U.S.C. 601-612.

³⁴ Small entities that qualified for a waiver from the requirements of Order Nos. 888 and 889 may apply for a waiver of the requirement to comply with these standards. We described the criteria for obtaining such a waiver in *Bridger Valley Electric Association, Inc.*, 101 FERC ¶ 61,146 (2002) and in *Sussex Rural Electric Cooperative*, 103 FERC ¶ 61,299 (2003). We stated in those cases that we would grant a waiver if the applicant is: (1) a small entity within the meaning of the RFA and has qualified for a waiver under Order Nos. 888 and 889, serves a load of 45 MW or less, and has four or fewer employees engaged in accounting, billing,

keeping with exemption provisions of the RFA. Accordingly, pursuant to section 605(b) of the RFA,³⁵ the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

VII. Comment Procedures

58. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due July 1, 2005.

Comments must refer to Docket No. RM05-5-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

59. Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC, 20426.

60. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

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

and regulatory activities; (2) it does not make, or have authority to make, wholesale power sales at market-based rates; (3) the applicant makes all of its sales under one cost-based rate agreement that is on file with the Commission; (4) it is obligated to file for Commission approval any new contracts or revisions to its existing contracts; and (5) the applicant's transmission system is essentially radial in nature and primarily used for distribution to its member-owners.

³⁵ 5 U.S.C. 605(b).

³⁰ Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

Street, NE., Room 2A, Washington, DC 20426.

62. From FERC's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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

List of Subjects

18 CFR Part 35

Electric utilities, Incorporation by reference, Reporting and recordkeeping requirements.

18 CFR Part 37

Conflict of interests, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 38

Conflict of interests, Electric power plants, Electric utilities, Incorporation by reference, Reporting and recordkeeping requirements.

By direction of the Commission.

Magalie R. Salas,
Secretary.

In consideration of the foregoing, the Commission proposes to amend Chapter I, Title 18, *Code of Federal Regulations*, as follows.

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

2. In § 35.28, add paragraph (c)(1)(vi) to read as follows:

§ 35.28 Non-discriminatory open access transmission tariff.

* * * * *

(c) * * *

(1) * * *

(vi) Each public utility's open access transmission tariff must include the standards incorporated by reference in part 38 of this chapter.

* * * * *

PART 37—OPEN ACCESS SAME-TIME INFORMATION SYSTEMS

3. The authority citation for part 37 continues to read as follows:

Authority: 16 U.S.C. 791-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

4. In § 37.5, paragraph (b) is revised to read as follows:

§ 37.5 Obligations of transmission providers and responsible parties.

* * * * *

(b) A Responsible Party must provide access to an OASIS providing standardized information relevant to the availability of transmission capacity, prices, and other information (as described in this part) pertaining to the transmission system for which it is responsible.

* * * * *

5. Part 38 is added to read as follows:

PART 38—BUSINESS PRACTICE STANDARDS AND COMMUNICATION PROTOCOLS FOR PUBLIC UTILITIES

Authority: 16 U.S.C. 791-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

Sec.

38.1 Applicability.

38.2 Incorporation by reference of North American Energy Standards Board Wholesale Electric Quadrant standards.

§ 38.1 Applicability.

This part applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce and to any non-public utility that seeks voluntary compliance with jurisdictional transmission tariff reciprocity conditions.

§ 38.2 Incorporation by reference of North American Energy Standards Board Wholesale Electric Quadrant standards.

(a) All entities to which § 38.1 is applicable must comply with the following business practice and electronic communication standards promulgated by the North American Energy Standards Board Wholesale Electric Quadrant, which are incorporated herein by reference:

(1) Open Access Same-Time Information Systems (OASIS) Business Practice Standards (WEQBPS-001-000, January 15, 2005) with the exception of the Definitions of "Affiliate," "Responsible Party," "Reseller," "Transmission Provider," "Transmission Customer," and "Wholesale Merchant Function," and Standard 1, including Standards 1.1 through 1.8, and Standard 9.7.

(2) Open Access Same-Time Information Systems (OASIS) Standards

and Communication Protocols (WEQSCP-001-000, January 15, 2005);

(3) Open Access Same-Time Information Systems (OASIS) Data Dictionary (WEQDD-001-000, January 15, 2005);

(4) Coordinate Interchange Standards (WEQBPS-002-000, January 15, 2005);

(5) Area Control Error (ACE) Equation Special Cases Standards (WEQBPS-003-000, January 15, 2005);

(6) Manual Time Error Correction Standards (WEQBPS-004-000, January 15, 2005); and

(7) Inadvertent Interchange Payback Standards (WEQBPS-005-000, January 15, 2005).

(b) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these standards may be obtained from the North American Energy Standards Board, 1301 Fannin, Suite 2350, Houston, TX 77002. Copies may be inspected at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426 and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

[FR Doc. 05-9797 Filed 5-16-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-117969-00 and REG-125628-01]

RIN 1545-BD76 and RIN 1545-BA65

Statutory Mergers and Consolidations; Revision of Income Tax Regulations Under Sections 358, 367, 884, and 6038B Dealing With Statutory Mergers or Consolidations Under Section 368(a)(1)(A) Involving One or More Foreign Corporations; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed rulemaking that affects corporations engaging in mergers

and consolidations and their shareholders under sections 358, 368(a)(1)(A), 367 and 884 of the Internal Revenue Code.

DATES: The public hearing originally scheduled for Thursday, May 19, 2005, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Treena Garrett of the Publications and Regulations Branch, Associate Chief Counsel (Procedures and Administration) (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The notices of proposed rulemaking and notices of public hearing that appeared in the **Federal Register** on Wednesday, January 5, 2005 (70 FR 746 and 70 FR 749), announced that a public hearing was scheduled for Thursday, May 19, 2005, at 10 a.m. in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under sections 358, 368(a)(1)(A), 367, and 884 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Thursday, April 28, 2005. Outlines of oral comments were due on Thursday, April 28, 2005.

The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit outlines of the topics to be addressed. As of Friday, May 6, 2005, no one has requested to speak. Therefore, the public hearing scheduled for Thursday, May 19, 2005, is cancelled.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 05-9612 Filed 5-16-05; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG-162813-04]

RIN 1545-BE20

Withholding Exemptions: Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document corrects a notice of proposed rulemaking by cross-

reference to temporary regulations that was published in the **Federal Register** on Thursday, April 14, 2005 (70 FR 19721). The document contains temporary regulations providing guidance under section 3402(f) of the Internal Revenue Code (Code) for employers and employees relating to the Form W-4, "Employee's Withholding Allowance Certificate."

FOR FURTHER INFORMATION CONTACT: Margaret A. Owens, (202) 622-0047 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking by cross-reference to temporary regulations (REG-162813-04), that is the subject of this correction is under section 3402 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking by cross-reference to temporary regulations (REG-162813-04) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking by cross-reference to temporary regulations (REG-162813-04) that was the subject of FR Doc. 05-6719, is corrected as follows:

On page 19722, column 2, under the amendatory instructional "Paragraph 1.", Line 2, the language "for part 1 continues to read, in part, as" is corrected to read, "for part 31 continues to read, in part, as".

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 05-9611 Filed 5-16-05; 8:45 am]

BILLING CODE 4830-01-P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 258

[Docket No. 2005-4 CARP SRA-Digital]

Rate Adjustment for the Satellite Carrier Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is submitting for public comment a proposed settlement

of royalty rates for the retransmission of digital over-the-air television broadcast signals by satellite carriers under the statutory license.

DATES: Comments and Notices of Intent to Participate must be submitted no later than June 16, 2005.

ADDRESSES: If hand delivered by a private party, an original and five copies of a comment and a Notice of Intent to Participate should be brought to Room LM-401 of the James Madison Memorial Building between 8:30 a.m. and 5 p.m. and the envelope should be addressed as follows: Office of the General Counsel/CARP, U.S. Copyright Office, James Madison Memorial Building, Room LM-401, 101 Independence Avenue, S.E., Washington, DC 20559-6000. If delivered by a commercial courier, an original and five copies of a comment and a Notice of Intent to Participate must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Streets, N.E., between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel/CARP, Room LM-403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, DC. If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment and a Notice of Intent to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Comments and Notices of Intent to Participate may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya Sandros, Associate General Counsel, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION: On December 8, 2004, the President signed the Satellite Home Viewer Extension and Reauthorization Act ("SHVERA"), a part of the Consolidated Appropriations Act of 2005. Pub.L. 108-447. SHVERA extends for an additional five years the statutory license for satellite carriers retransmitting over-the-air television broadcast stations to their subscribers, 17 U.S.C. 119, as well as making a number of amendments to the license. One of the amendments to section 119 sets forth a process, for the first time, for adjusting the royalty fees paid by

satellite carriers for the retransmission of digital broadcast signals. 17 U.S.C. 119(c)(2). The law set the initial rates as the rates set by the Librarian in 1997 for the retransmission of analog broadcast signals, 37 CFR 258.3(b)(1)&(2), reduced by 22.5 percent. 17 U.S.C. 119(c)(2)(A). These rates are to be adjusted in accordance with the procedures set forth in section 119(c)(1) of the Copyright Act.

On March 8, 2005, the Copyright Office received a letter from EchoStar Satellite L.L.C., DirecTV, Inc., Program Suppliers, and the Joint Sports Claimants requesting that the Office begin the process of setting the rates for the retransmission of digital broadcast signals by initiating a voluntary negotiation period so that rates for both digital and analog signals “will be in place before the July 31, 2005 deadline for satellite carriers to pay royalties for the first accounting period of 2005.” Letter at 2. The Office granted the request and, pursuant to section 119(c)(1), published in the **Federal Register** a notice initiating a voluntary negotiation period during which parties could negotiate in an effort to reach a voluntary agreement regarding the rates. See 70 FR 15368 (March 25, 2005).

In accordance with the March 25 notice, the Office has received one agreement, submitted jointly by the satellite carriers EchoStar Satellite L.L.C. and DirecTV, Inc., the copyright owners of motion pictures and syndicated television series represented by the Motion Picture Association of America, and the copyright owners of sports programming represented by the Office of the Commissioner of Baseball. The agreement proposes rates for the private home viewing of distant superstations and distant network stations for the 2005–2009 period, as well as the viewing of those signals in commercial establishments. The agreement specifies that distant superstations and network stations that are significantly viewed do not require a royalty payment, which is consistent with 17 U.S.C. 119(a)(3), as amended. In addition, the agreement proposes that, in the case of multicasting of digital superstations and network stations, each digital stream that is retransmitted by a satellite carrier must be paid for at the prescribed rate but no royalty payment is due for any program-related material contained on the stream within the meaning of *WGN v. United Video, Inc.*, 693 F.2d 622, 626 (7th Cir. 1982) and *Second Report and Order and First Order On Reconsideration in CS Doc. No. 98–120*, FCC 05–27 at ¶ 44 & n.158 (Feb. 23, 2005).

The statute requires the Librarian to “provide public notice of the royalty fees from the voluntary agreement and afford parties an opportunity to state that they object to those fees.” 17 U.S.C. 119(c)(1)(D)(ii)(II). This Notice of Proposed Rulemaking (“NPRM”) fulfills the requirement.

The law further provides that the Librarian shall adopt the rates contained in the voluntary agreement as applicable to all satellite carriers, distributors and copyright owners “unless a party with an intent to participate” in a royalty rate adjustment proceeding before a Copyright Arbitration Royalty Panel (“CARP”) and a “significant interest in the outcome” of the CARP proceeding files an objection. Consequently, any party that objects to the rates opposed in this NPRM must submit the following on or before June 16, 2005:

1. A notice of objection to the rates identifying the rate or rates to which the objection applies and the reasons for the objection;

2. A statement setting forth in detail why the objector has a significant interest in the royalty rates to be adopted; and

3. A separate Notice of Intention to Participate in the CARP proceeding to adjust the rates. The CARP proceeding will commence on or before December 31, 2005. See 17 U.S.C. 119(c)(2).

Only parties objecting to the royalty rates should submit the above-described documents.

A copy of the voluntary agreement can be viewed at www.copyright.gov/carp/sat_rate_agreement_amend.pdf. The Library is not proposing for adoption the additional terms set forth in the agreement as the statute only provides for adoption of royalty rates. See 17 U.S.C. 119(c)(1)(D)(ii)(III).

List of Subjects in 37 CFR Part 258

Copyright, Satellite, Television.

Proposed Regulations

For the reasons set forth above, the Copyright Office proposes to amend 37 CFR chapter II as follows:

PART 258—ADJUSTMENT OF ROYALTY FEE FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

1. The authority citation for part 258 is revised to read as follows:

Authority: 17 U.S.C. 119, 702, 802.

2. In § 258.2, paragraph (b) is amended by removing “§ 258.3(b)” and adding “§ 258.3(a)” in its place.

3. Section 258.3 is amended by revising the section heading and in paragraphs (a) through (h), by adding

“analog signals of” before “broadcast stations” each place it appears.

The revisions to § 258.3 read as follows:

§ 258.3 Royalty fee for secondary transmission of analog signals of broadcast stations by satellite carriers.

* * * * *

4. Add a new § 258.4 to read as follows:

§ 258.4 Royalty fee for secondary transmission of digital signals of broadcast stations by satellite carriers.

(a) Commencing January 1, 2005, the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—

(i) 20 cents per subscriber per month for distant superstations.

(ii) 17 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 40 cents per subscriber per month for distant superstations.

(b) Commencing January 1, 2006, the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—

(i) 21.5 cents per subscriber per month for distant superstations.

(ii) 20 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 43 cents per subscriber per month for distant superstations.

(c) Commencing January 1, 2007, the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—

(i) 23 cents per subscriber per month for distant superstations.

(ii) 23 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 46 cents per subscriber per month for distant superstations.

(d) Commencing January 1, 2008, the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—

(i) The 2007 rate per subscriber per month for distant superstations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2007 to January 2008.

(ii) The 2007 rate per subscriber per month for distant network stations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2007 to January 2008.

(2) For viewing in commercial establishments, the 2007 rate per subscriber per month for viewing distant superstations in commercial establishments adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2007 to January 2008.

(e) Commencing January 1, 2009, the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—

(i) The 2008 rate per subscriber per month for distant superstations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

(ii) The 2008 rate per subscriber per month for distant network stations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

(2) For viewing in commercial establishments, the 2008 rate per subscriber per month for viewing distant superstations in commercial establishments adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

(f) For purposes of calculating the royalty rates for secondary transmission of digital signals of broadcast stations by satellite carriers—

(1) In the case of digital multicasting, the rates in paragraphs (a) through (e) of this section apply to each digital stream that a satellite carrier or distributor retransmits pursuant to section 119; *provided*, however that no additional royalty shall be paid for the carriage of any material related to the programming on such stream; and

(2) Satellite carriers and distributors are not required to pay a section 119 royalty for the retransmission of a digital signal to a subscriber who resides in a community where that signal is “significantly viewed,” within the meaning of 17 U.S.C. 119(a)(3) and (b)(1), as amended.

Dated: May 12, 2005

Tanya Sandros,

Associate General Counsel.

[FR Doc. 05–9804 Filed 5–16–05; 8:45 am]

BILLING CODE 1410–33–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME Docket Number R08–OAR–2004–CO–0004; FRL–7912–7]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Greeley Revised Carbon Monoxide Maintenance Plan and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a State Implementation Plan (SIP) revision submitted by the State of Colorado. On June 20, 2003, the Governor of Colorado submitted a revised maintenance plan for the Greeley carbon monoxide (CO) maintenance area for the CO National Ambient Air Quality Standard (NAAQS). The revised maintenance plan contains transportation conformity budgets for 2005 through 2009, 2010 through 2014, and 2015 and beyond. In addition, the Governor submitted revisions to Colorado’s Regulation No. 11 “Motor Vehicle Emissions Inspection Program” and revisions to Colorado’s Regulation No. 13 “Oxygenated Fuels Program.” In this action, EPA is proposing approval of the Greeley CO revised maintenance plan, the transportation conformity budgets, and the revisions to Regulation No. 11 and Regulation No. 13. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before June 16, 2005.

ADDRESSES: Submit your comments, identified by RME Docket Number R08–OAR–2004–CO–0004, by one of the following methods:

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

- Agency Website: <http://docket.epa.gov/rmepub/index.jsp>. Regional Materials in EDOCKET (RME), EPA’s electronic public docket and comment system for regional actions, is EPA’s preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: long.richard@epa.gov and russ.tim@epa.gov.

- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental

Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME Docket Number R08–OAR–2004–CO–0004. EPA’s policy is that all comments received will be included in the public docket without change and may be made available at <http://docket.epa.gov/rmepub/index.jsp>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. EPA’s Regional Materials in EDOCKET and Federal regulations.gov Web site are “anonymous access” systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit EDOCKET online or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the Regional Materials in EDOCKET index at <http://docket.epa.gov/rmepub/index.jsp>. Although listed in the index, some

information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publically available only in hard copy form. Publicly available docket materials are available either electronically in Regional Materials in EDOCKET or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone (303) 312–6479, and e-mail at: russ.tim@epa.gov.

SUPPLEMENTARY INFORMATION:

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- (iii) The initials *NAAQS* mean National Ambient Air Quality Standard.
- (iv) The initials *SIP* mean or refer to State Implementation Plan.
- (v) The word *State* means the State of Colorado, unless the context indicates otherwise.

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through Regional Materials in EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- (a) Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- (b) Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- (c) Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- (d) Describe any assumptions and provide any technical information and/or data that you used.
- (e) If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- (f) Provide specific examples to illustrate your concerns, and suggest alternatives.
- (g) Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- (h) Make sure to submit your comments by the comment period deadline identified.

II. What Is the Purpose of This Action?

In this action, we are proposing approval of a revised maintenance plan for the Greeley attainment/maintenance area (hereafter, Greeley area) that is designed to keep the area in attainment for CO through 2015, we're proposing approval of transportation conformity motor vehicle emissions budgets (MVEB) for the area, we're proposing approval of changes to the State's Regulation No. 11 that will eliminate

the requirement to implement motor vehicle emissions inspections in the Greeley area, and we're proposing approval of changes to the State's Regulation No. 13 that will eliminate the requirement to implement a wintertime oxygenated fuels program in the Greeley area. We approved the original CO redesignation to attainment and maintenance plan for the Greeley area on March 10, 1999 (*see* 64 FR 11775).

The original Greeley CO maintenance plan that we approved on March 10, 1999 (hereafter March 10, 1999 maintenance plan) utilized the then applicable EPA mobile sources emission factor model, MOBILE5a. On January 18, 2002, we issued policy guidance for States and local areas to use to develop SIP revisions using the new, updated version of the model, MOBILE6. The policy guidance was entitled "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity" (hereafter, January 18, 2002 MOBILE6 policy). On November 12, 2002, EPA's Office of Transportation and Air Quality (OTAQ) issued an updated version of the MOBILE6 model, MOBILE6.2, and notified Federal, State, and Local agency users of the model's availability. MOBILE6.2 contained additional updates for air toxics and particulate matter. However, the CO emission factors were essentially the same as in the MOBILE6 version of the model.

For the original March 10, 1999 maintenance plan, the State followed our October 6, 1995 policy entitled, "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" (hereafter October 6, 1995 policy). Our October 6, 1995 policy indicated that nonclassifiable CO nonattainment areas, such as the Greeley area, that were seeking redesignation to attainment, need only prepare an attainment year emissions inventory and continue to implement the prior nonattainment control measures. However, based on the State's decision to pursue the elimination of the motor vehicle basic Inspection and Maintenance (I/M) program and the oxygenated fuels program control measures from the March 10, 1999, maintenance plan, our October 6, 1995 policy no longer applies. Instead, the relevant EPA policy we use in considering the Governor's June 20, 2003 revised maintenance plan is our September 4, 1992 policy memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" (hereafter, September 4, 1992 policy).

The attainment year emission inventory provided in the March 10, 1999 maintenance plan was for 1995. For the revised maintenance plan, the State prepared a new attainment year inventory for 1992, projected emission inventories for 1998, 2005, 2010, and 2015 (eliminating any emission reductions benefits from the prior basic I/M and oxygenated fuels programs beginning in 2004), and calculated all the mobile sources CO emissions using MOBILE6.2. In addition, the State prepared an emissions analysis for 2004 that evaluated the elimination of the basic I/M and oxygenated fuels programs in that year. The State calculated a CO MVEB for 2005 through 2009 and applied a selected amount of the available safety margin to the 2005 through 2009 transportation conformity MVEB. The State calculated a CO MVEB for 2010 through 2014 and applied a selected amount of the available safety margin to the 2010 through 2014 transportation conformity MVEB. The State calculated a CO MVEB for 2015 and beyond and also applied a selected amount of the available safety margin to the 2015 and beyond transportation conformity MVEB. We have determined that all the revisions noted above are Federally-approvable, as described further below.

III. What Is the State's Process to Submit These Materials to EPA?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a State to us.

The Colorado Air Quality Control Commission (AQCC) held a public hearing for the Greeley revised CO maintenance plan, and the revisions to Regulation No. 11 and Regulation No. 13 on December 19, 2002. The AQCC adopted the revised maintenance plan, and revisions to Regulation No. 11 and Regulation No. 13 directly after the hearing. These SIP revisions became State effective March 2, 2003, and were submitted by the Governor to us on June 20, 2003.

We have evaluated the Governor's submittal and have concluded that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. As required by section 110(k)(1)(B) of the CAA, we reviewed these SIP materials for conformance with the completeness criteria in 40 CFR part 51, appendix V and determined that the Governor's submittal was administratively and technically complete. Our completeness determination was sent on September 19, 2003, through a letter from Robert E. Roberts, Regional Administrator, to Governor Bill Owens.

IV. EPA's Evaluation of the Greeley Revised Maintenance Plan

EPA has reviewed the State's revised maintenance plan for the Greeley area and believes that approval is warranted. The following are the key aspects of this revision along with our evaluation of each:

(a) The State has air quality data that show continuous attainment of the CO NAAQS.

As described in 40 CFR 50.8, the national primary ambient air quality standard for carbon monoxide is 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year. 40 CFR 50.8

continues by stating that the levels of CO in the ambient air shall be measured by a reference method based on 40 CFR part 50, Appendix C and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53. The March 10, 1999 maintenance plan relied on ambient air quality data from 1988 through 1997. In our consideration of the revised Greeley CO maintenance plan, submitted by the Governor on June 20, 2003, we reviewed ambient air quality data from 1988 through 2004. The Greeley area shows continuous attainment of the CO NAAQS from 1988 to present. All of the above-referenced air quality data are archived in our Air Quality System (AQS).

(b) Using the MOBILE6.2 emission factor model, the State provided a revised attainment year inventory (1992), new projected years (1998, 2005, 2010, and 2015) inventories and an analysis for 2004.

The revised maintenance plan that the Governor submitted on June 20, 2003, includes comprehensive inventories of CO emissions for the Greeley area. These inventories include emissions from stationary point sources, area sources, non-road mobile sources, and on-road mobile sources. More detailed descriptions of the new 1992 attainment year inventory, and the new 1998, 2005, 2010, and 2015 projected inventories, are documented in the maintenance plan in section 2 entitled "Emission Inventories and Maintenance Demonstration," and in the State's Technical Support Document (TSD). The State's submittal contains emission inventory information that was prepared in accordance with EPA guidance. Summary emission figures from the 1992 attainment year and the projected years are provided in Table IV.-1 below.

TABLE IV-1.—SUMMARY OF CO EMISSIONS IN TONS PER DAY FOR THE GREELEY AREA

Source Category	1992	1998	2005	2010	2015
Point*	1.850	1.838	2.101	2.287	2.474
Area*	9.159	9.779	3.181	3.244	3.306
Non-Road*	5.437	6.127	6.900	7.696	8.501
Subtotal	16.4	17.7	12.2	13.2	14.3
On-Road	59.3	47.7	56.5	47.3	46.1
Total	75.7	65.4	68.7	60.5	60.4

*The State reported these categories with three decimal places to provide a better representation of the smaller source categories.

In addition to the above data, we note that Table 1 of the maintenance plan, entitled "1992-2015 Greeley Attainment/Maintenance Area Carbon

Monoxide Emission Inventories," includes inventory analysis data for 2004. With the elimination of the basic I/M program and oxygenated fuels

program in 2004, mobile source emissions are 59.0 tons per day and total CO emissions are 71.0 tons per

day, which is below the attainment year level of emissions of 75.7 tons per day.

The revised mobile source emissions show the largest change from the March 10, 1999 maintenance plan and this is primarily due to the use of MOBILE6.2 instead of MOBILE5a. The MOBILE6.2 modeling information is contained in the State's TSD (see "Mobile Source Emission Inventories," page 6) and on a compact disk we prepared (a copy is available upon request). The State's TSD information is also available on a compact disk that may be requested from the State or it can be downloaded directly from the State's Web site at <http://apcd.state.co.us/documents/techdocs.html>. The TSD compact disk contains much of the modeling data, input-output files, fleet makeup, MOBILE6.2 input parameters, and other information, and is included with the docket for this action. Other revisions to the mobile sources category resulted from revised vehicle miles traveled (VMT) estimates that were provided to the State from the North Front Range Transportation and Air Quality Planning Council (NFRTAQPC), which is the metropolitan planning organization (MPO) for the Greeley area. In summary, the revised maintenance plan and State TSD contain detailed emission inventory information that was prepared in accordance with EPA guidance and is acceptable to EPA.

(c) The State revised the March 10, 1999 Greeley maintenance plan. As described above, the State prepared, and we approved, the March 10, 1999 Greeley maintenance plan based on our October 6, 1995 policy. Because the State is seeking removal of control measures (the basic I/M program and the oxygenated fuels program) from the maintenance plan, the October 6, 1995 policy no longer applies, and the State is required to submit a full maintenance plan, including motor vehicle emissions budgets for transportation conformity.

The State has prepared a full maintenance demonstration, that includes a new attainment year inventory, for 1992, interim projected emission inventories for 1998, 2005, 2010, and a final maintenance year emission inventory for 2015.¹ As described below, the revised Greeley maintenance plan successfully demonstrates maintenance of the CO

NAAQS from 1992 to 2015, despite the elimination of both the basic I/M program and the oxygenated gasoline program.

In the revised maintenance plan, the State updated all emission source categories (point, area, non-road, and mobile) using the latest versions of applicable models (including MOBILE6.2). Other revisions involved transportation data sets, emissions data, emission factors, population figures and other demographic information. In addition, the revised maintenance plan addresses the requirements for transportation conformity, which are described further below.

As discussed above, the State prepared a new attainment year inventory, for 1992, and new emission inventories for the years 1998, 2005, 2010, and 2015. The results of these calculations are presented in Table 1 and Table 2, both entitled "1992–2015 Greeley Attainment/Maintenance Area Carbon Monoxide Emission Inventories (tons/day)," of the revised Greeley maintenance plan and are also summarized in our Table IV–1 above. The State has demonstrated using MOBILE6.2, that mobile source emissions continuously decline from 1992 to 2015 and that the total CO emissions from all source categories, projected for years 1998, 2005, 2010, and 2015, as well as for 2004, are all below the 1992 attainment year level of CO emissions. Therefore, we are proposing approval of the revised maintenance plan as it continues to demonstrate maintenance of the CO NAAQS from 1992 to 2015, while removing from the Federally-enforceable SIP both the basic I/M program (of Regulation No. 11) and the oxygenated fuels program (Regulation No. 13) for Weld County and the Greeley CO maintenance area.

(d) Monitoring Network and Verification of Continued Attainment. Continued attainment of the CO NAAQS in the Greeley area depends, in part, on the State's efforts to track indicators throughout the maintenance period. This requirement is met in section 6. "Monitoring Network/Verification of Continued Attainment" of the revised Greeley CO maintenance plan. In section 6., the State commits to continue the operation of the CO monitor in the Greeley area and to annually review this monitoring network and make changes as appropriate to meet the requirements of 40 CFR part 58.

Also, in section 7.A, the State commits to track mobile sources' CO emissions (which are the largest component of the inventories) through the ongoing regional transportation

planning process that is done by NFRTAQPC. Since regular revisions to Greeley's transportation improvement programs must go through a transportation conformity finding, the State will use this process to periodically review the Vehicle Miles Traveled (VMT) and mobile source emissions projections used in the revised maintenance plan. This regional transportation process is conducted by NFRTAQPC in coordination with the State's Air Pollution Control Division (APCD), the AQCC, and EPA.

Based on the above, we are proposing approval of these commitments as satisfying the relevant requirements. We note that a final rulemaking action would render the State's commitments federally enforceable. These commitments are also the same as we approved in the original maintenance plan.

(e) Contingency Plan. Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures.

As stated in section 7 of the revised maintenance plan, the contingency measures for the Greeley area will be triggered by a violation of the CO NAAQS. (However, the maintenance plan does note that an exceedance of the CO NAAQS may initiate a voluntary, local process by the City of Greeley, NFRTAQPC and APCD to identify and evaluate potential contingency measures.)

The City of Greeley and NFRTAQPC, in conjunction with the APCD and AQCC, will initiate a subcommittee process to begin evaluating potential contingency measures no more than 60 days after being notified by the APCD that a violation of the CO NAAQS has occurred. The subcommittee will present recommendations within 120 days of notification and the recommended contingency measures will be presented to the AQCC within 180 days of notification. The AQCC will then hold a public hearing to consider the recommended contingency measures, along with any other contingency measures that the AQCC believes may be appropriate to effectively address the violation of the CO NAAQS. The necessary contingency measures will be adopted and implemented within one year after the violation occurs.

The potential contingency measures that are identified in section 7.C of the revised Greeley CO maintenance plan include; (1) a basic vehicle inspection

¹ As noted above, the State used the MOBILE6.2 model to revise the Greeley CO maintenance plan. While under certain circumstances, our January 18, 2002, MOBILE6 policy allows areas to revise their motor vehicle emission inventories and transportation conformity MVEBs using the MOBILE6 model without revising the entire SIP or completing additional modeling, those circumstances are not present in this case.

and maintenance program as described in AQCC Regulation No. 11 as it existed prior to the modifications adopted by the AQCC on December 19, 2002, with the addition of any on-board diagnostics components as required by Federal law and, (2) a 2.7% oxygenated fuels program as set forth in AQCC Regulation No. 13 prior to the modifications made on December 19, 2002.

Based on the above, we find that the contingency measures provided in the State's revised Greeley CO maintenance plan are sufficient to meet the requirements of section 175A(d) of the CAA and we are proposing approval of them.

(f) Subsequent Maintenance Plan Revisions. In accordance with section 175A(b) of the CAA, Colorado committed to submit a revised maintenance plan eight years after our approval of the original redesignation. This provision for revising the maintenance plan is contained in section 8 of the revised Greeley CO maintenance plan. In section 8, the State commits to submit a revised maintenance plan eight years after the approval of the May 10, 1999, maintenance plan.

Based on our review of the components of the revised Greeley CO maintenance plan, as discussed in our items IV.(a) through IV.(f) above, we have concluded that the State has met the necessary requirements in order for us to propose approval of the revised Greeley CO maintenance plan.

V. EPA's Evaluation of the Transportation Conformity Requirements

As we noted above, in order for the State to remove the basic I/M program and oxygenated gasoline programs from the Federal SIP for the Greeley area, a full maintenance demonstration was required. With the development of the full maintenance demonstration, which included the necessary projected emission inventories for future years, the Greeley area then had to address the transportation conformity requirements of section 176 of the CAA and the relevant sections of our conformity regulation (see 40 CFR 93.118 and 93.124).

One key provision of our conformity regulation requires a demonstration that emissions from the transportation plan and Transportation Improvement Program are consistent with the emissions budget(s) in the SIP (40 CFR 93.118 and 93.124). The emissions budget is defined as the level of mobile source emissions relied upon in the attainment or maintenance demonstration to maintain compliance with the NAAQS in the nonattainment or maintenance area. The rule's requirements and EPA's policy on emissions budgets are found in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62193-62196) and in the sections of the rule referenced above.

Section 5 of the maintenance plan defines the CO motor vehicle emissions budgets in the Greeley CO attainment/maintenance area as 63 tons per day

(tpd) for 2005 through 2009, 62 tpd for 2010 through 2014, and 60 tpd for 2015 and beyond.

The transportation conformity motor vehicle emissions budgets were derived by taking the difference between the attainment year (1992) total emissions and the projected future years' total emissions. This difference is the "safety margin," part or all of which may be added to projected mobile sources CO emissions to arrive at a motor vehicle emissions budget to be used for transportation conformity purposes. The State added the safety margins, less one ton per day, to projected mobile sources CO emissions for 2005, 2010, and 2015. However, the State then rounded 62.5 tpd up to 63 tpd for the 2005 through 2009 budget and rounded 61.5 tpd up to 62 tpd for the 2010 through 2014 budget. Generally, rounding up budget values is not appropriate because the higher values may not be consistent with the maintenance demonstration, but in this case, the State's 0.5 tpd higher budgets can be accommodated within the one tpd of safety margin that the State did not initially allocate to the budgets. Therefore, we are ignoring the State's rounding errors and accepting 63 tpd as the budget for 2005 through 2009 and 62 tpd as the budget for 2010 through 2014.

The State's determination of safety margins and motor vehicle emissions budgets for the Greeley CO maintenance plan is further illustrated in Table V-1 below and in section 5 of the maintenance plan:

TABLE V-1.—MOBILE SOURCES EMISSIONS, SAFETY MARGINS, AND MOTOR VEHICLE EMISSIONS BUDGETS IN TONS OF CO PER DAY (TPD)

Year	Mobile sources emissions (tpd)	Total emissions (tpd)	Math	Margin of safety (tpd)	Motor vehicle emissions budget (tpd)
1992	59.3	75.7		N/A	N/A
2005	56.5	68.7	75.7 - 68.7 = 7 7 - 1 = 6 56.5 + 6 = 62.5 (plus 0.5) is 63	6	63
2010	47.3	60.5	75.7 - 60.5 = 15.2 15.2 - 1 = 14.2 47.3 + 14.2 = 61.5 (plus 0.5) is 62	14.2	62
2015	46.1	60.4	75.7 - 60.4 = 15.3 15.3 - 1 = 14.3 46.1 + 14.3 = 60.4 or 60	14.3	60

Note: N/A = Not Applicable.

Our analysis indicates that the above figures are consistent with maintenance of the CO NAAQS throughout the maintenance period. Therefore, we are proposing approval of the following motor vehicle emissions budgets for the Greeley area: 63 tons per day for 2005

through 2009, 62 tons per day for 2010 through 2014, and 60 tons per day for 2015 and beyond.

Pursuant to § 93.118(e)(4) of EPA's transportation conformity rule, as amended, EPA must determine the adequacy of submitted mobile source

emissions budgets. EPA reviewed the Greeley CO budgets for adequacy using the criteria in 40 CFR 93.118(e)(4), and determined that the budgets were adequate for conformity purposes. EPA's adequacy determination was made in a letter to the Colorado APCD

on October 29, 2003, and was announced in the **Federal Register** on January 5, 2004 (69 FR 339). As a result of this adequacy finding, the budgets took effect for conformity determinations in the Greeley area on January 20, 2004. However, we note that we are not bound by that determination in acting on the maintenance plan.

In addition to the above, the State has made a commitment regarding transportation conformity in section 5 of the maintenance plan. Because informal roll-forward analyses, prepared by the State, indicate that the 2015 CO emissions budget may be exceeded by 2030, the State has committed to the reimplementation of the basic I/M program (with any Federally required on-board diagnostic tests) for the Greeley area in 2026. This commitment by the State is included in the maintenance plan for purposes of 40 CFR 93.122(a)(3)(iii), which provides that emissions reduction credit from such programs may be included in the transportation conformity emissions analysis if the maintenance plan contains such a written commitment. We agree with this interpretation of 40 CFR 93.122(a)(3)(iii) and will make this State commitment Federally enforceable if we approve the revised Greeley CO maintenance plan.

VI. EPA's Evaluation of the Regulation No. 11 Revisions

Colorado's Regulation No. 11 is entitled "Motor Vehicle Emissions Inspection Program." In developing the Greeley CO maintenance plan, the State evaluated a number of options for revising the current motor vehicle emissions inspection program. The final decision, based on the use of our Mobile6.2 emission factor model, was to eliminate the basic I/M program from the Federally-approved SIP beginning on January 1, 2004. A description of the State's process and emissions evaluation of the Regulation No. 11 revisions is found in sections 2 and 3 of the maintenance plan. These revisions to Regulation No. 11 were submitted, as a separate revision to the SIP, for our approval in conjunction with the revised maintenance plan.

The revisions adopted by the AQCC on December 19, 2002, and submitted by the Governor on June 20, 2003, remove the Greeley area component of the Colorado automobile inspection and maintenance program ("AIR Program") from the Federally-approved SIP. Section 2 of the maintenance plan reflects this change in Regulation No. 11 in that the mobile source CO emissions were calculated without the CO emissions reduction benefit of a basic

I/M program starting in 2004 and continuing through 2015. We note that even with the elimination of the basic I/M program and the elimination of the oxygenated fuels program, discussed below, for the Greeley area beginning on January 1, 2004, the area is still able to meet our requirements to demonstrate maintenance of the CO standard through 2015.

We have reviewed and are proposing approval of these State-adopted changes to Regulation No. 11.

VII. EPA's Evaluation of the Regulation No. 13 Revisions

Colorado's Regulation No. 13 is entitled "Oxygenated Fuels Program" (hereafter referred to as Regulation No. 13). The purpose of this regulation is to reduce CO emissions from gasoline powered motor vehicles in the Greeley area through the wintertime use of oxygenated fuels. Section 211(m) of the CAA originally required the State to implement an oxygenated fuels program in the Greeley area. Section 211(m) states that the oxygenated fuels program must cover no less than a four month period each year unless EPA approves a shorter period. We can approve a shorter implementation period if a State submits a demonstration that a reduced implementation period will still assure that there will be no exceedances of the CO NAAQS outside of this reduced period. This was done previously when we approved revisions to Regulation No. 13 for the Denver area, that also affected the Greeley area, that shortened the oxygenated fuels season and reduced the oxygenate content (see 62 FR 10690, March 10, 1997 and 64 FR 46279, August 25, 1999). When an area is redesignated to attainment, the oxygenated fuels program may be further shortened or eliminated entirely as long as the State is able to show the program is not needed to demonstrate maintenance of the CO NAAQS (see 65 FR 80779, December 22, 2000).

In developing the Greeley CO revised maintenance plan, the State evaluated options for revising the current oxygenated fuels program. The final decision, based on the use of our Mobile6.2 emission factor model, was to eliminate the oxygenated fuels program from the Federally-approved SIP beginning on January 1, 2004. A description of the State's process and emissions evaluation of the Regulation No. 13 revisions is found in sections 2 and 3 of the maintenance plan. These revisions to Regulation No. 13 were submitted, as a separate revision to the SIP, for our approval in conjunction with the revised maintenance plan.

The current EPA-approved oxygenated fuels program for the Greeley area has the following three requirements: (1) The control period is from November 1 through February 7 of each winter season, (2) an oxygen content of at least 2.0% by weight is required from November 1 through November 7, and (3) an oxygen content of at least 2.7% by weight is required from November 8 through February 7.

In conjunction with the submittal of the Greeley CO revised maintenance plan, the State of Colorado is seeking EPA's approval of revisions to Regulation No. 13 that would eliminate the oxygenated fuels program for the Greeley area beginning on January 1, 2004.

As we discussed above, and as presented in section 2 of the revised maintenance plan, the removal of the CO emission reductions associated with the implementation of Regulation No. 13 were incorporated by the State into the emission projections, using our Mobile6.2 emissions model, beginning in 2004 and were projected through the final maintenance year of 2015. Even with the elimination of both Regulation No. 11 and Regulation No. 13 for the Greeley area starting in 2004, maintenance of the CO NAAQS is successfully demonstrated.

We have reviewed these changes to Regulation No. 13, that the State adopted on December 19, 2002, and the Governor submitted on June 20, 2003. We are proposing approval of these revisions as they are consistent with maintenance of the CO NAAQS for the Greeley area and meet the requirements of section 211(m) of the CAA.

VIII. Consideration of Section 110(l) of the CAA

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA.

EPA originally anticipated final action on the revised Greeley CO maintenance plan by the end of 2004. However, for the reasons discussed below, we determined that we needed to postpone action on the plan until we acted on the Denver 8-hour ozone Early Action Compact (EAC) plan. This is because the revised CO maintenance plan eliminates the basic I/M program in the Greeley area.

The Greeley area is included in the Denver 8-hour ozone nonattainment boundary and is also included in the attainment demonstration modeling for

the Denver 8-hour ozone EAC plan. While the basic I/M program was originally adopted for Greeley to control CO emissions, it also produces some reduction in volatile organic compound (VOC) emissions, a precursor to ground level ozone formation. For example, vehicles in the Greeley area are failed for excessive hydrocarbon emissions, which contain VOCs. In other words, removal of the basic I/M program from the Greeley area could lead to an increase in ozone.

Under EPA's interpretation of section 110(l) of the Clean Air Act, we cannot approve the removal of the basic I/M program from the Greeley area absent a substitute revision providing equivalent or greater VOC reductions or a demonstration that elimination of the program will not interfere with relevant requirements of the Clean Air Act (in this case, attainment of the 8-hour ozone NAAQS.)

The State is not providing a substitute SIP revision. Instead, Colorado intends to demonstrate non-interference through its 8-hour ozone attainment demonstration, which is part of the Denver 8-hour ozone EAC plan that the Governor submitted on July 21, 2004. The 8-hour ozone attainment demonstration takes no emissions reduction credit for the Greeley basic I/M program. We have not acted on the Denver 8-hour ozone EAC plan, but intend to do so in the near future.

Assuming we approve the Denver EAC ozone attainment demonstration, we will then have the technical and legal basis to approve the removal of the Greeley area basic I/M program from the SIP. Thus, we must approve the Denver 8-hour ozone EAC plan before, or at the same time, we approve the removal of the Greeley area basic I/M program from the SIP. Accordingly, we will not finalize approval of the revised Greeley CO maintenance plan and revised Regulation No. 11 unless and until we approve the Denver 8-hour ozone EAC plan.

IX. Proposed Action

In this action, EPA is proposing approval of the Greeley revised carbon monoxide maintenance plan, the transportation conformity budgets for 2005 through 2009, 2010 through 2014, and 2015 and beyond, and the revisions to Regulation No. 11 and Regulation No. 13.

Submit your comments, identified by RME Docket Number R08-OAR-2004-CO-0004, by one of the methods identified above at the front of this proposed rule. We will consider your comments in deciding our final action if they are received before June 16, 2005.

EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of the rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

X. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the

distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 6, 2005.

Kerrigan G. Clough,

Acting Regional Administrator, Region VIII.

[FR Doc. 05-9721 Filed 5-16-05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME Docket Number R08-OAR-2005-CO-0001; FRL-7912-9]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Denver Early Action Compact Ozone Plan, Attainment Demonstration of the 8-hour Ozone Standard, and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a State Implementation Plan (SIP) revision submitted by the State of Colorado. On July 21, 2004, the Governor of Colorado submitted an Early Action Compact (EAC) ozone plan

for the Denver metropolitan area (hereafter, Denver area) for the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Governor's submittal also contained an attainment demonstration for the 8-hour ozone NAAQS. In conjunction with the EAC ozone plan, the Governor submitted revisions to Colorado's Common Provisions Regulation, Colorado's Regulation No. 7 "Emissions of Volatile Organic Compounds" (hereafter, Regulation No. 7), and revisions to Colorado's Regulation No. 11 "Motor Vehicle Emissions Inspection Program" (hereafter Regulation No. 11). In this action, EPA is proposing approval of the Denver EAC ozone plan, the associated attainment demonstration, and the revisions to the Common Provisions Regulation, Regulation No. 7, and Regulation No. 11. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before June 16, 2005.

ADDRESSES: Submit your comments, identified by RME Docket Number R08-OAR-2005-CO-0001, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Agency Web site: <http://docket.epa.gov/rmepub/index.jsp>. Regional Materials in EDOCKET (RME), EPA's electronic public docket and comment system for regional actions, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: long.richard@epa.gov and russ.tim@epa.gov.

• Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

• Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 300, Denver, Colorado 80202-2466.

• Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME Docket Number R08-OAR-2005-CO-0001. EPA's policy is that all comments received will be included in the public docket without change and

may be made available at <http://docket.epa.gov/rmepub/index.jsp>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. EPA's Regional Materials in EDOCKET and federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET online or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the Regional Materials in EDOCKET index at <http://docket.epa.gov/rmepub/index.jsp>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publically available only in hard copy form. Publicly available docket materials are available either electronically in Regional Materials in EDOCKET or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy

of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, phone (303) 312-6479, and e-mail at: russ.tim@epa.gov.

SUPPLEMENTARY INFORMATION:

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- (iii) The initials *NAAQS* mean National Ambient Air Quality Standard.
- (iv) The initials *SIP* mean or refer to State Implementation Plan.
- (v) The word *State* means the State of Colorado, unless the context indicates otherwise.

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that

includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

I. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

II. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

III. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

IV. Describe any assumptions and provide any technical information and/or data that you used.

V. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

VI. Provide specific examples to illustrate your concerns, and suggest alternatives.

VII. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

VIII. Make sure to submit your comments by the comment period deadline identified.

II. What Is the Purpose of This Action?

In this action, we are proposing approval of the Early Action Compact ozone plan for the Denver area that is designed to demonstrate attainment of the 8-hour ozone NAAQS by December 31, 2007 with additional provisions for continued maintenance of the ozone NAAQS through 2012, we're proposing approval of the photochemical modeled attainment demonstration, we're proposing approval of certain revisions to the State's Common Provisions Regulation, we're proposing approval of revisions to Regulation No. 7 for the control of VOC and NO_x emissions from certain oil and gas exploration and production operations, we're proposing approval of revisions to the motor vehicle inspections and maintenance (I/M) requirements in Regulation No. 11 the Governor submitted on July 21, 2004, and we're proposing approval of several prior I/M revisions to Regulation No. 11.

III. What Is the State's Process to Submit These Materials to EPA?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a State to us.

A. The Colorado Air Quality Control Commission (AQCC) held a public hearing for the Denver EAC ozone plan on March 11 and 12, 2004. The AQCC adopted the EAC ozone plan, and its associated attainment demonstration, directly after the hearing. This SIP revision became State effective on May 30, 2004, and was submitted by the Governor to us on July 21, 2004.

We have evaluated the Governor's submittal for the Denver EAC ozone plan and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. By operation of law under section 110(k)(1)(B) of the CAA, the Governor's July 21, 2004, submittal became complete on January 21, 2005.

B. The Colorado AQCC held a public hearing for the revisions to the Common Provisions Regulation, Regulation No. 7 and Regulation No. 11 on March 11 and 12, 2004. The AQCC adopted these revisions directly after the hearing. These SIP revisions became State effective on May 30, 2004, and were submitted by the Governor to us on July 21, 2004.

We have evaluated the Governor's submittal for the Common Provisions Regulation, Regulation No. 7 and Regulation No. 11 revisions and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. By operation of law under section 110(k)(1)(B) of the CAA, the Governor's July 21, 2004, submittal became complete on January 21, 2005.

C. For the 2000, 2001, and 2002 Regulation No. 11 revisions, the Colorado AQCC held a public hearing on November 16, 2000, December 20, 2001, August 15, 2002, and October 17, 2002. The AQCC adopted the revisions to Regulation No. 11 directly after these hearings. These SIP revisions became State effective on December 30, 2000, January 30, 2002, September 30, 2002, and December 30, 2002, respectively, and were all submitted by the Governor to us on June 20, 2003.

We evaluated the Governor's submittal and concluded that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. Pursuant to section 110(k)(1)(B) of the CAA, we reviewed these SIP materials for conformance with the completeness criteria in 40 CFR part 51, appendix V and determined that the Governor's June 30, 2003, submittal was administratively and technically complete. Our completeness determination was sent on November 28, 2003, through a letter from Robert E. Roberts, Regional Administrator, to Governor Bill Owens.

D. For the 2003 Regulation No. 11 revisions, the Colorado AQCC held a public hearing on September 18, 2003, and December 18, 2003. The AQCC adopted the revisions to Regulation No. 11 directly after these hearings. These SIP revisions became State effective on November 30, 2003, and March 1, 2004, respectively, and were all submitted by the Governor to us on April 12, 2004.

We evaluated the Governor's submittal and concluded that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. Pursuant to section 110(k)(1)(B) of the CAA, we reviewed these SIP materials for conformance with the completeness criteria in 40 CFR part 51, appendix V and determined that the Governor's April 12, 2004, submittal was administratively and technically complete. Our completeness determination was sent on June 17, 2004, through a letter from Robert E. Roberts, Regional Administrator, to Governor Bill Owens.

E. The Colorado AQCC held a public hearing for additional revisions to Regulation No. 7 on December 16, 2004. The AQCC adopted these revisions directly after the hearing. These SIP revisions became State effective on March 2, 2005, and were submitted by the Governor to us on March 24, 2005.

We have evaluated the Governor's submittal of the additional revisions to Regulation No. 7 and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. Pursuant to section 110(k)(1)(B) of the CAA, we reviewed these SIP materials for conformance with the completeness criteria in 40 CFR part 51, appendix V and determined that the Governor's March 24, 2005, submittal was administratively and technically complete. Our completeness determination was sent on April 6, 2005, through a letter from Robert E. Roberts, Regional Administrator, to Governor Bill Owens.

IV. Background for Early Action Compacts for the 8-hour Ozone NAAQS

A. Why Was the Compact Program Developed?

As discussed in our proposed rule for the implementation of the 8-hour ozone NAAQS (see 68 FR 32805, June 2, 2003), State, local and Tribal air pollution control agencies continued to express a need for added flexibility in implementing the 8-hour ozone NAAQS, including incentives for taking action sooner than the CAA requires for reducing ground-level ozone. The compact program permits local areas to make decisions that will achieve reductions in VOC and NO_x emissions sooner than otherwise is mandated by the CAA. Early planning and early implementation of control measures that improves air quality will likely accelerate protection of public health. We issued our initial policy on early planning on November 14, 2002¹ (hereafter, November 14, 2002 policy), with a further description in our June 2, 2003 proposed rule (68 FR 32805), and as provided in our April 30, 2004 final rule (69 FR 23951) entitled "Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1."

B. What Was the "Early Action" Protocol That Texas Submitted to EPA?

In March of 2002, the Texas Commission on Environmental Quality (TCEQ) encouraged EPA to consider incentives for early planning towards achieving the 8-hour ozone NAAQS. The TCEQ submitted to EPA the *Protocol for Early Action Compacts Designed to Achieve and Maintain the 8-hour Ozone Standard (Protocol)*. The Protocol was designed to achieve NO_x and VOC emissions reductions for the 8-hour ozone NAAQS sooner than would otherwise be required under the CAA. The TCEQ recommended that the Protocol be formalized by "Early Action Compact" agreements primarily developed by local, State and Federal (EPA) officials. In a letter dated June 19, 2002, from Gregg Cooke, Administrator, Region 6, to Robert Huston, Chairman, TCEQ, EPA endorsed the principles outlined in the Protocol. The Protocol was subsequently revised on December 11, 2002,² based on comments from

¹ Memorandum from Jeffrey R. Holmstead, Assistant Administrator, to Regional Administrators, entitled "Schedule for 8-Hour Ozone Designations and its Effect on Early Action Compacts" dated November 14, 2002.

² The Texas Protocol was submitted to EPA in March 2002 for review and was revised in December 2002 based on the Agency's comments concerning the need for additional milestones and

EPA. Areas meeting the necessary prerequisites prepared an Early Action Compact (EAC) document that was based on the provisions of the Protocol. These EACs were then executed by the necessary State and local entities, along with the respective EPA Regional Office, by December 31, 2002. The EACs were required to contain the following:

1. Early planning, implementation, and emissions reductions leading to expeditious attainment and maintenance of the 8-hour ozone standard.

2. Local control of the measures employed with broad-based public input.

3. State support to ensure technical integrity of the early action plan including completion of emissions inventories and dispersion modeling (based on most recent Agency guidance) to support the attainment demonstration and selected local control measures.

4. Formal incorporation of the early action plan itself into the State Implementation Plan (SIP). Also, adoption and submittal as revisions to the SIP of control strategies that demonstrate attainment.

5. Completion of a component to address emissions growth at least 5 years beyond December 31, 2007, ensuring that the area will remain in attainment of the 8-hour ozone standard during that period.

6. Semiannual reports detailing progress toward completion of compact milestones.

7. Designation of all areas as attainment or nonattainment in April 2004, but for compact areas, deferral of the effective date of the nonattainment designation and/or designation requirements so long as all compact terms and milestones continue to be met.

8. Safeguards to return areas to traditional SIP attainment requirements should compact terms be unfulfilled (e.g., if the area fails to attain in 2007), with appropriate credit given for reduction measures already implemented.

C. What are the milestone and submittal requirements for Early Action Compact areas?

The November 14, 2002, policy memorandum, an additional EPA memorandum dated April 4, 2003,³ our June 2, 2003 proposed rule (68 FR

other clarifications. Docket No. OAR-2003-0090-0004.

³ Memorandum from Lydia N. Wegman, Director, Air Quality Strategies and Standards Division, "Early Action Compacts (EACs): The June 16, 2003 Submission and Other Clarifications," April 4, 2003. Docket No. OAR-2003-0090-0002.

32805), and our April 30, 2004 final rule (69 FR 23951) establish the activities EAC areas are required to perform and the necessary submittals that must be made to EPA. EAC areas are required to select control strategies based on SIP-quality dispersion modeling that shows attainment of the 8-hour ozone NAAQS no later than December 31, 2007 through implementation of the control strategies. We specified that all EAC areas must submit a local plan by March 31, 2004 that includes measures that are specific, quantified, and permanent and that, once approved into the SIP by EPA, will be federally enforceable. The March 31, 2004 submission also had to include specific implementation dates for the local controls, as well as detailed documentation supporting the selection of measures. Control measures must be implemented no later than December 31, 2005, which is at least 16½ months earlier than required by the CAA. Reports are required every 6 months to describe progress toward completion of milestones.

Table IV-1 below presents the milestones and submissions that EAC areas are required to complete in order to continue eligibility for a deferral of the effective date of the nonattainment designation for the 8-hour ozone NAAQS.

TABLE IV-1.—EARLY ACTION COMPACT MILESTONES

Submittal Date	Compact Milestone
December 31, 2002.	State/Locals submit EAC for EPA signature.
June 16, 2003	State/Locals submit preliminary list and description of potential local control measures under consideration.
March 31, 2004.	Plan submitted to State for necessary action (includes specific, quantified and permanent control measures to be adopted).
December 31, 2004.	State submits EAC plan and adopted local measures to EPA as a SIP revision that, when approved, will be federally enforceable.
No later than December 31, 2005.	State/Locals to implement adopted SIP control measures.
June 30, 2006	State reports on implementation of control measures, assessment of air quality improvement, and reductions in NO _x and VOC emissions to date.
December 31, 2007.	EAC area attains 8-hour ozone NAAQS.

In accordance with the Protocol and the executed EAC documents, EPA

recognized the EAC areas' commitments to early, voluntary action by designating the EAC areas that were violating the 8-hour NAAQS (based on air quality data from 2001, 2002, and 2003) as nonattainment on April 30, 2004 (see 69 FR 23858), but deferred the effective date of the nonattainment designation so long as all terms and milestones of the EAC continue to be met.

V. EPA's Evaluation of the Denver Early Action Compact Milestone Submittals

We have reviewed the Denver EAC milestone submittals with respect to the requirements in the Protocol and the executed December 31, 2002 Denver EAC. We consider these milestone submittals as necessary prerequisites in order for us to propose approval of the Denver EAC ozone plan SIP revision. The following are our analyses of how the EAC milestone submittal requirements, discussed above, have been met for the Denver EAC.

A. State/Locals Submit EAC for EPA Signature by December 31, 2002

The State of Colorado delivered the Denver EAC to EPA, Region 8 on December 30, 2002. The EAC had been signed by Jim Scherer, Chairman of the Denver Regional Air Quality Council (RAQC), Robert E. Brady Jr., Chairman of the Colorado Air Quality Control Commission (AQCC), Douglas H. Benevento, Executive Director, Colorado Department of Public Health and Environment (CDPHE), Thomas Norton, Executive Director, Colorado Department of Transportation (CDOT), and Sharon L. Richardson, Chairman, Denver Regional Council of Governments (DRCOG). The Denver EAC was executed by Robert E. Roberts, Regional Administrator, EPA Region 8, on December 31, 2002.

The Denver EAC was amended on March 18, 2004 with the additional signatures of Stephen F. Stutz, Chair, Elbert County Board of County Commissioners, Kathay Rennels, Chair, Larimer County Board of County Commissioners, Michael Harms, Chair, Morgan County Board of County Commissioners, and Rob Masden, Chair, Weld County Board of County Commissioners.

Based on the above actions, EPA has determined that this EAC milestone requirement has been addressed.

B. State/Locals Submit Preliminary List and Description of Potential Local Control Measures Under Consideration by June 16, 2003

On June 16, 2003, Ken Lloyd, Executive Director, RAQC and Margie Perkins, Director, Air Pollution Control

Division (APCD) of the CDPHE jointly submitted the Denver EAC area's "June 16, 2003 Milestone—Identification and Description of Potential Control Strategies for Further Consideration." This submittal contained a further description of the stakeholder process, strategy evaluation considerations, and a list of ten potential emission reduction strategies. Provided for each of the potential strategies were, a brief description, estimate of potential emission reductions (where available), an implementation approach and schedule, and a description of the geographic area of application of the strategy.

Based on the content of this document, EPA has determined that this EAC milestone requirement has been addressed.

C. Plan Submitted to State for necessary Action (Includes Specific, Quantified and Permanent Control Measures To Be Adopted) by March 31, 2004

The Denver RAQC held a public meeting on December 11, 2003, at the end of which, the RAQC gave their approval to the Denver EAC ozone plan. In conjunction with the RAQC's planning processes, the Colorado AQCC entertained public comment during noticed public meetings in July, August, September, November, and December, 2003. With the RAQC's approval, the Denver EAC plan, and associated materials, were then transmitted to the Colorado AQCC. At their December 18, 2003, public meeting the AQCC gave notice to open a three-month public comment period and scheduled a public hearing for March 11, 2004 (which was subsequently extended to March 11 and March 12, 2004.) At the December 18, 2003 AQCC meeting, the AQCC also noticed for public comment revisions to the appropriate Colorado Regulations that would achieve the necessary emission reductions that were modeled in the attainment demonstration which supported the EAC plan. Once approved, these Regulation revisions would generate permanent and enforceable emission reductions. We note that the Denver EAC plan does not take any credit for voluntary measures.

Based on the above actions, EPA has determined that this EAC milestone requirement has been addressed.

D. State Submits EAC Plan and Adopted Local Measures to EPA as a SIP Revision (That, When Approved, Will Be Federally Enforceable) by December 31, 2004

On March 11 and March 12, 2004, the AQCC conducted a public hearing to consider the Denver EAC plan, the

attainment demonstration, and the necessary revisions to Colorado's Common Provisions Regulation, Regulation No. 7, and Regulation No. 11. At the end of the public hearing on March 12, 2004, the AQCC adopted all the above SIP materials. The entire Denver EAC SIP package was forwarded to Governor Owens who then transmitted the SIP package to EPA, Region 8, with a letter dated July 21, 2004.

We note that on March 10, 2004, and just prior to the AQCC public hearing of March 11 and March 12, 2004, we sent a letter to the State and AQCC expressing concerns with the adequacy of the revisions to Colorado's Regulation No. 7. In that March 10, 2004 letter, we stated that we would continue to work with the State to resolve our concerns.

CDPHE and EPA staff met several times starting in August, 2004 up through December, 2004 to address the Regulation No. 7 deficiencies. At the September, 2004 AQCC meeting, the AQCC established a public comment period and noticed for public hearing revisions to Regulation No. 7. The AQCC held a public hearing on December 16, 2004 to consider the revisions to Regulation No. 7. The AQCC adopted the revisions directly after the public hearing and Governor Owens submitted these supplemental Regulation No. 7 revisions to us on March 24, 2005.

Based on the above actions, EPA has determined that this EAC milestone requirement has been addressed.

We also note that in addition to meeting all the required EAC milestones, the State and RAQC jointly submitted "Progress Reports" on June 30, 2003, December 31, 2003, March 31, 2004, and December 31, 2004.

VI. EPA's Evaluation of the Denver Early Action Compact Ozone Plan

We have reviewed the Denver EAC ozone plan (hereafter, Denver EAC plan) with respect to the requirements in the Protocol, the December 31, 2002 Denver EAC document, and our general requirements for a nonattainment area plan and believe that approval of the Denver EAC plan is warranted. The following are our descriptions and analysis of how the Denver EAC plan meets the necessary provisions referenced above.

We note that the Denver EAC plan is divided into two sections; a non-SIP introduction and monitoring background section and the SIP section entitled "8-Hour Ozone State Implementation Plan" that contains emission inventories, control measures,

photochemical dispersion modeling, and a weight of evidence analysis.

A. Introduction and Monitoring Background Section (non-SIP Materials)

The introduction section discusses the EAC protocol, the aspects of the Denver EAC, the Protocol milestones and how these were met, information that went into the development of the SIP emission inventories and dispersion modeling, emission reduction strategies, aspects of maintenance for growth, a brief description of the stakeholder/public process, and a description of the area encompassed by the Denver EAC plan. The ozone monitoring section provides information with respect to the location of Front Range ozone monitors (from southern metropolitan Denver north to Fort Collins including Rocky Mountain National Park), the State's ambient air quality data assurance program, a description and commitment for continued operation of the ozone monitoring network, and relevant 8-hour ozone monitoring data from 1996 through 2003 with design values presented for data from 2001, 2002, and 2003.

B. Denver EAC Plan—"8-Hour Ozone State Implementation Plan"

1. Base Case Emissions Inventories

(a) As described in Chapter I of the Denver EAC plan, the State and RAQC used demographic data that was provided by the metropolitan planning

organizations (MPO), DRCOG and North Front Range Transportation and Air Quality Planning Council (NFRTAQPC). Demographic data were prepared for 2002, 2007, and 2012 and are presented in Table 4 of the Denver EAC plan.

(b) At the time that the emission inventories were being prepared for the Denver EAC plan, EPA had not yet finalized the 8-hour ozone nonattainment boundary for the Denver-Boulder-Greeley area ⁴. The State and RAQC prepared the EAC emission inventories for two situations depending on EPA's final decision on the boundary: (1) inventories based on Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, and Weld Counties, and (2) inventories based on Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Elbert, Jefferson, Larimer, Morgan, and Weld Counties. These inventories address ozone precursor emissions of volatile organic compounds (VOC) and nitrogen oxides (NO_x).

(c) The 2002 and 2007 base case inventories incorporate control measures that were in place in 2002 and were predicted to be in place in 2007. The essential control measures are described in Chapter I of the Denver EAC plan and are: (1) Federally-mandated regulations for motor vehicle exhaust (or tailpipe) emissions and Federally-mandated regulations for exhaust emissions from non-road engines, (2) Colorado's Regulation No. 7

for the control of VOC emissions, and (3) Colorado's Regulation No. 11, the State's Automobile Inspection and Readjustment (A.I.R.) Program, which requires the application of the State's Basic Inspection and Maintenance (I/M) program for vehicles older than 1982 and the Enhanced I/M program for vehicles of model year 1982 and newer. With respect to the Basic I/M program, Chapter I, 2 of the EAC plan states, "The computer modeling does not include any credit for the basic programs in Colorado Springs and Fort Collins/Greeley areas and such basic programs are not part of, or being submitted for inclusion in, the SIP." In addition to the above, Chapter I, 4 indicates that a conventional gasoline Reid Vapor Pressure (RVP) of 8.2 pounds per square inch (psi) was used in the 2002 base case inventory and an RVP of 9.0 was assumed for the 2007 base case inventory. Chapter I, 4 also states that "All of the inventories were developed using EPA-approved emissions modeling methods, including EPA's MOBILE6 model and local VMT data for on-road mobile source emissions, EPA's non-road model and local demographic information for area and off-road sources, and reported actual emissions for point sources." The 2002 and 2007 base case VOC and NO_x emission inventories are presented in Table 5a and Table 5b in Chapter I of the Denver EAC plan and are summarized below in Tables VI-1 and VI-2.

TABLE VI-1.—SUMMARY OF EMISSION INVENTORIES IN TONS PER DAY (TPD) ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS, JEFFERSON, AND WELD COUNTIES

Source category	2002 VOCs	2002 NO _x	2007 VOCs	2007 NO _x
Point Sources	192.8	105.2	204.1	107.1
Area Sources	96.9	25.6	104.1	27.6
Non-Road Sources	73.1	87.99	53.7	82.5
On-Road Sources	152.8	157.8	117.5	119.3
Subtotal Anthropogenic	515.6	376.6	479.4	336.5
Biogenics	468.1	37.1	468.1	37.1
Total	983.7	413.7	947.5	373.6

TABLE VI-2.—SUMMARY OF EMISSION INVENTORIES IN TONS PER DAY (TPD) ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS, ELBERT, JEFFERSON, LARIMER, MORGAN, AND WELD COUNTIES

Source category	2002 VOCs	2002 NO _x	2007 VOCs	2007 NO _x
Point Sources	200.0	140.1	209.3	144.9
Area Sources	111.3	30.4	119.6	32.7
Non-Road Sources	84.9	104.6	62.6	92.4
On-Road Sources	172.6	177.6	135.1	136.6
Subtotal Anthropogenic	568.8	452.7	526.6	406.6
Biogenics	799.46	52.3	799.5	52.3

⁴ EPA promulgated the final 8-hour ozone nonattainment boundary for the Denver-Boulder-Greeley area on April 30, 2004 (see 69 FR 23858.)

The boundary includes all of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson

Counties and the southern halves of Larimer and Weld Counties.

TABLE VI-2.—SUMMARY OF EMISSION INVENTORIES IN TONS PER DAY (TPD) ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS, ELBERT, JEFFERSON, LARIMER, MORGAN, AND WELD COUNTIES—Continued

Source category	2002 VOCs	2002 NO _x	2007 VOCs	2007 NO _x
Total	1368.3	505.0	1326.1	458.9

2. Control Measures

Chapter II of the Denver EAC plan describes the additional control measures, above and beyond those assumed in the 2007 base case emissions inventory, that will be implemented by December 31, 2005. These additional control measures are incorporated into the SIP to demonstrate attainment of the 8-hour ozone NAAQS by 2007, maintenance of the 8-hour ozone NAAQS through 2012, and to meet the requirements of the EAC Protocol.

(a) Gasoline Reid Vapor Pressure (RVP). Chapter II A. of the Denver EAC plan describes the RVP control measure. Since 1991, gasoline sold in the Denver area during the summer ozone season (for gasoline RVP, this is defined as June 1 through September 15) has been subject to an EPA national rule that requires an RVP of 7.8 psi (see 55 FR 23658, June 11, 1990, and 56 FR 64704, December 12, 1991.) This RVP requirement of 7.8 psi was applicable to the Denver 1-hour ozone NAAQS nonattainment area as defined in the **Federal Register** (see 56 FR 56694, November 6, 1991.) From 1992 through the 2003 summer ozone season, and in response to waiver petitions from the Governor of Colorado, we either waived or granted enforcement discretion for the 7.8 psi RVP requirement for the Denver area and instead allowed the less stringent 9.0 psi RVP. Our decisions were based on evidence that demonstrated the 7.8 psi RVP was not necessary given the Denver area's record of continued attainment of the 1-hour NAAQS using the 9.0 psi RVP requirement and additional evidence presented by the State that showed economic hardship to consumers and industry if the 7.8 psi RVP level was imposed.

Since 1999, and in response to a request from the RAQC, refiners serving the Denver area voluntarily provided gasoline with an RVP of 8.5 psi or lower to help reduce evaporative emissions of VOCs from refueling and vehicle operations. Through the Denver EAC stakeholder meetings, the RAQC, State, and industry elected to commit to a gasoline RVP of 8.1 psi to help reduce VOC emissions. Therefore, the Denver EAC plan and 2007 dispersion modeled attainment demonstration took credit for

the more stringent RVP level of 8.1 psi. On January 12, 2004, the Colorado Petroleum Association (CPA) submitted a request to EPA for enforcement discretion for the 7.8 psi RVP requirement for June 1, 2004 through September 15, 2004. In their January 12, 2004 letter, CPA acknowledged their continuing efforts with CDPHE and the RAQC in developing the Denver EAC plan using an RVP of 8.1 psi, but asked that EPA grant enforcement discretion for a 9.0 psi RVP with CPA's offer to meet the prior voluntary 8.5 psi RVP level. However, quality-assured ozone monitoring data for 2001, 2002, and 2003 showed that three of the ozone ambient air quality monitors in the Denver area's network recorded violations of the 8-hour ozone NAAQS. In a letter dated March 25, 2004, we explained that primarily based on the monitored violations of the 8-hour ozone NAAQS and public health issues, enforcement discretion was not warranted and that the Federal requirement for 7.8 psi RVP gasoline for the Denver area would be effective beginning June 1, 2004. We note that, although the Denver EAC plan and attainment demonstration dispersion modeling take credit for 8.1 psi RVP conventional gasoline (9.1 psi RVP for ethanol blends), the Denver area will instead be realizing greater evaporative VOC emissions reductions due to EPA's requirement for 7.8 psi RVP.⁵

An additional RVP issue is found in the third paragraph in Chapter II A. of the Denver EAC plan which states:

Therefore, since this EAC ozone action plan for the 8-hour ozone standard relies on an RVP level of 8.1 psi (9.1 psi for ethanol blends) in the 2007 control case inventory for the existing Denver 1-hour ozone attainment/maintenance area, the State of Colorado requests a three year waiver establishing an 8.1 psi (9.1 psi for ethanol blends) RVP level for the existing Denver 1-hour attainment/maintenance area through the 2007 summer ozone season.

We view this and related language in the SIP as a petition to EPA to establish an 8.1 psi RVP standard for the Denver

area rather than the currently applicable 7.8 psi RVP standard. A revision to the federal RVP standard can only be done via rulemaking under section 211 of the CAA, and the authority to conduct such rulemaking cannot be delegated from the Administrator of EPA to the Regional Administrator of EPA Region VIII. Hence, Colorado's RVP petition cannot be addressed in this SIP rulemaking. Our inability to act on Colorado's RVP petition does not affect our ability to propose approval of the EAC plan because the currently applicable standard—7.8 psi RVP—will reduce VOC emissions more than the 8.1 psi RVP standard the State relied on to model attainment in 2007.

(b) Oil and Gas Exploration and Production (E&P) Condensate Tank Controls. The Denver EAC plan and attainment demonstration include a reduction in flash emissions of VOCs from new control equipment to be installed on E&P condensate collection, storage, processing and handling operations. Revisions to Colorado's Regulation No. 7 (also being proposed for approval with this action and described in section VIII below) require the installation of air pollution control technology to achieve at least a 47.5 percent reduction in VOC emissions from E&P production operations, natural gas compressor stations, and natural gas drip stations located in the Denver EAC plan area.

(c) Controls for Stationary Reciprocating Internal Combustion Engines (RICE). The Denver EAC plan and attainment demonstration include VOC and NO_x emission reductions from new control equipment to be installed on new and existing rich burn and lean burn natural gas-fired RICE engines larger than 500 horsepower. Chapter II C. states that emission control equipment for uncontrolled rich burn RICE shall be non-selective catalyst reduction and an air fuel ratio controller or other equally effective air pollution control technology. Chapter II C. also states that for uncontrolled lean burn RICE, emission control equipment shall be oxidation catalyst reduction or other equally effective air pollution control technology. These RICE controls are contained in revisions to Colorado's Regulation No. 7.

⁵ The requirement for conventional gasoline is an RVP of 7.8 psi. However, the CAA allows an additional 1.0 psi increase for gasoline blended with ethanol. In the Denver EAC attainment demonstration dispersion modeling, the State assumes a 25 percent market penetration for ethanol blended gasoline.

(d) Controls for Dehydration Units. Chapter II D. of the Denver EAC plan and the attainment demonstration include VOC emission reductions from new control equipment to be installed on new and existing dehydration towers, with VOC emissions in excess of 15 tons per year, located at oil and gas operations. These new control requirements are contained in revisions to Colorado's Regulation No. 7.

(e) Revisions to Colorado's Regulation No. 11—Automobile Inspection and Readjustment Program. Chapter II E. of the Denver EAC plan and the attainment demonstration include VOC and NO_x emission reductions from revisions to Regulation No. 11. These revisions reduce the coverage of the remote sensing clean screen area in order to reduce the disbenefit of the clean screen program and to reflect the practical reality of potential coverage. No more than 50% of the fleet of gasoline vehicles in the enhanced I/M program area (described in Regulation No. 11) of applicability will be evaluated with remote sensing during any twelve-month period after December 31, 2005. These revisions to Colorado's Regulation No. 11 are also being proposed for approval with this action. For further discussion, see section IX below.

3. Maintenance for Growth—Continuing Planning Process

The State's methodology and demonstration of maintenance of the 8-hour ozone NAAQS is described in Chapter III H. of the Denver EAC plan and our evaluation is described further in section VII C. below. We note, however, that an oversight occurred in which the State failed to include a discussion in the Denver EAC plan as to how it would address the Protocol's continuing planning process provisions. To address this issue, the State submitted a commitment letter, dated March 22, 2005, that detailed the specific measures it would use to address the continuing planning requirements of the Protocol.

The State will periodically evaluate the data and growth assumptions used in the attainment demonstration, review point source growth, and review transportation patterns. If these periodic reviews demonstrate a need to adopt additional control measures, the State will evaluate and adopt the necessary controls for the Denver EAC plan. The State also noted that the transportation patterns and emissions in the Denver EAC plan's 8-hour ozone control area are already evaluated due to the transportation conformity requirements of currently approved maintenance

plans (*i.e.*, Denver PM₁₀, Denver carbon monoxide, Denver 1-hour ozone, Fort Collins carbon monoxide, Greeley carbon monoxide, and Longmont carbon monoxide). The State's letter also contained a commitment to amend the Denver EAC plan, as a SIP revision, to incorporate the continuing planning process language from our Protocol. This SIP revision will be performed in 2005. However, due to State-internal SIP processing requirements, it will not be submitted to EPA until 2006.

In addition to the above, we note that once the Denver area receives an effective attainment designation in 2008, the area will then have to meet the requirements of 40 CFR 51.905(a)(4) and 40 CFR 51.905(a)(4)(ii). To meet the requirements of 40 CFR 51.905(a)(4)(ii), the State will have to submit a CAA section 110(a)(1) maintenance plan within three years of the designation of attainment (*i.e.*, 2011). In the State's March 22, 2005 letter, it acknowledges this obligation and also states its intention to prepare this required maintenance plan in an earlier time period.

Based on the contents of the March 22, 2005 commitment letter, we have determined that the State has adequately addressed the continuing planning process requirements of the Protocol.

VII. EPA's Evaluation of the Denver Early Action Compact Ozone Plan's Attainment Demonstration

Chapter III of the Denver EAC plan contains descriptions and results of the attainment demonstration photochemical dispersion modeling, including relative reduction factors (RRF), 2007 design values, 2007 control case inventories, a 2007 control case demonstration, and weight of evidence analyses.

A. Photochemical Dispersion Modeling

1. Model Approach Selected. The State selected the EPA-approved photochemical model "Comprehensive Air Quality Model with Extensions" (CAMx). The State's contractors, ENVIRON International Corporation and Alpine Geophysics Atmospheric Sciences Group performed the modeling work. Meteorological fields for input into the CAMx model were produced with the Mesoscale Meteorological Model (MM5). Emissions data, previously described above, were processed with the Emissions Processing System (EPS2x) for 2002 and 2007. The photochemical dispersion modeling was performed in accordance with our then available draft May 1999 modeling guidance entitled "Draft

Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8-hour Ozone NAAQS." A more in-depth discussion of the modeling protocol is located in appendix A ("Modeling Protocol, Episode Selection, and Domain Definition") of the State's TSD which is included with the docket for this action.

2. Modeling Domain. The Denver EAC plan's air quality modeling domains were defined on an MM5 system with 36 kilometer (km), 12 km, and a 4 km nested-grid structure. This structure was utilized in conjunction with the CAMx and EPS2x air quality and emissions modeling during the episode periods that are described below. The larger 36km domain was selected to address the impact of boundary condition uncertainties for the Front Range area of Colorado, as CDPHE was concerned there may be transport from Southern California and Texas. The 12 km grid resolution domain essentially covers the central Rocky Mountain states or portions thereof (*i.e.*, Arizona, Colorado, New Mexico, Utah and Wyoming.) The 4 km nested-grid was used for the period encompassing the final, selected ozone episode of June 25, 2002 to July 1, 2002 to provide finer resolution of the emissions, transport, and transformation, and to evaluate the selected control strategies for the Denver EAC area and nearby Front Range cities. A more in-depth discussion of the modeling domain is located in Appendix A ("Modeling Protocol, Episode Selection and Domain Definition") of the State's TSD.

3. Episode Selection. Initially, the State, RAQC, and the modeling contractors evaluated three 2002 ozone episodes. These episodes were June 8 to June 12, June 25 to July 1, and July 18 to July 21. The June 8 to June 12 episode was removed from consideration due to the problems associated with the Hayman wildfire that started on June 8, 2002. The potential influx of emissions along with the effects of the large smoke plume made this episode unsuitable for use. Both the June 25 to July 1 and July 18 to July 21 episodes were modeled. However, the results for the July 18 to July 21 episode were unable to conform to the necessary model performance standards required by our 8-hour ozone NAAQS modeling guidance ("Draft Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8-hour Ozone NAAQS.") It appears that the poor model performance for this episode was due to convective meteorological conditions that could not be resolved by MM5. However, the results for the June 25 to July 1 episode were successful in

meeting our modeling guidance and were used for the Denver EAC ozone plan's attainment demonstration. Additional discussion on episode selection can be found in section D of our TSD and in Appendix B of the State's TSD.

4. Base Case Relative Reduction Factors (RRF). The dispersion modeling for the Denver EAC plan produced base case relative reduction factors (RRF) for receptors in the modeling domain where ozone monitors are located. In general, the RRF for each monitor is equal to the mean 2007 base case modeled 8-hour ozone concentration divided by the mean 2002 base case modeled 8-hour ozone concentration. Once the RRFs are developed, the RRF for each monitoring site is multiplied by the monitoring

site's base case design value to determine a future case design value (*i.e.*, 2007) to indicate if attainment is demonstrated at each site. This is further discussed in Chapter III B. and C. of the Denver EAC plan. Twelve Front Range ozone monitors were considered by the State, ranging from Fort Collins to the north of metropolitan Denver, in Larimer County, to the Chatfield reservoir in the southwestern portion of metropolitan Denver, and also including an ozone monitor operated by the National Park Service (NPS) just outside the eastern border of Rocky Mountain National Park in Larimer County. The current (2001–2003) base case ozone design values used in the Denver EAC plan and attainment demonstration are based on

monitoring data from 2001, 2002, and 2003. In these three years of data, three of the twelve monitors were violating the 8-hour ozone NAAQS. They are: (1) The Chatfield (hereafter Chatfield) reservoir monitor, located in Douglas County, Air Quality System (AQS) site identification number 080350002, (2) the National Renewable Energies Laboratory (hereafter NREL) monitor, located in Jefferson County, AQS identification number 080590011, and (3) the Rocky Flats North (hereafter Rocky Flats) monitor, located in Jefferson County, AQS identification number 080590006. For the violating monitors, we have extracted RRF information from Table 6 of the Denver EAC plan and present it below in our Table VII–1:

TABLE VII–1.—RRF FOR VIOLATING MONITORS

Monitoring site name	8-hour ozone current (2001–2003) base case design values in ppm	Base case relative reduction factors (RRF)	8-hour ozone future (2007) base case design values in ppm
Chatfield	0.085	0.9807	0.0834
NREL	0.085	0.9946	0.0845
Rocky Flats	0.087	0.9942	0.0865

Table VII–1 represents the 2007 base case modeling which relied on expected emission reductions from existing State controls, existing Federal rules, and anticipated reductions from new Federal rules. As is clear from Table VII–1 above and the Denver EAC plan, additional emission reductions are necessary to bring the Rocky Flats monitor towards modeled attainment for 2007. The 2007 “control case” emission inventories and modeling are described below and in Chapter III. E and F of the Denver EAC plan. Further discussions are found in sections C and D of our TSD and in Appendices F, J, K, and L of the State's TSD.

5. 2007 Control Case Emission Inventories. The 2007 control case

emission inventories reflect estimated VOC and NO_x emission reductions from the control strategies described in Chapter III. E of the Denver EAC plan and in section VI B.2. above. In addition to emission reductions from existing State and Federal rules, for 2007 the State calculated the following:

- (a) 10 tons per day (tpd) VOC reductions from an 8.1 psi RVP for conventional gasoline with 9.1 psi RVP for ethanol blends (9 tpd from on-road vehicles, 1 tpd from refueling, and assuming 25% market penetration for ethanol blends),
- (b) 55 tpd VOC reductions from control of oilfield flash emissions,
- (c) 5.5 tpd VOC reductions and 19 tpd NO_x reductions from oilfield RICE controls, and,

(d) 0.5 tpd VOC reductions from the control of oilfield dehydrators.

The State calculated total emission reductions from existing and new State and Federal rules for the 2007 control case of 106 tpd of VOC emissions and 58 tpd of NO_x emissions for the eight-county metropolitan Denver area (counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, and Weld) and slightly greater tons per day for the eleven-county area (adding Elbert, Larimer, and Morgan counties to the other eight). These projected emission reductions were extracted from Chapter III. E of the Denver EAC plan (Tables 7a, 7b, 8a, and 8b) and are presented below in our Tables VII–2 and VII–3:

TABLE VII–2.—SUMMARY OF EMISSIONS TONS PER AVERAGE EPISODE DAY (TPD) EMISSIONS FOR ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS, JEFFERSON, AND WELD COUNTIES

Source category	2007 VOCs base case	2007 NO _x base case	2007 VOCs control case	2007 NO _x control case
Point Sources	204.1	107.1	143.3	88.3
Area Sources	104.1	27.6	104.1	27.6
Non-Road Sources	53.7	82.5	53.5	82.6
On-Road Sources	117.5	119.3	108.4	119.0
Subtotal Anthropogenic	479.4	336.5	409.3	317.5
Biogenics	468.1	37.1	468.1	37.1

TABLE VII-2.—SUMMARY OF EMISSIONS TONS PER AVERAGE EPISODE DAY (TPD) EMISSIONS FOR ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS, JEFFERSON, AND WELD COUNTIES—Continued

Source category	2007 VOCs base case	2007 NO _x base case	2007 VOCs control case	2007 NO _x control case
Total	947.5	373.6	877.4	354.6

TABLE VII-3.—SUMMARY OF EMISSIONS TONS PER AVERAGE EPISODE DAY (TPD) EMISSIONS FOR ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS, ELBERT, JEFFERSON, LARIMER, MORGAN, AND WELD COUNTIES

Source category	2007 VOCs base case	2007 NO _x base case	2007 VOCs control case	2007 NO _x control case
Point Sources	209.3	144.9	148.1	126.1
Area Sources	119.6	32.7	119.6	32.7
Non-Road Sources	62.6	92.4	62.6	93.3
On-Road Sources	135.1	136.6	126.0	136.3
Subtotal Anthropogenic	526.6	406.6	456.4	388.4
Biogenics	799.5	52.3	799.5	52.3
Total	1326.1	458.9	1255.8	440.7

6. 2007 Control Case Modeling Demonstration. The State modeled the above base case and control case scenarios with CAMx. As discussed above and in Chapter III. F of the Denver EAC plan, the 2007 base case and 2007 control case modeling produce relative reduction factors (RRF) for receptors in

the modeling domain where ozone ambient air quality monitors are located. Table VII-4 below presents the 2007 control case RRFs, 2007 control case design values for modeled days greater than 0.070 ppm, and control case design values for modeled days greater than 0.080 ppm for the Chatfield, NREL, and

Rocky Flats monitors. We note that the nine other monitors listed in Table 9 of the Denver EAC plan all show predicted attainment with values less than 0.081 ppm for both evaluation days (*i.e.*, modeled days greater than 0.070 ppm and greater than 0.080 ppm.)

TABLE VII-4

Monitoring site name	8-hour ozone base case design values 2001-2003 (ppm)	Days > 0.070 (ppm)	Days > 0.070 (ppm)	Days > 0.080 (ppm)	Days > 0.080 (ppm)
		2007 control case RRF	2007 control case design values (ppm)	2007 control case RRF	2007 control case design values (ppm)
Chatfield	0.085	0.9761	0.0830	0.9779	0.0831
NREL	0.085	0.9891	0.0841	0.9748	0.0829
Rocky Flats	0.087	0.9888	0.0860	0.9811	0.0854

In Section D of our TSD and in Appendix I of the State's TSD, results are presented for the final modeling runs for the June 25, 2002 to July 1, 2002 episode. These results reflect incorporation of all the control measures for the 2007 attainment year. However, CAMx still predicts that the Rocky Flats monitor will marginally exceed the 8-hour ozone NAAQS. The information is presented below in Table VII-5.

TABLE VII-5

Monitoring site	2001-2003 design value	2007 predicted design value
Chatfield	85 ppb	82.9 ppb
NREL	85 ppb	83.9 ppb

TABLE VII-5—Continued

Monitoring site	2001-2003 design value	2007 predicted design value
Rocky Flats	87 ppb	85.9 ppb

As can be seen above in Tables VII-4, VII-5, and Table 9 of the Denver EAC plan, the Rocky Flats monitor was unable to demonstrate attainment with the 2007 control case emission reduction strategies. The State and its modeling contractor performed additional sensitivity analyses, that are described further in section D of our TSD and Appendix K of the State's TSD. They concluded, based on the anomalous meteorological conditions in 2003 and the under-prediction tendency

of the CAMx model, for the Denver EAC plan application, that a weight of evidence (WOE) demonstration was warranted. A WOE demonstration provides corroborating evidence and technical analysis, beyond the dispersion modeling, to support a conclusion that attainment is likely to occur. Weight of evidence demonstrations may be accepted by EPA and have been approved in prior 1-hour ozone dispersion-modeled demonstrations of attainment. We also describe their use in our May, 1999 draft guidance for the 8-hour ozone NAAQS ("Draft Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8-hour Ozone NAAQS.")

B. Weight of Evidence Determination

As described in Chapter III. G of the Denver EAC plan and in our May, 1999 draft modeling guidance for the 8-hour ozone NAAQS, if resultant values of the dispersion modeling for an attainment demonstration are between 0.084 ppm and 0.089 ppm at one or more monitoring site receptor locations, then a WOE determination should be performed. Since the final modeled design value at the Rocky Flats monitoring site is predicted to be below 0.089 ppm, our guidance indicates that corroborating evidence, based on other analyses, can be sufficiently convincing to support a conclusion that attainment is likely to occur despite the outcome of the dispersion modeling. To the State and its contractors, the modeling results appear to be very "stiff"; that is, the estimated 2007 design values are not very sensitive to local emission controls. The State indicated in Chapter III. G of the Denver EAC plan that they believe this lack of sensitivity is primarily caused by the following: (1) Anomalous temperatures and low mixing heights in 2003 were more conducive to ozone formation than the meteorological conditions that were used in the 2002 modeling episode, (2) the model's tendency, despite achieving most of EPA's model performance goals, to under-predict ozone concentrations and thus under-predict the beneficial impact of local control measures, and (3) potential influence from elevated, upwind background concentrations of ozone and ozone precursor emissions that were detected by the air quality monitors in 2003, but unaccounted for in the photochemical modeling.

The following describes aspects of the State's WOE analysis:

1. **Anomalous Meteorological Conditions in 2003 and Trends Analysis.** The Denver EAC plan's photochemical modeling was designed with ozone episode days and meteorological data from 2002. However, with the 8-hour ozone violations detected in 2003, the 2002-based photochemical modeling was then applied to address these higher 2003 ozone values. It was discovered, though, that meteorological conditions were significantly different between 2002 and 2003 and this affected the photochemical model's performance. One evaluation method the State applied to address this issue was to provide meteorological data that indicated that 2003 had record-setting maximum ambient temperatures and lower than average mixing heights, both of which contributed to the elevated 2003 monitored 8-hour ozone values. If

the extreme high ambient temperatures and low-level mixing heights of summer 2003 are excluded, a 1993 to 2002 trends analysis shows a 1.2% annual reduction in ozone concentrations, which would result in predicted attainment of the 8-hour ozone NAAQS by 2007. A further discussion is provided in section D of our TSD and in Appendix N of the State's TSD.

2. **Under-Prediction Tendency of the Model.** An overall under-prediction tendency of the model was documented by the State in Appendixes H and N of their TSD and in section D of our TSD. The model tended to under-predict 2003 ozone concentrations by approximately 20%. We note that when a photochemical model underestimates the ozone concentrations, less ozone is attributed to the local precursor emissions in the model than resulted from these emissions in reality. To evaluate this issue, the State's contractor prepared an analysis for modeled days greater than 70 ppb for the episode days of June 27, 2002 through June 30, 2002. However, for these episode days, only minimal changes in the predicted ozone values were seen (modeled values were still low). Only the July 1, 2002 episode day modeling results, with a model-predicted value of 85 ppb, approached the design value of 87 ppb and the monitor-observed value of 89 ppb. This is further described in Chapter III. G, Table 10, of the Denver EAC plan, section D of our TSD, and in Appendixes B, K, and L of the State's TSD.

3. **Number of Fine Grid Cell Hours Greater than 84 ppb.** The State evaluated an indicator of the model's performance—the relative change from the 2002 base case modeling to the 2007 control case modeling with respect to the predicted ozone concentrations in the 4 km grid cells. Specifically, the State's contractor found that the number of 8-hour periods that the model predicted to be greater than 84 ppb for the 2007 control case (4) were 88% fewer than the model predicted for the 2002 base case (33). This 88% figure is greater than the "large" reduction (80%) that is suggested in our 1999 draft 8-hour ozone modeling guidance and supports the conclusion that the proposed control strategy package for 2007 is consistent with meeting the 8-hour NAAQS. This evaluation is further described in section D of our TSD and in Appendix L of the State's TSD.

4. **Relative Difference (RD).** Relative Difference (RD) is another metric the State's contractor evaluated. RD examines the amount by which the 8-hour ozone concentration is above 84 ppb in the 2007 control case modeling

versus the 2002 base case modeling. The State's contractor computed the ratio of the average estimated "excess 8-hour ozone" for the 2007 control case modeling to the average estimated "excess 8-hour ozone" for the 2002 base case modeling. In this case, we are using the phrase "excess 8-hour ozone" to mean the amount by which the average in the particular year exceeds 84 ppb. The State's contractor calculated an RD of 93%, which means the 2007 value was 93% less than the 2002 value. EPA considers large RDs to be desirable, with anything greater than 80% considered large. Thus, this 93% figure further supports a conclusion that the control strategy package for 2007 is consistent with meeting the 8-hour NAAQS. This evaluation is further described in section D of our TSD and in Appendix L of the State's TSD.

5. **VOC and NO_x Sensitivity.** The State and its contractor performed sensitivity modeling runs looking at reductions in VOCs, VOCs and NO_x, and just NO_x. The sensitivity analyses indicated that VOC reductions alone were more important for achieving reductions in ozone values in the urbanized area and at the Rocky Flats air quality monitoring location. This also helped confirm the validity of the 2007 control strategy package which focused on VOC controls. This evaluation is further described in section D of our TSD and in Appendixes J and K of the State's TSD.

In summary, the State's WOE analyses provide adequate support for the State's attainment demonstration. Our decision on the adequacy of the WOE is based on the composite of the analyses, and not on any single element. The WOE complements the modeled 2007 control strategies and indicates that attainment should be reached by December 31, 2007 as is required by the EAC Protocol.

C. Maintenance Through 2012

The EAC Protocol requires that, in addition to demonstrating attainment of the 8-hour ozone NAAQS in 2007, areas demonstrate maintenance of the 8-hour ozone NAAQS through 2012. For the Denver EAC plan, the State performed a comparison of projected emissions, from all source categories, for 2012 to those used in the 2007 dispersion modeled attainment demonstration (as supported by WOE.) The 2012 emission inventories assume that the 2007 control strategies remain in place through 2012. The 2012 emission inventories also account for Federal emission control measures that are scheduled to take effect in the 2007 to 2012 time period. As the 2012 projected emissions are less than the 2007 dispersion modeled

emissions in the attainment demonstration, continued maintenance is demonstrated. The 2007 control case emission inventories for the 8-county

area and the 11-county area, along with the 2012 maintenance emission inventories, are presented in Chapter III E. Tables 7a, 7b, 8a, and 8b respectively

and also in our Tables VII-6 and VII-7 below.

TABLE VII-6.—SUMMARY OF EMISSIONS TONS PER AVERAGE EPISODE DAY (TPD) EMISSIONS FOR ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS, JEFFERSON, AND WELD COUNTIES

Source category	2007 VOCs control case	2012 VOCs control case	2007 NO _x control case	2012 NO _x control case
Point Sources	143.3	152.9	88.3	96.5
Area Sources	104.1	114.0	27.6	31.1
Non-Road Sources	53.5	47.7	82.6	74.8
On-Road Sources	108.4	76.0	119.0	77.7
Subtotal Anthropogenic	409.3	390.6	317.5	280.1
Biogenics	468.1	468.1	37.1	37.1
Total	877.4	858.7	354.6	317.2

TABLE VII-7.—SUMMARY OF EMISSIONS TONS PER AVERAGE EPISODE DAY (TPD) EMISSIONS FOR ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS, ELBERT, JEFFERSON, LARIMER, MORGAN, AND WELD COUNTIES

Source category	2007 VOCs control case	2012 VOCs control case	2007 NO _x control case	2012 NO _x control case
Point Sources	148.1	159.2	126.1	138.1
Area Sources	119.6	131.3	32.7	36.7
Non-Road Sources	62.6	56.2	93.3	84.6
On-Road Sources	126.0	89.0	136.3	90.1
Subtotal Anthropogenic	456.4	435.7	388.4	349.4
Biogenics	799.5	799.5	52.3	52.3
Total	1255.8	1235.2	440.7	401.8

Our review of the attainment demonstration shows that it should be approved. The State has adopted acceptable control strategies and has performed modeling that meets our modeling guidance requirements for the 8-hour ozone NAAQS and the EAC Protocol. Modeling based on newly adopted and existing control measures, and supplemented by a weight-of-evidence analysis, demonstrates attainment by December 31, 2007 and maintenance through 2012. Therefore, we are proposing to approve the attainment demonstration.

VIII. EPA's Evaluation of the Regulation No. 7 Revisions

Colorado's Regulation No. 7 is entitled "Emissions of Volatile Organic Compounds" (hereafter, Regulation No. 7). In conjunction with the development of the Denver EAC plan, the State made several changes and/or additions to sections I.A., I.B., XII, and XVI of Regulation No. 7 which the AQCC adopted after its March 12, 2004, public hearing. These Regulation No. 7 revisions were submitted to us by the Governor on July 21, 2004. Based on input and discussions with EPA, the AQCC further amended Regulation No. 7 on December 16, 2004, following a public hearing. The Governor submitted

these additional revisions to Regulation No. 7 to us on March 24, 2005. These March 24, 2005 Regulation No. 7 revisions supersede and replace those submitted by the Governor on July 21, 2004, and are those we are proposing to approve.

The purpose of the revisions to Regulation No. 7 was to reduce emissions of: (1) VOCs from condensate tanks and operations at oil and gas exploration and production (E&P) facilities, (2) VOCs and NO_x from stationary and portable oilfield reciprocating internal combustion engines (RICE), (3) VOCs from gas processing plants, and (4) VOCs from dehydrators at oilfield operations. These revisions to Regulation No. 7 apply to all affected facilities within the 8-hour ozone nonattainment area boundary, with the majority of affected facilities being located in southern Weld County.

The revisions to Regulation No. 7 affect the following sections:

A. Sections I.A. and I.B. Including definitions of the Denver 1-hour ozone area and the Denver 8-hour ozone control area. Also indicating that new and existing oil and gas operations come under the provisions of sections XII and XVI..

B. Section II.A., additional definitions.

C. A new Section XII, "Volatile Organic Compound Emissions From Oil And Gas Operations." Includes definitions, percentages of emission reductions for the high ozone season and rest of the year, numerous recordkeeping requirements for a spreadsheet to determine daily compliance, emission factors used to demonstrate compliance, reporting requirements for certain equipment if a construction or Title V permit is issued by the State, methodology for approval of alternative emissions control equipment, requirements for gas-processing plants, requirements for controlling emissions from dehydration units, and a methodology for approval to develop testing methods and revised emission factors.

D. A new Section XVI, "Control of Emissions From Stationary And Portable Engines in the 8-hour Ozone Control Area." Includes specific requirements for emission control technology for applicable RICE and dates for the removal or replacement with electric units for certain existing internal combustion engines.

One of the major requirements of the changes is an overall reduction of 47.5% of VOCs from E&P condensate storage tanks during the summer ozone season to meet the modeled requirements of the

attainment demonstration. Due to the unique operating parameters and numerous tanks in the field (in excess of 1,000), the AQCC allowed an overall averaging approach, rather than a unit-by-unit approach, to achieve the necessary emission reductions. The regulation includes detailed record keeping requirements to help ensure the 47.5% reduction requirement is met.

We have reviewed, and are proposing approval of, all of the above State-adopted revisions to Regulation No. 7.

IX. EPA's evaluation of the Regulation No. 11 Revisions

Colorado's Regulation No. 11 is entitled "Motor Vehicle Emissions Inspection Program" (hereafter referred to as Regulation No. 11). This program has undergone several revisions since 2000, including revisions that were adopted by the AQCC in conjunction with the Denver EAC plan after the March 11–12, 2004 public hearing. The prior Regulation No. 11 revisions that the Governor submitted on June 20, 2003 and April 12, 2004 are briefly described below. The revisions the Governor submitted on July 21, 2004 in support of the Denver EAC plan are also described below:

A. Revisions adopted November 16, 2000, submitted June 20, 2003.

This submittal amended Regulation No. 11 by (1) extending the time for taking valid remote-sensing readings for purposes of the clean screen program, and (2) correcting a citation error in a section of the rule concerning the licensing of clean screen inspectors.

B. Revisions adopted December 20, 2001, submitted June 20, 2003.

This submittal amended Regulation No. 11 by (1) expanding the clean screen program, (2) excluding El Paso County from the clean screen program, and (3) repealing the "Verification of Emissions Test" certificate or windshield sticker.

C. Revisions adopted August 15, 2002, submitted June 20, 2003.

This submittal amended Regulation No. 11 to switch to a pay-upon-registration system for the clean screen program. The rule amendments also included a change to the timing requirements for remote sensing readings to make the clean screen program more flexible. As amended, the regulation requires two valid remote sensing readings within a twelve-month period in order to clean screen a vehicle. The regulation previously required the most recent reading to be within 120 days of the registration renewal date. In addition, this submittal included several minor, housekeeping changes such as:

1. The elimination of a requirement for agencies to develop the equivalent of a windshield sticker for clean screened vehicles.

2. The elimination of a provision requiring annual inspections for government vehicles.

3. The repeal of provisions establishing a method to mail payments to the contractor.

D. Revisions adopted October 17, 2002, submitted June 20, 2003.

This submittal to Regulation No. 11 expanded the pay-upon-registration for the clean screen program (see the August 15, 2002 version) to the enhanced I/M program area (see the December 20, 2001 version). These revisions also contained provisions that the malfunction indicator light (MIL) and on-board diagnostic (OBD II) fault codes will not be used as the basis for test failures and it eliminated a pre-existing state requirement for vehicles to pass MIL tests. We note that Federal law does not require MIL or OBD tests for pre-1996 vehicles.

These revisions also eliminated the requirement for 1996 and newer vehicles to pass MIL and OBD tests. This particular revision is acceptable to EPA in view of our final Motor Vehicle Inspection/Maintenance requirements (see 66 FR 18155, April 5, 2001) which extended the deadline for beginning OBD inspections to January 1, 2002. As the Denver metropolitan area was redesignated to attainment for carbon monoxide on December 14, 2001 (see 66 FR 64751), this January 1, 2002 OBD implementation date was not applicable to the Denver metropolitan area and the State need not retain the MIL and OBD program in the SIP.

E. Revisions adopted September 18, 2003, submitted April 12, 2004.

This submittal to Regulation No. 11 allows the sale and registration of used motor vehicles without an emissions inspection if the motor vehicle is less than 3 years old. In addition, Regulation No. 11 previously required motor vehicle dealers to have an emissions test for used vehicles at the time of sale, regardless of when they may have been inspected before. The rule has been revised such that motor vehicle dealers need to only have vehicles that are consigned for sale inspected annually; further inspection is not required at the time of sale.

F. Revisions adopted December 18, 2003, submitted April 12, 2004.

This submittal to Regulation No. 11 removed the calendar year 2004 and 2005 cutpoints, while retaining the 2006 cutpoints, and also removed El Paso County (Colorado Springs area) from the

Federal applicability of a basic I/M program.

G. Revisions adopted March 12, 2004, submitted July 21, 2004.

This submittal to Regulation No. 11 supports the Denver EAC plan by reducing the percentage of the fleet to be clean-screened from a maximum of 80% to a maximum of 50% after December 31, 2005.

We have reviewed, and are proposing approval of, all of the above State-adopted revisions to Regulation No. 11.

X. EPA's evaluation of the Common Provisions Regulation Revision

The State amended the Common Provisions Regulation to incorporate the American Petroleum Institute's (API) definition of "condensate," which refers to hydrocarbon liquids that have an API gravity of 40 degrees or greater.

We have reviewed, and are proposing approval of, this revision to the Common Provisions Regulation.

XI. Consideration of Section 110(l) of the CAA

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. The Denver EAC ozone plan will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA.

XII. Proposed Action

EPA is proposing to approve the Denver Early Action Compact (EAC) ozone plan that the Governor submitted on July 21, 2004, the attainment demonstration, the revisions to Regulation No. 7 that the Governor submitted on March 24, 2005, all of the revisions to Regulation No. 11, and the revisions to the Common Provisions Regulation, all as a revision to the SIP.

Submit your comments, identified by RME Docket Number R08-OAR-2004-CO-0001, by one of the methods identified above at the front of this proposed rule. We will consider your comments in deciding our final action if they are received before June 16, 2005. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

XIII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 6, 2005.

Kerrigan G. Clough,

Acting Regional Administrator, Region VIII.

[FR Doc. 05-9724 Filed 5-16-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03-OAR-2005-VA-0004; FRL-7913-7]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Attainment Demonstration for the Roanoke Metropolitan Statistical Area (MSA) Early Action Compact Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The proposed revision consists of an Early Action Compact (EAC) Plan that will enable the Roanoke MSA EAC Area to demonstrate attainment and maintenance of the 8-hour ozone national ambient air quality (NAAQS) standard. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 16, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03-OAR-2005-VA-0004 by one of the following methods:

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

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

C. *E-mail:* campbell.dave@epa.gov.

D. *Mail:* R03-OAR-2005-VA-0004, David Campbell, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to RME ID No. R03-OAR-2005-VA-0004. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://www.regulations.gov) or e-mail. The EPA RME and the Federal [regulations.gov](http://www.regulations.gov) Web sites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Although listed in the index,

some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT:

Ellen Wentworth, (215) 814-2034, or by e-mail at wentworth.ellen@epa.gov.

SUPPLEMENTARY INFORMATION:

On December 21, 2004, the Commonwealth of Virginia submitted a revision to its SIP. This revision consists of an Early Action Plan (EAP) for the Roanoke MSA Ozone EAC Area. On February 17, 2005, the Commonwealth supplemented its December 20, 2004 submittal by providing a copy of the record of hearing and summary of testimony during its rule adoption process.

I. Background

In 1997, EPA established a new 8-hour ozone NAAQS that addresses the longer-term impact of ozone at lower levels. As such, the new standard is set at a lower level, 0.08 parts per million (ppm) than the previous 1-hour standard, 0.120 ppm, and is more protective of human health. Attainment of the 8-hour ozone standard is determined by averaging three years of the fourth highest 8-hour ozone levels as recorded by ambient air quality monitor(s) in an area. This number, called the design value, must be lower than 85 parts per billion (ppb) in order for the area to comply with the ozone standard. Currently, the Roanoke MSA EAC Area, which consists of the Counties of Botetourt and Roanoke, the Cities of Roanoke and Salem, and the Town of Vinton, has an official design value, based on quality-assured air quality data for the period 2001 to 2003, of 85 ppb¹.

¹ To attain the 8-hour national ambient air quality standard (NAAQS) for ozone requires the fourth highest 8-hour daily maximum ozone concentration, average over three consecutive years, to be ≤ 80 parts per billion (ppb) at each monitoring site (See 40 CFR part 50.10, Appendix I, paragraph 2.3). Because of the stipulations for rounding significant figures, this equates to a modeled attainment target of ≤ 84 ppb. Because non-significant figures are truncated, a modeling estimate of < 85 ppb is equivalent to ≤ 84 ppb.

To begin to address the elevated ozone concentrations in the Roanoke MSA, the Virginia Department of Environmental Quality (VADEQ) investigated voluntary actions that could be implemented proactively to improve air quality. Virginia found the most promising of all of the options it explored to be EPA's EAC program. EACs are voluntary agreements entered into by affected local jurisdictions, State regulatory agencies, and EPA to develop EAPs to reduce ozone precursor pollutants, such as nitrogen oxides (NO_x) and volatile organic compounds (VOCs) and improve local air quality. The goal of an EAP is to bring about a positive change to local air quality on a schedule that is faster than the traditional regulatory nonattainment area designation and air quality planning process. These plans include the same components of traditional SIPs for nonattainment areas: emissions inventories, control strategies, schedules and commitments, and a demonstration of attainment based on photochemical modeling.

The goal of an EAP is to develop a comprehensive strategy that will allow an area to achieve attainment of the 8-hour ozone standard by 2007. This goal is accomplished by selecting and implementing the local ozone precursor pollutant control measures and other State and nationally-implemented control measures that reduce emissions and allows the area to comply with the NAAQS for ozone. Areas successful in developing a plan that demonstrates attainment of the 8-hour ozone standard by 2007 will receive a deferral of the effective date of the nonattainment designation for the area from EPA. This deferral will remain in place as long as certain milestones are met, such as implementation of local controls by 2005. If the interim milestones are met and the area demonstrates attainment of the standard during the period from 2005 to 2007, based on quality-assured air quality data, then the nonattainment designation for the relevant area will be withdrawn by EPA and the area will face no further regulatory requirements. If an area fails at any point in the process, the nonattainment designation will become effective along with all of the associated regulatory requirements of such a designation.

In December 2002, a number of States entered into EAC agreements, pledging to reduce emissions earlier than required by the Act for compliance with the 8-hour ozone standard. These States and local communities had to meet specific criteria and agreed to meet certain milestones for development and implementation of their individual EAC

agreements. States with communities participating in the EAC program had to submit plans for meeting the 8-hour ozone standard by December 31, 2004, rather than the June 15, 2007 deadline applicable to all other areas not meeting the standard. The EACs required communities to develop and implement air pollution control strategies, account for emissions growth, and demonstrate attainment and maintenance of the 8-hour ozone standard. Greater details on the EAC program are explained in EPA's December 16, 2003 (68 FR 70108) proposed **Federal Register** notice entitled, "Deferral of Effective Date of Nonattainment Designations for 8-hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas." In December 2002, the Roanoke MSA entered into an EAC with both the Commonwealth of Virginia and EPA. This compact was signed by all parties involved and then submitted to EPA by the required date of December 31, 2002.

On April 15, 2004, EPA designated all areas for the 8-hour ozone standard. The EPA deferred the effective date of nonattainment designations for EAC areas that were violating the 8-hour standard, but continued to meet the their established EAC milestones. On April 30, 2004 (69 FR 23858), EPA published its formal air quality designations and classifications for the 8-hour ozone standard. This action included the deferral of the effective date for all nonattainment areas that entered into EACs and developed EAPs, including the Roanoke MSA EAC Area. Specifically, the Roanoke MSA was designated as a "basic" nonattainment area with the effective date of the designation deferred to September 30, 2005. In a separate notice, EPA expects to continue to officially defer the effective date of the nonattainment designation for this Area, among others, in the future so long as the Area continues to fulfill its EAC obligations, including semi-annual status reporting requirements, implementation of the measures in its EAP by December 31, 2005, and a progress assessment by June 30, 2006. EPA anticipates extending the currently effective deferral for all EAC areas from September 30, 2005 until December 31, 2006, provided the above conditions are met.

II. Summary of the SIP Revision

A. Content of the Roanoke MSA EAC Area Attainment Demonstration

As part of its EAC plan, Virginia developed an attainment demonstration supported by an ozone photochemical modeling study for the Roanoke MSA EAC Area. The attainment

demonstration identifies a set of measures that will result in emission reductions and provides analyses that predict that the measures will result in ambient air quality concentrations that meet the 8-hour ozone standard in the Roanoke MSA EAC Area.

The attainment demonstration was supported by results of a photochemical modeling analysis and technical documentation for all ozone monitors in the Roanoke MSA EAC Area. EPA believes that VADEQ's 8-hour ozone photochemical modeling study developed for the Roanoke MSA EAC Area meets EPA's current modeling requirements. The Commonwealth has adequately followed all relevant EPA guidance in demonstrating that the Roanoke MSA EAC Area will attain the 8-hour ozone NAAQS in 2007, and continue to do so in 2012. The modeling results predict the maximum 2007 8-hour ozone design value for this area to be 80.1 ppb, which is less than what is needed (≤ 84 ppb) to show modeled attainment of the 8-hour ozone NAAQS.

The attainment modeling information presented in this notice should be used in conjunction with the Commonwealth's SIP submittal and EPA's technical support document (TSD), as certain modeling requirements performed by the State (*i.e.*, details of the quality assurance performed, detailed analysis of data suitability, complete listings of all data inputs and outputs, etc.) are not reproduced in this notice.

B. Measures Included in the EAC SIP

The Roanoke MSA EAP is designed to enable a proactive approach to ensuring attainment of the 8-hour ozone NAAQS. Using the EAP approach, the Roanoke MSA EAC Area will be implementing emission-reduction measures directed at attaining the 8-hour standard starting in 2005. The Area is then required to demonstrate compliance with the 8-hour ozone standard by 2007, and maintain compliance with the standard at least through 2012. Compliance with the standard will be determined using ozone monitoring data.

The EAP control measures for the Roanoke MSA EAC Area consist of local, State, and Federal emission reduction strategies. Control measures to be implemented on the local level that were included in the demonstration of attainment for the Area include a comprehensive local air quality action day strategy. This strategy is a combination of activities to reduce ozone precursors. Local and county governments are making commitments to limit or ban certain ozone precursor forming activities during predicted high

ozone days such as restrictions on residential and public landscaping operations, pesticide applications, refueling of vehicles, and vehicle travel. Voluntary restrictions on these types of activities will be requested of local businesses and the general public.

Virginia has also submitted a number of locally implemented measures in their EAP that, although not included in the attainment demonstration, will provide additional air quality benefits to the Roanoke MSA EAC Area and surrounding communities. These control measures include: heavy duty diesel and diesel equipment strategies (reduction of locomotive and school bus idling, retrofit technology for school buses, the purchase and use of alternative fuel vehicles and biodiesel-ready trucks, the purchase of hybrid vehicles, educational and training programs on vehicle use); tree canopy/urban forestry strategies; expansion of a bicycle infrastructure; a gasoline-powered lawnmower buy-back program; and open burning restrictions during days with elevated predicted ozone concentrations.

In addition to the local strategies, several State and Federal actions have or will produce substantial ozone precursor emissions reductions both inside and outside of the local EAC Area. These State and Federal actions are aimed at reducing local emissions by limiting the transport of pollution into the Area from emissions sources located outside of the local area. These strategies, when combined with the local strategies, are expected to lower area ozone concentrations to the level at or below the ozone standard.

Control measures to be implemented on the State level that were included in the attainment demonstration for the Area include VOC and NO_x RACT controls for selected point and area sources in the Roanoke MSA Area; State cutback asphalt regulations that will control VOC emissions in the Roanoke Area; and Stage I vapor recovery for gasoline fueling stations.

Virginia has also submitted a number of State-supported measures in their EAP that were not included in the attainment demonstration, but are expected to provide additional air quality benefits to the Roanoke MSA EAC Area. These control measures include: the National Low Emissions Vehicle Program (NLEV) and the utilization of an enhanced ozone forecasting tool for the Roanoke Area to support the local ozone action days program and associated voluntary emission reduction efforts.

The NO_x SIP Call (63 FR 57356, October 27, 1998) required States to

implement reductions necessary to address the ozone transport problem, and on June 25, 2002, Virginia submitted its NO_x Budget Trading Program to meet its Phase I NO_x SIP Call obligations. Virginia's Phase I program applies to electric generating units that serve a generator greater than 25 megawatts and to industrial units greater than 250 mmBTU/hr. On July 8, 2003 (68 FR 40520), EPA conditionally approved Virginia's NO_x Budget Trading Program, and fully approved the program on August 25, 2004 (69 FR 52174). Virginia began implementing its NO_x Budget Trading Program during the 2004 ozone season. The photochemical modeling that demonstrates attainment for the Roanoke MSA Area relies upon expected benefits from the NO_x SIP Call throughout the modeling domain.

To help achieve attainment in the Area, the VADEQ has recently adopted NO_x reasonably available control technology (RACT) requirements for certain sources located in the Roanoke MSA EAC Area. At this time, Virginia has formally established NO_x RACT requirements for three sources located in the Roanoke MSA EAC Area. The Commonwealth has submitted the source-specific RACT requirements to EPA for approval into the Virginia SIP. On April 27, 2005 (70 FR 21621), EPA published a final rulemaking approving the source-specific NO_x RACT determinations for the Roanoke MSA EAC area.

At the Federal level, numerous EPA programs have been or will be implemented to reduce ozone pollution. These programs, that were included in the modeled demonstration of attainment, cover all the major categories of ozone generating pollutants and are designed to assist many areas that need to come into compliance with the Federal ozone standard. These include stationary and area source controls (low-VOC industrial/architectural paints, vehicle paints, metal-cleaning products, and consumer products); motor vehicle emissions controls for VOC and NO_x (NLEV, Tier 2 vehicle requirements, and heavy-duty diesel standards); and non-road vehicle and equipment standards (lawn and garden equipment, construction equipment, boat engines, and locomotives).

All these measures have been developed to address the creation of ozone producing emissions in local areas as well as to lessen the regional transport of ozone as a comprehensive approach to reducing ozone levels. A detailed description of all the control measures including those that were included in the attainment

demonstration, as well as the additional measures that are expected to assist the Area in meeting attainment of the standard in 2007, can be found in the TSD prepared in support of this rulemaking.

C. Maintenance for Growth

Consistent with EPA guidance, the EAP also contains components to ensure maintenance of the 8-hour ozone standard through 2012, five years beyond the 2007 attainment date. The Roanoke MSA EAC Area has developed an emissions inventory for the year 2012, as well as a continuing planning process to address this essential part of the plan. Due to the emission control measures identified in the EAP, the emissions inventory predicted an overall reduction in emissions through 2012. From 1999 to 2007, emissions of VOCs are estimated to decline by 27.6 percent and emissions of NO_x are estimated to be reduced by 28.2 percent. By 2012, emissions are predicted to be 8.2 percent less than those modeled in 2007 for VOCs, and 25.5 percent less than those modeled in 2007 for NO_x. Using air quality models to anticipate the impact of growth, as well as the Federal, State-assisted, and locally-implemented measures to reduce emissions, the Commonwealth of Virginia has projected the Area will be in attainment of the 8-hour ozone standard in 2007, and will remain in attainment through 2012.

To fulfill the continuing planning process that will ensure that the Roanoke MSA EAC Area will maintain the 8-hour ozone standard through 2012, the Roanoke MSA EAP establishes a commitment and mechanism to work with local stakeholders to identify and require additional measures to further reduce ozone precursor emissions. In addition, the EAC signatories and implementing agencies will review all EAC activities and report on these results in their semi-annual reports, beginning in June 2006. The semi-annual reports will track and document, at a minimum, control strategy implementation and results, monitoring data, and future plans. Furthermore, as part of the SIP submittal, the Roanoke MSA commits to submit periodic updates to VADEQ and EPA on the implementation status and results of the local control program with sufficient details to make program sufficiency determinations. Although not required by the EPA, the Roanoke MSA EAP contains contingency measures which could be implemented in response to any unexpected shortfall in anticipated reductions. These additional strategies include the implementation of one or

more of the following Ozone Transport Commission (OTC) rules: Portable Container Rule, the Architectural/Industrial Maintenance Coatings Rule, Mobile Equipment Repair and Refinishing Rule, Solvent Cleaning Operations Rule, and Consumer Products Rule.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *" The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these

programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a State agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a State audit privilege and immunity law can affect only State enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the State plan, independently of any State enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, State audit privilege or immunity law.

IV. Proposed Action

EPA is proposing to approve the attainment demonstration and the EAP for the Roanoke MSA EAC Area in the Commonwealth of Virginia. The modeling of ozone and ozone precursor emissions from sources in the Roanoke MSA EAC Area demonstrates that the specified control strategies will provide for attainment of the 8-hour ozone NAAQS by December 31, 2007, and maintenance of that standard through 2012. To date, the Roanoke MSA has met all of its EAC milestones, and, as long as the Area continues to meet the agreed upon milestones, the nonattainment designation for this Area will be deferred until September 30, 2005. EPA is soliciting public comments on the issues discussed in this

document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for

failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This proposed rule, pertaining to the attainment demonstration and EAP for the Roanoke MSA ozone EAC Area, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

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

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

Dated: May 3, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05-9782 Filed 5-16-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03-OAR-2005-MD-0004; FRL-7913-8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Attainment Demonstration for the Washington County Early Action Compact Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maryland. The proposed revision

consists of an Early Action Compact (EAC) Plan that will enable the Washington County EAC Area to demonstrate attainment and maintenance of the 8-hour ozone national ambient air quality (NAAQS) standard. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 16, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03-OAR-2005-MD-0004 by one of the following methods:

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

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

C. *E-mail:* campbell.dave@epa.gov.

D. *Mail:* R03-OAR-2005-MD-0004, David Campbell, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to RME ID No. R03-OAR-2005-MD-0004. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://www.regulations.gov) or e-mail. The EPA RME and the Federal [regulations.gov](http://www.regulations.gov) Web sites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic

comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814-2034, or by e-mail at wentworth.ellen@epa.gov.

SUPPLEMENTARY INFORMATION: On December 20, 2004, the Maryland Department of the Environment (MDE) submitted a revision to its SIP. This revision consists of an Early Action Plan (EAP) for the Washington County EAC area. On February 28, 2005, the Maryland Department of the Environment (MDE) supplemented its December 20, 2004 submittal by providing a modeling addendum to its submittal after notice and public hearing.

I. Background

In 1997, EPA established a new 8-hour ozone NAAQS that addresses the longer-term impact of ozone at lower levels. As such, the new standard is set at a lower level, 0.08 parts per million (ppm) than the previous 1-hour standard, 0.120 ppm, and is more protective of human health. Attainment of the 8-hour ozone standard is determined by averaging three years of the fourth highest 8-hour ozone levels as recorded by ambient air quality monitor(s) in an area. This number, called the design value, must be lower than 85 parts per billion (ppb) in order

for the area to comply with the ozone standard. Currently, the Washington County EAC Area has an official design value based on quality-assured air quality data for the period 2001 to 2003, of 87 ppb.¹

To begin to address the elevated ozone concentrations in the Washington County Area, the MDE investigated voluntary actions that could be implemented proactively to improve air quality. Maryland found the most promising of all of the options it explored to be EPA's EAC program. EACs are voluntary agreements entered into by affected local jurisdictions, State regulatory agencies, and EPA, to develop EAPs to reduce ozone precursor pollutants, such as nitrogen oxides (NO_x) and volatile organic compounds (VOCs) and improve local air quality. The goal of an EAP is to bring about a positive change to local air quality on a schedule that is faster than the traditional regulatory nonattainment area designation and air quality planning process. These plans include the same components of traditional SIPs for nonattainment areas: emissions inventories, control strategies, schedules and commitments, and a demonstration of attainment based on photochemical modeling.

The goal of an EAP is to develop a comprehensive strategy that will allow an area to achieve attainment of the 8-hour ozone standard by 2007. This goal is accomplished by selecting and implementing the local ozone precursor pollutant control measures and other State and nationally implemented control measures that reduce emissions and allow the area to comply with the NAAQS for ozone. Areas successful in developing a plan that demonstrates attainment of the 8-hour ozone standard by 2007 will receive a deferral of the effective date of the nonattainment designation for the area from EPA. This deferral will remain in place as long as certain milestones are met, such as implementation of local controls by 2005. If the interim milestones are met and the area demonstrates attainment of the standard during the period from 2005 to 2007, based on quality-assured air quality data, then the nonattainment designation for the relevant area will be withdrawn by EPA and the area will

¹ To attain the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone requires the fourth highest 8-hour daily maximum ozone concentration, average over three consecutive years, to be ≤80 parts per billion (ppb) at each monitoring site (See 40 CFR part 50.10, Appendix I, paragraph 2.3). Because of the stipulations for rounding significant figures, this equates to a modeled attainment target of ≤84 ppb. Because non-significant figures are truncated, a modeling estimate of <85 ppb is equivalent to ≤84 ppb.

face no further regulatory requirements. If an area fails at any point in the process, the nonattainment designation will become effective along with all of the associated regulatory requirements of such a designation.

In December 2002, a number of States entered into EAC agreements, pledging to reduce emissions earlier than required by the Act for compliance with the 8-hour ozone standard. These States and local communities had to meet specific criteria and agreed to meet certain milestones for development and implementation of their individual EAC agreements. States with communities participating in the EAC program had to submit plans for meeting the 8-hour ozone standard by December 31, 2004, rather than the June 15, 2007 deadline applicable to all other areas not meeting the standard. The EACs required communities to develop and implement air pollution control strategies, account for emissions growth, and demonstrate attainment and maintenance of the 8-hour ozone standard. Greater details on the EAC program are explained in EPA's December 16, 2003 (68 FR 70108) proposed **Federal Register** notice entitled, "Deferral of Effective Date of Nonattainment Designations for 8-hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas." In December 2002, the Washington County Area entered into an EAC with both the MDE and EPA. This compact was signed by all parties involved and then submitted to EPA by the required date of December 31, 2002.

On April 15, 2004, EPA designated all areas for the 8-hour ozone standard. The EPA deferred the effective date of nonattainment designations for EAC areas that were violating the 8-hour standard, but continued to meet their established EAC milestones. On April 30, 2004 (69 FR 23858), EPA published its formal air quality designations and classifications for the 8-hour ozone standard. This action included the deferral of the effective date for all nonattainment areas that entered into EACs and developed EAPs, including the Washington County EAC Area. Specifically, the Washington County Area was designated as a "basic" nonattainment area with the effective date of the designation deferred to September 30, 2005. In a separate notice, EPA expects to continue to officially defer the effective date of the nonattainment designation for this Area, among others, in the future so long as the Area continues to fulfill its EAC obligations, including semi-annual status reporting requirements, implementation of the measures in its EAP by December 31, 2005, and a

progress assessment by June 30, 2006. EPA anticipates extending the currently effective deferral for all EAC areas from September 30, 2005 until December 31, 2006, provided the above conditions are met.

II. Summary of the SIP Revision

A. Content of the Washington County EAC Area Attainment Demonstration

As part of its EAC plan, Maryland developed an attainment demonstration supported by an ozone photochemical modeling study for the Washington County EAC Area. The attainment demonstration identifies a set of measures that will result in emission reductions and provides analyses that predict that the measures will result in ambient air quality concentrations that meet the 8-hour ozone standard in the Washington County EAC Area.

The attainment demonstration was supported by results of a photochemical modeling analysis and technical documentation for all ozone monitors in the Washington County EAC Area. EPA believes that Maryland's 8-hour ozone photochemical modeling study developed for the Washington County EAC Area meets EPA's current modeling requirements. The State has adequately followed all relevant EPA guidance in demonstrating that the Washington County EAC Area will attain the 8-hour ozone NAAQS in 2007, and continue to do so in 2012. The modeling results predict the maximum 2007 8-hour ozone design value for this area to be 80.8 ppb, which is less than what is needed (≤ 84 ppb) to show modeled attainment of the 8-hour ozone NAAQS.

The attainment modeling information presented in this notice should be used in conjunction with the State's SIP submittal and EPA's technical support document (TSD), as certain modeling requirements performed by the State (*i.e.*, details of the quality assurance performed, detailed analysis of data suitability, complete listings of all data inputs and outputs, etc.) are not reproduced in this notice.

B. Measures Included in the EAC SIP

The Washington County EAP is designed to enable a proactive approach to ensuring attainment of the 8-hour NAAQS. Using the EAP approach, the Washington County EAC Area will be implementing emission-reduction measures directed at attaining the 8-hour standard starting in 2005. The Area is then required to demonstrate compliance with the 8-hour ozone standard by 2007, and maintain compliance with the standard at least through 2012. Compliance with the

standard will be determined using ozone monitoring data. Historically, the State of Maryland has been very aggressive with its emission control program for ozone. As part of the Ozone Transport Commission (OTR), the MDE has implemented as many regulations as possible statewide and Washington County has been heavily regulated.

The EAP control measures for the Washington County EAC Area consist of local, state, and Federal emission reduction strategies. Control measures to be implemented on the local level include a suite of measures which include: Vehicle miles traveled (VMT) and trip reduction measures (ride-matching/commuter connections, transit programs in Washington County, and park and ride lots); traffic flow improvements (signal system enhancements, incident management, and intelligent transportation systems (ITS)); vehicle acquisitions and replacements in Washington County (fleet replacement and transit engine rebuilds); and an air quality action day program. Though not included in the modeled demonstration of attainment, emission reductions from the implementation of these measures will provide additional air quality benefits to the Washington County Area.

In addition to the local strategies, several State and Federal actions have or will produce substantial ozone precursor emissions reductions both inside and outside of the local EAC area. These reductions are aimed at reducing local emissions and transport of pollution into the area. These strategies when combined with the local strategies, are expected to lower area ozone concentrations to the level at or below the ozone standard.

Control measures to be implemented on the State level that were included in the attainment demonstration for the Area include reductions from area sources such as regulations requiring low-emissions architectural and industrial maintenance (AIM) coatings, paint for road markings, and consumer products. On May 25, 2004 (69 FR 29674), EPA proposed approval of Maryland's Ozone Transportation Commission (OTC) AIM rule into the Maryland SIP.

Maryland has also submitted a number of State-supported measures in their EAP that were not included in the attainment demonstration, but are expected to provide additional air quality benefits to the Washington County EAC Area. These control measures include: the vehicle emissions inspection program (VEIP); off-road vehicle replacements; reasonably available control technology (RACT) for

one source in the Washington County Area; and VOC reductions from the OTC portable fuel container program.

The NO_x SIP Call (63 FR 57356, October 27, 1998) required States to implement reductions necessary to address the ozone transport problem, and on April 27, 2000, Maryland submitted its NO_x Budget Trading Program to meet its NO_x SIP Call obligations. Maryland's program applies to electric generating units that serve a generator greater than 25 megawatts and to industrial units greater than 250 mMBTU/hr. On January 10, 2001, (66 FR 1866), EPA approved Maryland's NO_x Budget Trading Program. Maryland began implementing its NO_x Budget Trading Program during the 2003 ozone season. The photochemical modeling that demonstrates attainment for the Washington County EAC Area relies upon expected benefits from the NO_x SIP Call throughout the modeling domain.

At the Federal level, numerous EPA programs have been or will be implemented to reduce ozone pollution. These programs, that were included in the modeled demonstration of attainment, cover all the major categories of ozone generating pollutants and are designed to assist many areas that need to come into compliance with the Federal ozone standard. These include motor vehicle emissions controls for VOC and NO_x sources (the National Low Emissions Vehicle Program (NLEV), Tier II, and Heavy Duty Engine (HDE) standards).

All these measures have been developed to address the creation of ozone producing emissions in the local areas as well as to lessen the transport of ozone into the area as a comprehensive approach to reducing ozone levels. A detailed summary and description of all of the control measures including those that were modeled, as well as the additional measures that are expected to assist the Area in meeting attainment of the standard in 2007, can be found in the TSD prepared in support of this rulemaking.

C. Maintenance for Growth

Consistent with EPA guidance, the EAP also contains components to ensure maintenance of the 8-hour ozone standard through 2012, five years beyond the 2007 attainment date. The Washington County EAC area has developed an emissions inventory for the year 2012, as well as a continuing planning process to address this essential part of the plan. Due to the emission control measures identified in the EAP, the emissions inventory

predicted an overall reduction in emissions through 2012. From 1999 to 2007, emissions of VOCs are estimated to decline by 8.4 percent, and emissions of NO_x are estimated to be reduced by 15.7 percent. By 2012, emissions are predicted to be 4.9 percent less than those modeled in 2007 for VOCs, and 21.3 percent less than those modeled in 2007 for NO_x. Using air quality models to anticipate the impact of growth, as well as the Federal, State-assisted, and locally-implemented measures to reduce emissions, the State of Maryland has projected the Area will be in attainment of the 8-hour ozone standard in 2007, and will remain in attainment through 2012.

The maintenance for growth portion of the compact includes the continuous planning process that provides for a review to ensure that the adopted emission reduction strategies are adequate to address growth in emissions. The continuous planning process will be conducted concurrently with the tracking and reporting process for the EAP. In addition, the Maryland compact requires that if the continuous planning process identifies the need to add emission reduction strategies after the plan is incorporated into the SIP, the local area and State will initiate the process to include the new measures in the Maryland SIP. The continuous planning process is adequate to fulfill the need for a commitment to evaluate and to correct any potential shortfalls in anticipated emissions reductions. In addition, the EAC signatories and implementing agencies will review all EAC activities and report on these results in their semi-annual reports, beginning in June 2006. The semi-annual reports will track and document, at a minimum, control strategy implementation and results, monitoring data and future plans. Furthermore, as part of this SIP submittal, the local area commits to continue to submit periodic updates in the form of semi-annual status reports to MDE and EPA on the implementation status and results of the local control program with sufficient details to make program sufficiency determinations. Although not required by the EAC protocol, Washington County's plan contains contingency measures which could be implemented in response to any unexpected shortfall in anticipated reductions. These additional strategies include the implementation of one or more of the following: flexible work schedules for employees in the County; reformulated gasoline (RFG) or low Reid vapor pressure (RVP) gasoline program; diesel vehicle emission controls; traffic flow

improvements; low-emissions vehicle acquisitions; and, gas can and lawnmower replacement programs.

III. Proposed Action

EPA is proposing to approve the attainment demonstration and the EAP for the Washington County EAC Area in the State of Maryland. The modeling of ozone and ozone precursor emissions from sources in the Washington County EAC area demonstrates that the specified control strategies will provide for attainment of the 8-hour ozone NAAQS by December 31, 2007, and maintenance of that standard through 2012. To date, Washington County has met all of its EAC milestones, and as long as the Area continues to meet the agreed upon milestones, the nonattainment designation for this Area will be deferred until September 30, 2005. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the

States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule, pertaining to the attainment demonstration and EAP for the Washington County EAC area, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Volatile Organic Compounds, Reporting and recordkeeping requirements.

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

Dated: May 3, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05-9783 Filed 5-16-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03-OAR-2005-VA-0005; FRL-7913-9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia, Attainment Demonstration for the Northern Shenandoah Valley Ozone Early Action Compact Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This proposed revision consists of an Early Action Compact (EAC) Plan that will enable the Northern Shenandoah Valley Ozone EAC Area to demonstrate attainment and maintenance of the 8-hour ozone national ambient air quality standard (NAAQS). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 16, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03-OAR-2005-VA-0005 by one of the following methods:

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

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

C. *E-mail:* campbell.dave@epa.gov.

D. *Mail:* R03-OAR-2005-VA-0005, David Campbell, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to RME ID No. R03-OAR-2005-VA-0005.

EPA's policy is that all comments received will be included in the public docket without change, and may be including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION: On December 20, 2004, the Commonwealth of Virginia submitted a revision to its SIP. This revision consists of an Early Action Plan (EAP) for the Northern Shenandoah Valley Ozone EAC Area.

On February 15, 2005, the Commonwealth supplemented its December 20, 2004 submittal by providing a copy of the record of hearing and summary of testimony during its rule adoption process.

I. Background

In 1997, EPA established a new 8-hour ozone NAAQS that addresses the longer-term impact of ozone at lower levels. As such, the new standard is set at a lower level, 0.08 parts per million (ppm) than the previous 1-hour standard, 0.120 ppm, and is more protective of human health. Attainment of the 8-hour ozone standard is determined by averaging three years of the fourth highest 8-hour ozone levels as recorded by ambient air quality monitor(s) in an area. This number, called the design value, must be lower than 85 parts per billion (ppb) in order for the area to comply with the ozone standard. Currently, the Northern Shenandoah Valley EAC Area, which consists of the City of Winchester and Frederick County, has an official design value based on quality-assured air quality data for the period 2001 to 2003 of 85 ppb.¹

To begin to address the elevated ozone concentrations in the Northern Shenandoah Valley Area, the Virginia Department of Environmental Quality (VADEQ) investigated voluntary actions that could be implemented proactively to improve air quality. Virginia found the most promising of all of the options it explored to be EPA's EAC program. EACs are voluntary agreements entered into by affected local jurisdictions, state regulatory agencies, and EPA to develop EAPs to reduce ozone precursor pollutants, such as nitrogen oxides (NO_x) and volatile organic compounds (VOCs) and improve local air quality. The goal of the EAP is to bring about a positive change to local air quality on a schedule that is faster than the traditional regulatory nonattainment area designation and air quality planning process. These plans include the same components of traditional SIPs for nonattainment areas: emissions inventories, control strategies, schedules and commitments, and a demonstration of attainment based on photochemical modeling.

¹ To attain the 8-hour national ambient air quality standard (NAAQS) for ozone requires the fourth highest 8-hour daily maximum ozone concentration, average over three consecutive years, to be ≤80 parts per billion (ppb) at each monitoring site (See 40 CFR Part 50.10, Appendix I, paragraph 2.3). Because of the stipulations for rounding significant figures, this equates to a modeled attainment target of ≤84 ppb. Because non-significant figures are truncated, a modeling estimate of <85 ppb is equivalent to ≤84 ppb.

The goal of an EAP is to develop a comprehensive strategy that will allow an area to achieve attainment of the 8-hour ozone standard by 2007. This goal is accomplished by selecting and implementing local ozone precursor pollutant control measures and other state and nationally-implemented control measures that reduce emissions and allows the area to comply with the NAAQS for ozone. Areas successful in developing a plan that demonstrates attainment of the 8-hour ozone standard by 2007 will receive a deferral of the effective date of the nonattainment designation for the area from EPA. This deferral will remain in place as long as certain milestones are met, such as implementation of local controls by 2005. If the interim milestones are met and the area demonstrates attainment of the standard during the period from 2005 to 2007, based on quality-assured air quality data, then the nonattainment designation for the relevant area will be withdrawn by EPA and the area will face no further regulatory requirements. If an area fails at any point in the process, the nonattainment designation will become effective, along with all of the associated regulatory requirements of such a designation.

In December 2002, a number of states entered into EAC agreements, pledging to reduce emissions earlier than required by the Act for compliance with the 8-hour ozone standard. These states and local communities had to meet specific criteria and agreed to meet certain milestones for development and implementation of their individual EAC agreements. States with communities participating in the EAC program had to submit plans for meeting the 8-hour ozone standard by December 31, 2004, rather than the June 15, 2007 deadline applicable to all other areas not meeting the standard. The EACs required communities to develop and implement air pollution control strategies, account for emissions growth, and demonstrate attainment and maintenance of the 8-hour ozone standard. Greater details on the EAC program are explained in EPA's December 16, 2003 (68 FR 70108) proposed **Federal Register** notice entitled, "Deferral of Effective Date of Nonattainment Designations for 8-hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas." In December 2002, the Northern Shenandoah Valley Area entered into an EAC with both the Commonwealth and EPA. This compact was signed by all parties involved and then submitted to EPA by the required date of December 31, 2002.

On April 15, 2004, EPA designated all areas for the 8-hour ozone standard. The

EPA deferred the effective date of nonattainment designations for EAC areas that were violating the 8-hour standard, but continued to meet their established EAC milestones. On April 30, 2004 (69 FR 23858), EPA published its formal air quality designations and classifications for the 8-hour ozone standard. This action included the deferral of the effective date for all nonattainment areas that entered into EACs and developed EAPs, including the Northern Shenandoah Valley EAC Area. Specifically, the Winchester/Frederick Area was designated as a "basic" nonattainment area with the effective date of the designation deferred until September 30, 2005. In a separate notice, EPA expects to continue to officially defer the effective date of the nonattainment designation for this Area, among others, in the future so long as the Area continues to fulfill its EAC obligations, including semi-annual status reporting requirements, implementation of the measures in its EAP by December 31, 2005, and a progress assessment by June 30, 2006. EPA anticipates extending the currently effective deferral for all EAC areas from September 30, 2005 until December 31, 2006, provided the above conditions are met.

II. Summary of SIP Revision

A. Content of the Northern Shenandoah Valley EAC Area Attainment Demonstration

As part of its EAC plan, Virginia developed an attainment demonstration supported by an ozone photochemical modeling study for the Northern Shenandoah Valley EAC Area. The attainment demonstration identifies a set of measures that will result in emission reductions and provides analyses that predict that the measures result in ambient air quality concentrations that meet the 8-hour ozone standard in the Northern Shenandoah Valley EAC Area.

The attainment demonstration was supported by results of a photochemical modeling analysis and technical documentation for all ozone monitors in the Northern Shenandoah Valley EAC Area. EPA believes that VADEQ's 8-hour ozone photochemical modeling study developed for the Northern Shenandoah Valley EAC Area meets EPA's current modeling requirements. The Commonwealth has adequately followed all relevant EPA guidance in demonstrating that the Northern Shenandoah Valley EAC Area will attain the 8-hour ozone NAAQS in 2007, and continue to do so in 2012. The modeling results predict the maximum

2007 8-hour ozone design value for this area to be 81.8 ppb, which is less than what is needed (≤ 84 ppb) to show modeled attainment of the 8-hour ozone NAAQS.

The attainment modeling information presented in this notice should be used in conjunction with the Commonwealth's SIP submittal and EPA's technical support document (TSD), as certain modeling requirements performed by the State (i.e., details of the quality assurance procedures performed, detailed analysis of data suitability, complete listings of all data inputs and outputs, etc.) are not reproduced in this notice.

B. Measures Included in the EAC SIP

The Northern Shenandoah Valley EAP is designed to enable a proactive approach to ensuring attainment of the 8-hour NAAQS. Using the EAP approach, the Northern Shenandoah Valley EAC Area will be implementing emission-reduction measures directed at attaining the 8-hour standard starting in 2005. The Area is then required to demonstrate compliance with the 8-hour ozone standard by 2007, and maintain compliance with the standard at least through 2012. Compliance with the standard will be determined using ozone monitoring data.

The EAP control measures for the Northern Shenandoah Valley EAC Area consist of local, state and Federal emission reduction strategies. Control measures to be implemented on the local level that were included in the demonstration of attainment for the Area include a comprehensive local ozone action day/public awareness program. This strategy is a combination of activities to reduce ozone precursors which includes: a general public awareness program; a school-based awareness program; an educational and promotional campaign; an employer-based ozone action day campaign; dynamic message signs; video monitor deployment; lawn and garden equipment usage restrictions for state and local governments; other state and local government restrictions (e.g. refueling guidelines, pesticide application restrictions); and voluntary restrictions by the general public (e.g. lawn and garden equipment usage, refueling).

Virginia has also submitted a number of locally-implemented measures in their EAP that, although not included in the attainment demonstration, will provide additional air quality benefits to the Northern Shenandoah Valley EAC Area and surrounding communities. These control measures include: vehicle miles of travel (VMT) reduction

programs—programs/activities designed to reduce VMT, enhanced/expanded Northern Shenandoah Valley Regional Commission ridesharing program; open burning restrictions during days with elevated predicted ozone concentrations; engine-idling restrictions for public and private diesel trucks; advanced emissions control technology for area school bus fleets; and voluntary emission reductions by local industries.

In addition to the local strategies, several State and Federal actions have or will produce substantial ozone precursor emissions reductions both inside and outside of the local EAC area. These state and Federal actions are aimed at reducing local emissions by limiting the transport of pollution into the area from emissions sources located outside of the local area. These strategies, when combined with the local strategies, are expected to lower area ozone concentrations to the level at or below the ozone standard.

Control measures to be implemented on the state level that were included in the attainment demonstration for the Area include: VOC reasonably available control technology (RACT) requirements for selected point and area sources in the City of Winchester and Frederick County and State cutback asphalt regulations that will control VOC emissions in the City of Winchester and Frederick County.

Virginia has also submitted a number of State-supported measures in their EAP that were not included in the attainment demonstration but are expected to provide additional air quality benefits to the Northern Shenandoah Valley EAC Area. These control measures include: The National Low Emission Vehicle Program (NLEV) and the utilization of an enhanced ozone forecasting tool for the Northern Shenandoah Valley EAC Area to support the local ozone action days program and associated voluntary emission reduction efforts.

The NO_x SIP Call (63 FR 57356, October 27, 1998) required states to implement reductions necessary to address the ozone transport problem, and on June 25, 2002, Virginia submitted its NO_x Budget Trading Program to meet its Phase I NO_x SIP Call obligations. Virginia's Phase I program applies to electric generating units that serve a generator greater than 25 megawatts and to industrial units greater than 250 mmBTU/hr. On July 8, 2003 (68 FR 40520), EPA conditionally approved Virginia's NO_x Budget Trading Program, and fully approved the program on August 25, 2004 (69 FR 52174). Virginia began implementing its

NO_x Budget Trading Program during the 2004 ozone season. The photochemical modeling that demonstrates attainment for the Northern Shenandoah Valley Area relies upon expected benefits from the NO_x Budget Trading Program throughout the modeling domain.

To help achieve attainment in the Area, VADEQ has recently adopted NO_x reasonably available control technology (RACT) requirements for certain sources located in the Northern Shenandoah Valley EAC Area. At this time, Virginia has formally established NO_x RACT requirements for one source located in the Northern Shenandoah Valley EAC Area. The Commonwealth has submitted the source-specific NO_x RACT requirements to EPA for approval into the Virginia SIP. On April 27, 2005 (70 FR 21621), EPA published a final rulemaking approving the source-specific NO_x RACT determination for the Northern Shenandoah Valley EAC Area.

At the Federal level, numerous EPA programs have been or will be implemented to reduce ozone pollution. These programs that were included in the modeled demonstration attainment cover all the major categories of ozone generating pollutants and are designed to assist many areas that need to come into compliance with the Federal ozone standard. These include stationary and area source controls (low-VOC industrial/architectural paints, vehicle paints, metal-cleaning products, and consumer products); motor vehicle emissions controls for VOCs and NO_x (NLEV, Tier 2 vehicle requirements and heavy-duty diesel standards); and non-road vehicle and equipment standards to control VOCs and NO_x emissions (lawn and garden equipment, construction equipment, boat engines and locomotives).

All these measures have been developed to address the creation of ozone producing emissions in local areas as well as to lessen the regional transport of ozone as a comprehensive approach to reducing ozone levels. A detailed description of all the control measures, including those that were included in the attainment demonstration, as well as the additional measures that are expected to assist the area in meeting attainment of the standard in 2007, can be found in the TSD prepared in support of this rulemaking.

C. Maintenance for Growth

Consistent with EPA guidance, the EAP also contains components to ensure maintenance of the 8-hour ozone standard through 2012, five years beyond the 2007 attainment date. The

Northern Shenandoah Valley EAC Area has developed an emissions inventory for the year 2012, as well as a continuing planning process to address this essential part of the plan. Due to the emission control measures identified in the EAP, the emissions inventory predicted an overall reduction in emissions through 2012. From 1999 to 2007, emissions of VOCs are estimated to decline by 17.9 percent and emissions of NO_x are estimated to be reduced by 21.2 percent. By 2012, emissions are predicted to be 0.6 percent less than those modeled in 2007 for VOCs, and 20.0 percent less than those modeled in 2007 for NO_x. Using air quality models to anticipate the impact of growth, as well as the Federal, state-assisted, and locally-implemented measures to reduce emissions, the Commonwealth of Virginia has projected the Area will be in attainment of the 8-hour ozone standard in 2007 and will remain in attainment through 2012.

To fulfill the continuing planning process that will ensure that the Northern Shenandoah Valley EAC Area will maintain the 8-hour ozone standard through 2012, the Northern Shenandoah Valley EAP establishes a commitment and mechanism to work with local stakeholders to identify and require additional measures to further reduce ozone precursor emissions. In addition, the EAC signatories and implementing agencies will review all EAC activities and report on these results in semi-annual reports beginning in June 2006. The semi-annual reports will track and document, at a minimum, control strategy implementation and results, monitoring data, and future plans. Furthermore, as part of the SIP submittal, the Northern Shenandoah Valley Area commits to submit periodic updates to VADEQ and EPA on the implementation status and results of the local control program with sufficient details to make program sufficiency determinations. Although not required by the EPA, the Northern Shenandoah Valley EAP contains contingency measures which could be implemented in response to any unexpected shortfall in anticipated reductions. These additional strategies include the implementation of one or more of the following Ozone Transport Commission (OTC) rules: Portable Container Rule, Architectural/Industrial Maintenance Coatings Rule, Mobile Equipment Repair and Refinishing Rule, Solvent Cleaning Operations Rule, and Consumer Products Rule.

III. General Information Pertaining to SIP Submittal From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *" The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the

extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Proposed Action

EPA is proposing to approve the attainment demonstration and the EAP for the Northern Shenandoah Valley EAC Area in the Commonwealth of Virginia. The modeling of ozone and ozone precursor emissions from sources affecting the Northern Shenandoah Valley EAC Area demonstrates that the specified control strategies will provide for attainment of the 8-hour ozone NAAQS by December 31, 2007 and maintenance of that standard through 2012. To date, the Northern Shenandoah Valley EAC Area has met all of its EAC milestones and, as long as the Area continues to meet the agreed upon milestones, the nonattainment designation for this Area will be deferred until September 30, 2005. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed

action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the

requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule pertaining to the attainment demonstration and EAP for the Northern Shenandoah Valley Ozone EAC Area does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and record-keeping requirements, Volatile organic compounds.

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

Dated: May 3, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05-9784 Filed 5-16-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03-OAR-2005-WV-0001; FRL-7914-1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia, Attainment Demonstration for the Eastern Panhandle Region Ozone Early Action Compact Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of West Virginia. This proposed revision consists of an Early Action Compact (EAC) Plan that will enable the Eastern Panhandle Region Ozone EAC Area to demonstrate attainment and maintenance of the 8-hour ozone national ambient air quality (NAAQS)

standard. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 16, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03-OAR-2005-WV-0001 by one of the following methods:

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

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

C. *E-mail:* campbell.dave@epa.gov.

D. *Mail:* R03-OAR-2005-WV-0001, David Campbell, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to RME ID No. R03-OAR-2005-WV-0001. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://www.regulations.gov) or e-mail. The EPA RME and the Federal [regulations.gov](http://www.regulations.gov) Web sites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties

and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, West Virginia 25304-2943.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION: On December 29, 2004, the State of West Virginia submitted a revision to its SIP. This revision consists of the Early Action Plan (EAP) for the Eastern Panhandle Region Ozone EAC Area which consists of Berkeley and Jefferson Counties.

I. Background

In 1997, EPA established a new 8-hour ozone NAAQS that addresses the longer-term impact of ozone at lower levels. As such, the new standard is set at a lower level, 0.08 parts per million (ppm) than the previous 1-hour standard, 0.120 ppm, and is more protective of human health. Attainment of the 8-hour ozone standard is determined by averaging three years of the fourth highest 8-hour ozone levels as recorded by ambient air quality monitor(s) in an area. This number, called the design value, must be lower than 85 parts per billion (ppb) to comply with the standard. Currently, Berkeley and Jefferson Counties' official design value based on quality-assured air quality data for the period 2001-2003 is 86 ppb.¹

¹ To attain the 8-hour national ambient air quality standard (NAAQS) for ozone requires the fourth highest 8-hour daily maximum ozone concentration, average over three consecutive years, to be \leq 80 parts per billion (ppb) at each monitoring

To begin to address the elevated ozone concentrations in the Eastern Panhandle Region, the West Virginia Department of Environmental Protection (WVDEP) investigated voluntary actions that could be implemented proactively to improve air quality. West Virginia found the most promising of all the options explored is EPA's EAC program. EAC's are voluntary agreements entered into by affected local jurisdictions, state regulatory agencies, and EPA to develop EAPs to reduce ozone precursor pollutants, such as nitrogen oxides (NO_x) and volatile organic compounds (VOCs) and improve local air quality. The goal of the EAP is to bring about a positive change to local air quality on a schedule that is faster than the traditional regulatory nonattainment area designation and air quality planning process. These plans include the same components of traditional SIPs for nonattainment areas: emissions inventories, control strategies, schedules and commitments, and a demonstration of attainment based on photochemical modeling.

The goal of an EAP is to develop a comprehensive strategy that will allow an area to achieve attainment of the 8-hour ozone standard by 2007. This goal is accomplished by selecting and implementing the local ozone precursor pollutant control measures and other state and nationally-implemented control measures that reduce emissions and allows the area to comply with the NAAQS for ozone. Areas successful in developing a plan that demonstrates attainment of the 8-hour ozone standard by 2007 will receive a deferral of the effective date of the nonattainment designation for the area from EPA. This deferral will remain in place as long as certain milestones are met, such as implementation of local controls by 2005. If the interim milestones are met and the area demonstrates attainment of the standard during the period from 2005 to 2007, based on quality-assured air quality data, then the nonattainment designations will be withdrawn by EPA and the area will face no further regulatory requirements. If an area fails at any point in the process, the nonattainment designation will become effective, along with the associated regulatory requirements of such a designation.

In December 2002, a number of states entered into EAC agreements, pledging to reduce emissions earlier than

required by the Act for compliance with the 8-hour ozone standard. These states and local communities had to meet specific criteria and agreed to meet certain milestones for development and implementation of their individual EAC agreements. States with communities participating in the EAC program had to submit plans for meeting the 8-hour ozone standard by December 31, 2004, rather than the June 15, 2007 deadline applicable to all other areas not meeting the standard. The EACs required communities to develop and implement air pollution control strategies, account for emissions growth, and demonstrate attainment and maintenance of the 8-hour ozone standard. Greater details on the EAC program are explained in EPA's December 16, 2003 (68 FR 70108) proposed **Federal Register** notice entitled, "Deferral of Effective Date of Nonattainment Designations for 8-hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas." In December 2002, the Eastern Panhandle Region entered into an EAC with both West Virginia and EPA. This compact was signed by all parties involved and then submitted to EPA by the required date of December 31, 2002.

On April 15, 2004, EPA designated all areas for the 8-hour ozone standard. EPA deferred the effective date of nonattainment designations for EAC areas that were violating the 8-hour standard, but continued to meet their established EAC milestones. On April 30, 2004 (69 FR 23858), EPA published its formal air quality designations and classifications for the 8-hour ozone standard. This action included the deferral of the effective date for all nonattainment areas that entered into EACs and developed EAPs, including the Eastern Panhandle Region Ozone EAC Area. Specifically, the Berkeley and Jefferson Counties were designated as a "basic" nonattainment area with the effective date of the designation deferred to September 30, 2005. In a separate notice, EPA expects to continue to officially defer the effective date of nonattainment designation for this Area, among others, in the future so long as the Area continues to fulfill its EAC obligations, including semi-annual reporting requirements, implementation of the measures in its EAP by December 31, 2005, and a progress assessment by June 30, 2006. EPA anticipates extending the currently effective deferral for all EAC areas from September 30, 2005 until December 31, 2006, provided the above conditions are met.

II. Summary of SIP Revision

A. Content of the Eastern Panhandle Region EAC Attainment Demonstration

As part of its EAP plan, West Virginia developed an attainment demonstration supported by an ozone photochemical modeling study developed for the Eastern Panhandle Region EAC Area. The attainment demonstration identifies a set of measures that will result in emission reductions and provides analyses that predict that the measures result in ambient air quality concentrations that meet the 8-hour ozone standard in the Eastern Panhandle Region EAC Area.

The attainment demonstration was supported by results of the photochemical modeling analysis and technical documentation for all ozone monitors in the Eastern Panhandle Region EAC Area. EPA believes that the WVDEP's EAC 8-hour ozone photochemical modeling study developed for the Eastern Panhandle Region EAC Area meets EPA's current modeling requirements. West Virginia has adequately followed all relevant EPA guidance in demonstrating that the Eastern Panhandle Region EAC Area will attain the 8-hour ozone NAAQS in 2007, and continue to do so in 2012. The modeling results predict the maximum 2007 8-hour ozone design value for this Area to be 81.8 ppb, which is less than what is needed (≤ 84 ppb) to show modeled attainment of the 8-hour ozone NAAQS.

The attainment modeling information presented in this notice should be used in conjunction with the States's SIP submittal and EPA's technical support document (TSD), as certain modeling requirements performed by the State (*i.e.*, details of the quality assurance performed, detailed analysis of data suitability, complete listings of all data inputs and outputs, etc.) are not reproduced in this notice.

B. Measures Included in the EAC SIP

The Eastern Panhandle Region EAP is designed to enable a proactive approach to ensuring attainment of the 8-hour NAAQS. Using the EAP approach, the Eastern Panhandle Region EAC Area will be implementing emission-reduction measures directed at attaining the 8-hour standard starting in 2005. The Area is then required to demonstrate compliance with the 8-hour ozone standard by 2007, and maintenance of that standard through 2012. Compliance with the standard will be determined using ozone monitoring data.

The EAP control measures for the Eastern Panhandle Region EAC Area

site (See 40 CFR Part 50.10, Appendix I, paragraph 2.3). Because of the stipulations for rounding significant figures, this equates to a modeled attainment target of ≤ 84 ppb. Because non-significant figures are truncated, a modeling estimate of < 85 ppb is equivalent to ≤ 84 ppb.

consist of local and Federal emission reduction strategies. Control measures to be implemented on the local level include a suite of non-regulatory measures which include: Ozone action days geared toward both the general public and employers; public awareness program that focuses on increasing the public's understanding of air quality issues; bicycle and pedestrian measures designed to promote bicycling and walking; reduced engine idling for trucks and school buses; voluntary ground freight partnership program using incentives to reduce emissions; increased public awareness of compliance with open burning restrictions; and, school bus engine retrofits to lower emissions. Though not included in the modeled demonstration of attainment, emission reductions from the implementation of these measures will provide additional air quality benefits to the Eastern Panhandle Region EAC Area.

In addition to local strategies, the attainment demonstration for the Eastern Panhandle Region EAP includes emission reductions from several Federal programs, including but not limited to the following: NO_x SIP Call; exhaust emission standards for light-duty vehicles (passenger cars) and light-duty trucks; Tier 2 vehicle and gasoline sulfur program; heavy duty diesel engine and fuel sulfur program; and, non-road diesel engine standards (Tier I and Tier II.)

The NO_x SIP Call (63 FR 58356, October 27, 1998) required states to implement reductions necessary to address the ozone transport problem, and on May 10, 2002, West Virginia submitted its NO_x Budget Trading Program to meet its Phase I NO_x SIP Call obligations. West Virginia's Phase I program applies to electric generating units that serve a generator greater than 25 megawatts and to industrial units greater than 250 mmBTU/hr. EPA approved West Virginia's NO_x Budget Program on May 10, 2002 (67 FR 31733). The photochemical modeling that demonstrates attainment for the Eastern Panhandle Region EAC Area relies upon expected benefits from the NO_x Budget Trading Program throughout the modeling domain.

All these measures have been developed to address the creation of ozone producing emissions in the local areas as well as to lessen the transport of ozone into the area as a comprehensive approach to reducing ozone levels. A detailed description of all the control measures, including those that were in the attainment demonstration as well as those additional measures that are expected to

assist the area in meeting attainment of the standard in 2007, can be found in the TSD prepared in support of this rulemaking.

C. Maintenance for Growth

Consistent with EPA guidance, the EAP also contains components to ensure maintenance of the 8-hour ozone standard through 2012, five years beyond the 2007 attainment date. The Eastern Panhandle Region EAC Area has developed an emissions inventory for the year 2012, as well as a continuing planning process to address this essential part of the plan. Due to the emission control measures identified in the EAP, the emissions inventory predicted an overall reduction in emissions through 2012. From 1999 to 2007, nominal increases in VOCs emissions are expected. By 2012, VOC emissions will be consistent with 1999 emission levels. For NO_x, emissions are expected to decline from 1999 to 2007 by 7.9 percent. By 2012, emissions are predicted to be 3.2 percent less than those modeled in 2007 for NO_x. Using air quality models to anticipate the impact of growth, as well as the Federal, state-assisted, and locally-implemented measures to reduce emissions, West Virginia has projected the Area will be in attainment of the 8-hour ozone standard in 2007 and will remain in attainment through 2012.

To fulfill the continuing planning process that will ensure that the Eastern Panhandle Region EAC Area will maintain the 8-hour ozone standard through 2012, the Eastern Panhandle Region EAP establishes a commitment and mechanism to work with local stakeholders to identify and require additional measures to further reduce ozone precursor emissions. In addition, the EAC signatories and implementing agencies will review all EAC activities and report on these results in semi-annual reports beginning in June 2006. The semi-annual reports will track and document, at a minimum, control strategy implementation and results, monitoring data, and future plans. Furthermore, as part of the SIP submittal, the Eastern Panhandle Region EAC Area commits to submit periodic updates to WVDEP and EPA on the implementation status and results of the local control program with sufficient details to make program sufficiency determinations. Although not required by EPA, the Eastern Panhandle Region EAP contains contingency measures which could be implemented in response to any unexpected shortfall in anticipated reductions. These additional strategies include: Implementation of WVDEP reasonably available control

technology (RACT) to control VOCs; alternative fuels program; truck-stop electrification to discourage engine idling; and, the sale of lower Reid Vapor Pressure (RVP) gasoline in the area.

III. Proposed Action

EPA is proposing to approve the attainment demonstration and the EAP for the West Virginia Eastern Panhandle Region EAC Area. The modeling of the ozone and ozone precursor emissions from sources affecting the Eastern Panhandle Region EAC Area demonstrates that the specified control strategies will provide for attainment of the 8-hour ozone NAAQS by December 31, 2007 and maintenance of that standard through 2012. To date, the Eastern Panhandle Region EAC Area has met all of its EAC milestones and, as long as the Area continues to meet the agreed upon milestones, the nonattainment designation for this Area will be deferred until September 30, 2005. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as

specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule pertaining to the attainment demonstration and EAP for the Eastern Panhandle Region Ozone EAC Area, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

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

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

Dated: May 3, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05-9785 Filed 5-16-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03-OAR-2005-VA-0006; FRL-7913-6]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Emission Standards for Solvent Cleaning Operations Using Non-Halogenated Solvents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia which consists of regulatory modifications intended to clarify the applicability of the solvent metal cleaning operations using non-halogenated solvents provisions. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by June 16, 2005.

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

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

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

C. *E-mail:* campbell.dave@epa.gov.

D. *Mail:* R03-OAR-2005-VA-0006,

Dave Campbell, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

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

Docket: All documents in the electronic docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division,

U.S. Environmental Protection Agency,
Region III, 1650 Arch Street,
Philadelphia, Pennsylvania 19103.
Copies of the State submittal are
available at the Virginia Department of
Environmental Quality, 629 East Main
Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT:
Ellen Wentworth, (215) 814-2034, or by
e-mail at wentworth.ellen@epa.gov.

SUPPLEMENTARY INFORMATION: For
further information, please see the
information provided in the direct final
action, pertaining to the Virginia solvent
metal cleaning operations using non-
halogenated solvents provisions with

the same title, that is located in the
“Rules and Regulations” section of this
Federal Register publication.

Dated: May 6, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05-9780 Filed 5-16-05; 8:45 am]

BILLING CODE 6560-50-P

Notices

Federal Register

Vol. 70, No. 94

Tuesday, May 17, 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet on Wednesday, May 18, 2005. The meeting will be held in the Calvert Room, Maryland State House, 1 State Circle, Annapolis, Maryland, beginning at 1:30 p.m.

The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a member of an Indian tribe; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

- I. Chairman's Welcome
- II. Swearing-In Ceremony
- III. Preserve America Community Recognition and Chairman's Award Presentation
- IV. Report of the Preservation Initiatives Committee
 - A. Heritage Tourism Initiative
 - B. Historic Preservation Tax Issue
 - C. National Heritage Areas Legislation

- V. Report of the Federal Agency Programs Committee
 - A. Review of Federal Agency Section 3 Reports
 - B. Base Realignment and Closure—Next Round and August 2005 ACHP Business Meeting
 - C. U.S. Forest Service Program Issues
 - D. Section 106 Case Update
- VI. Report of the Communications, Education, and Outreach Committee
 - A. Preserve America Presidential Awards for 2006
 - B. Chairman's Awards Database
 - C. Implementation of Congressional Communications Strategy
- VII. Report of the Native American Advisors
- VIII. Report of the Archeology Task Force
 - A. Discussion of Issues from Tuesday's Tour and Presentations
 - B. Schedule of Future Actions
- IX. Report of the Affordable Housing and Historic Preservation Task Force
- X. Preserve America Program Status Report
- XI. Chairman's Report
 - A. ACHP Alumni Foundation
 - B. Legislative Issues
 1. ACHP Reauthorization Legislation
 2. ACHP FY 2006 Appropriation
 - C. Native American Advisors
- XII. Executive Director's Report
- XIII. New Business
- XIV. Adjourn

Note: The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Room 809, Washington, DC 202-606-8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., #809, Washington, DC 2004.

Dated: May 11, 2005.

John M. Fowler

Executive Director.

[FR Doc. 05-9770 Filed 5-16-05; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 11, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the

Paperwork Reduction Act of 1995, Pub. L. 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Food Stamp Nutrition Connection Recipe Submission and Review Form.

OMB Control Number: 0518-NEW.

Summary of Collection: The National Agricultural Library's Food Stamp Nutrition Connection (FSNC) <http://www.nal.usda.gov/foodstamp/> resource system has developed an on-line recipe database, the Recipe Finder, as an added feature to the FSNC Web site to be launched in the fiscal year 2005. The purpose of the recipe data base is to provide our target audience, Food Stamp Program nutrition educators, with low-cost, easy to prepare, healthy recipes for classes and demonstrations

with Food Stamp Program participants. We rely on these same educators to submit their best recipes to us for review, analysis and posting in the database. Data collected using the "FSNC Recipe Review Form" will help identify the success or value of the nutrition education and budgeting tool with Food Stamp Program participants.

Need and Use of the Information: Food Stamp Program nutrition educators have the opportunity to submit recipes on-line saving the authors time while providing a fast and accurate vehicle in which to communicate with the authors. At the same time, submitted recipes will be reviewed for the purposes of ensuring that only high quality information remains in the database. The information will be collected electronically. If this collection was not conducted, it would inhibit the ability of the target audience to participate in a valuable resource that will assist them and in turn the Food Stamp Program participant.

Description of Respondents: Not-for Profit Institutions; Business or other for-profit; Federal Government, and State, local or tribal government.

Number of Respondents: 150.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 30.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 05-9742 Filed 5-16-05; 8:45 am]

BILLING CODE 3410-03-P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, May 16, 2005. The meeting will include routine business, a discussion of larger scale projects, and the recommendation for implementation of submitted project proposals.

DATES: The meeting will be held May 16, 2005, from 4 p.m. until 7 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Bob Talley, RAC Coordinator, Klamath National Forest, (530) 841-4423 or electronically at rtalley@fs.fed.us.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: May 6, 2005.

Michael P. Lee,

Deputy Forest Supervisor.

[FR Doc. 05-9454 Filed 5-16-05; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee will meet May 20, 2005, (RAC) in Covelo, California. Agenda items to be covered include: (1) Approval of minutes, (2) Public Comment, (3) Sub-committees (4) Discussion—items of interest (5) Next agenda and meeting date.

DATES: The meeting will be held on May 20, 2005, from 9:30 a.m., until day trip is completed.

ADDRESSES: The meeting will be held on the Mendocino National Forest. We will travel the M1 Road for the day looking at various proposed projects along the way.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo CA 95428 (707) 983-8503; e-mail rhurt@fs.fed.us.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by May 15, 2005. Public comment will have the opportunity to address the committee at the meeting.

Dated: May 6, 2005.

Blaine Baker,

Designated Federal Official.

[FR Doc. 05-9743 Filed 5-16-05; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Strengthening America's Communities Advisory Committee

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Notice of open meetings.

SUMMARY: The Strengthening America's Communities Advisory Committee (the "Committee") will convene public meetings on (i) Wednesday, June 1, 2005 to receive public comments on issues germane to the Committee's work and (ii) Thursday, June 2, 2005 to continue discussions on its high-level examination of key policy issues pertaining to the President's Strengthening America's Communities Initiative (the "Initiative").

DATES: Wednesday, June 1, 2005, beginning at 3 p.m. (EDT); and Thursday, June 2, 2005, beginning at 8:30 a.m. (EDT).

ADDRESSES: The meetings will take place at the Harborview Center, 300 Cleveland Street, Clearwater, Florida 33755.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Olson, Designated Federal Officer of the Committee, Economic Development Administration, Department of Commerce, Room 7015, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-4495; facsimile (202) 482-2838; e-mail: saci@eda.doc.gov. Please note that any correspondence sent by regular mail may be substantially delayed or suspended in delivery, since all regular mail sent to the Department of Commerce (the "Department") is subject to extensive security screening. For information about the Initiative, please visit the Department's Web site at <http://www.commerce.gov/SACI/index.htm>.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public and seating will be available, but may be limited. Reservations are not accepted. Requests for sign language interpretation and other auxiliary aids must be transmitted by facsimile or e-mail to the contact person listed above no later than May 25, 2005.

The prospective agendas for the Committee meetings are as follows: June 1, 2005: Public Comment Period; and General Discussion of Committee Business; June 2, 2005: Call to Order; Opening Remarks; and Review and Discussion of Key Committee Issues.

Members of the public will have the opportunity to present oral comments to

the Committee on June 1, 2005. The Committee values most those public comments that bear upon issues under direct examination by the Committee, rather than issues unrelated to the Committee's current scope of discussion. Members of the public may also submit written statements to the contact person listed above at any time before or after the meeting. However, to facilitate distribution of written statements to Committee members, the Committee suggests that written statements be submitted to the Designated Federal Officer listed above by facsimile or e-mail no later than May 25, 2005.

The above agendas are subject to change. More detailed agendas (including details on the public comment portion of the meeting) will be posted on the Department's Web site at <http://www.commerce.gov/SACI/index.htm>, and a final agenda will be made available to the public prior to the Committee meetings.

Dated: May 11, 2005.

David Bearden,

Deputy Assistant Secretary of Commerce for Economic Development.

[FR Doc. 05-9759 Filed 5-16-05; 8:45 am]

BILLING CODE 3510-24-P

DEPARTMENT OF COMMERCE

International Trade Administration

(A-351-832)

Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Brazil

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

SUMMARY: On November 8, 2004, the Department of Commerce (the Department) published the preliminary results of its first administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Brazil. The review covers one producer of the subject merchandise. The period of review (POR) is April 15, 2002, through September 30, 2003. Based on our analysis of comments received, these final results do not differ from the preliminary results. The final results are listed below in the Final Results of Review section.

EFFECTIVE DATE: May 17, 2005.

FOR FURTHER INFORMATION CONTACT: Constance Handley or David Neubacher, at (202) 482-0631 or (202) 482-5823, respectively; AD/CVD Operations, Office 1, Import Administration,

International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 8, 2004, the Department published in the **Federal Register** the preliminary results of the first administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Brazil. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire from Brazil*, 69 FR 64716 (November 8, 2004) (Preliminary Results)

We invited parties to comment on the *Preliminary Results*. On January 5, 2005, we received case briefs from the respondent, Companhia Siderúrgica Belgo Mineira, Belgo Mineira Participação Indústria e Comércio S.A. and BMP Siderúrgica S.A. (collectively, Belgo), Belgo's affiliate,¹ and the petitioners, Gerdau Ameristeel US Inc., Georgetown Steel Company, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.² The respondent and petitioners submitted rebuttal briefs on January 12, 2005. A public hearing was requested, with parties agreeing to limit it to issues raised on the scope inquiry that was initiated in conjunction with this administrative review.

Scope Issues

On October 27, 2004, the Department issued its preliminary ruling concerning the exclusion of grade 1080 tire cord quality wire rod and tire bead quality tire wire rod (1080 TCBQWR). *See Memorandum from Jesse Cortes, Analyst to Jeffery May, Deputy Assistant Secretary, Re: Carbon and Certain Alloy Steel Wire Rod from Brazil: Preliminary Scope Ruling on Grade 1080 Tire Cord Quality Wire Rod and Tire Bead Quality Wire Rod* (October 27, 2004). We received case briefs from Belgo and Bakaert, and the petitioners submitted rebuttal comments.

As mentioned above, a public hearing was held on the scope inquiry on January 28, 2005. On May 9, 2005, the Department issued its final ruling on the scope inquiry. *See Memorandum from*

¹ Bekaert Corporation (Bekaert U.S.) and N.V. Bekaert S.A. (N.V. Bakaert) (collectively, "Bekaert").

² Since the review was initiated, Georgetown Steel Company was purchased by International Steel Group and is now known as ISG Georgetown. As of November 1, 2004, Gerdau Ameristeel completed its purchase of the assets of North Star Steel, and that facility is now part of Gerdau Ameristeel.

David Neubacher, Analyst to Barbara E. Tillman, Acting Deputy Assistant Secretary, Re: Carbon and Certain Alloy Steel Wire Rod from Brazil: Final Scope Ruling on Grade 1080 Tire Cord Quality Wire Rod and Tire Bead Quality Wire Rod (*Final Scope Ruling*) (May 9, 2005), which is on file in the Central Records Unit in Room B-099 of the main Commerce building. For the final ruling, we have continued to hold that for entries prior to July 24, 2003, 1080 TCBQWR with inclusions greater than 20 microns measured in any direction, is excluded from the order

Scope of the Order

Effective July 24, 2003, in accordance with the Department's *Notice of Final Result of Changed Circumstances Review of the Antidumping Duty and Countervailing Duty Orders, and Intent to Revoke Orders in Part*, 68 FR 64079 (November 12, 2003), the scope of this order was amended. Therefore, for purposes of this review, there were separate scopes in effect. These scopes are set forth below.

Scope of Order from April 15, 2002, through July 23, 2003

The merchandise subject to this order is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the *Harmonized Tariff Schedule of the United States* (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04-

114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04-114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as "tire cord quality" or "tire bead quality" indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to

certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under review are currently classifiable under subheadings 7213.91.3010, 7213.91.3015, 7213.91.3090, 7213.91.3092, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Scope of Order from July 24, 2003, through the POR

The merchandise subject to this order is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the HTSUS definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04-114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii)

containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04-114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis - that is, the direction of rolling - of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as "tire cord quality" or "tire bead quality" indicates the acceptability of the product for use in the production of tire

cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under review are currently classifiable under subheadings 7213.91.3010, 7213.91.3015, 7213.91.3090, 7213.91.3092, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.³

Analysis of Comments Received

The issues raised in the case briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum* to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, from Barbara E. Tillman, Acting Deputy Assistant Secretary (*Decision Memorandum*), and the *Final Scope Ruling* which is hereby adopted by this notice. A list of the issues addressed in the *Decision Memorandum* is appended to this notice. The *Decision Memorandum* is on file in the Central Records Unit in Room B-099 of the main Commerce building, and can also be accessed directly on the Web at www.ia.ita.doc.gov/frn. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

³ Effective January 1, 2004, U.S. Customs and Border Protection (CBP) reclassified certain HTSUS numbers related to the subject merchandise. See http://hotdocs.usitc.gov/tariff_chapters_current/toc.html.

Changes Since the Preliminary Results

No changes have been made since the *Preliminary Results*. Our decisions regarding issues raised in the case briefs are discussed in detail in the *Decision Memorandum* and the *Final Scope Ruling*.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists for the period of April 15, 2002, through September 30, 2003:

Producer	Weighted-Average Margin (Percentage)
Companhia Siderúrgica Belgo Mineira, Belgo Mineira Participação Indústria e Comércio S.A., and BMP Siderúrgica S.A.	98.69

Assessment

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). The Department calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposits

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of carbon and certain alloy steel wire rod from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Tariff Act of 1930, as amended (the Act): (1) for companies covered by this review, the cash deposit rate will be the rate listed above; (2) for merchandise exported by producers or exporters not covered in this review but covered in the investigation, the cash deposit rate will continue to be the company-specific rate from the final determination; (3) if the exporter is not a firm covered in this review or the

investigation, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the final determination; and (4) if neither the exporter nor the producer is a firm covered in this review or the investigation, the cash deposit rate will be 74.35 percent,⁴ the "All Others" rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final 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 in the subsequent assessment of double antidumping duties.

This notice also is 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. Timely written notification of the 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.

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

Dated: May 9, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX

Comment 1: Normal Value Adjustment for ICMS taxes

Comment 2: U.S. Price Adjustment for Duty Drawback

Comment 3: Adjustment for Commissions

Comment 4: Affiliated Parties

Comment 5: Special Rule for Products Further Manufactured in the United States

Comment 6: Final Scope Ruling

[FR Doc. E5-2471 Filed 5-16-05; 8:45 am]

BILLING CODE 3510-DS-S

⁴ Please note that the instructions sent to Customs and Border Protection will reduce the rate by the amount of the export subsidy.

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-822

Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: May 17, 2005.

SUMMARY: On November 9, 2004, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain helical spring lock washers (HSLWs) from the People's Republic of China (the PRC). We gave interested parties an opportunity to comment on the preliminary results. Based upon our analysis of the comments and information received, we made changes to the dumping margin calculations for the final results. We find that certain HSLWs from the PRC were not being sold in the United States below normal value by Hangzhou Spring Washer Co., Ltd. (Hangzhou) during the period October 1, 2002, through September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Marin Weaver at (202) 482-2336 or Cathy Feig at (202) 482-3962; AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:**Case History**

The preliminary results in this administrative review were published on November 9, 2004. *See Certain Helical Spring Lock Washers from the PRC; Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 64903 (*Preliminary Results*). Since the *Preliminary Results*, the following events have occurred.

On December 10, 2004, Hangzhou submitted its case brief. Shakeproof Assembly Components Division of Illinoise Tool Works, Inc. (Shakeproof), a domestic interested party, filed one "bracketing-not-final" copy of its case brief on December 10, 2004, and the final proprietary version on December 13, 2004. Both Shakeproof and Hangzhou submitted rebuttal briefs on December 17, 2004. On March 8, 2005, we extended the deadline for the final results of this review from March 9,

2005, to May 8, 2005. *See Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review: Certain Helical Spring Lock Washers from the People's Republic of China*, 70 FR 11193 (March 8, 2005).

Scope of the Order

The products covered by the order are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

HSLWs subject to the order are currently classifiable under subheading 7318.21.0030 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

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 Issues and Decision Memorandum, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this administrative review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (CRU), room B-099 of the main Department 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/fm>. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Price Comparisons

We calculated export price and normal value based on the same methodology used in the *Preliminary Results* with the following exceptions: We calculated the surrogate financial ratios using the 2003 Reserve Bank of India (RBI) Bulletin instead of the 1997 RBI Bulletin. Additionally, we did not apply overhead to the plating costs and we have calculated brokerage and handling on a per-piece basis instead of

a per-kilogram basis. Finally, we corrected our calculation of distances from the suppliers for each applicable input. See the accompanying Issues and Decision Memorandum and the Final Results Calculation Memorandum for Hangzhou Spring Washer Co., Ltd., dated May 9, 2005, for a full discussion of the issues and application of the changes.

Final Results of Review

The weighted-average dumping margin for the POR is as follows:

Manufacturer/exporter	Margin (percent)
Hangzhou Spring Washer Co., Ltd.	0.00

Assessment Rates

In accordance with 19 CFR 351.212(b)(1), we have calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total entered value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we will direct U.S. Customs and Border Protection (CBP) to apply the *ad valorem* assessment rates against the entered value of each of the importer's (or customer's) entries during the review period. Where an importer (or customer) -specific *ad valorem* rate was *de minimis*, we will instruct CBP to liquidate without regard to antidumping duties.

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit rates will be effective upon publication of these final results for all shipments of HSLWs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Tariff Act of 1930, as amended (the Act): (1) the cash deposit rate for Hangzhou will be zero; (2) for a company previously found to be

entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) for all other PRC exporters of subject merchandise, the rate will be the PRC country-wide rate of 128.63 percent, which is the "All Other PRC Manufacturers, Producers and Exporters" rate from the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the PRC*, 58 FR 48833 (September 20, 1993); and (4) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit rates shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final 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 doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a 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, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/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 these results and notice in accordance with sections 751(a) and 777(i) of the Act.

Date: May 9, 2005.

Joseph A Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix I--Decision Memorandum

Comment 1: Use of Steel Wire Rod from the United Kingdom
Comment 2: Plating Factor vs. Plating Services
Comment 3: Labor Rate

Comment 4: Offsetting for Negative Margins

Comment 5: By-Product Offset

Comment 6: Calculation of Brokerage and Handling Cost

Comment 7: Steel Wire Rod Inputs

Comment 8: Financial Ratios

Comment 9: Valuation of Steel Scrap

Comment 10: Hydrochloric Acid

Comment 11: Joint Venture

Comment 12: Application of Overhead to COM

[FR Doc. E5-2465 Filed 5-16-05; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

(A-485-806)

Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Romania

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

EFFECTIVE DATE: May 17, 2005.

FOR FURTHER INFORMATION CONTACT: David Layton or Paul Stolz, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0371 and (202) 482-4474, respectively.

SUPPLEMENTARY INFORMATION: On April 13, 2005, the Department of Commerce (the Department) published in the *Federal Register* a notice extending the final results of the administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Romania by 30 days until no later than May 6, 2005. *See Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Romania* 70 FR 19417 (April 13, 2005).

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Trade Act as amended (the Act) provides that the Department may extend the time limit for completion of the final results of an administrative review to a maximum of 180 days if it determines that it is not practicable to complete the final results within the statutory time limit of 120 days from the date on which the preliminary results were published. The Department has determined that due to

the complexity of the issues arising from Romania's graduation to market economy status during the review period, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act and section 351.213(h)(1) of the Department's regulations. Therefore, the Department is extending the time limit for the completion of these final results to 180 days. Accordingly, the final results of this review will now be due no later than June 6, 2005, which is the first business day after 180 days from the publication of the preliminary results.

This notice is published in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations.

Dated: May 6, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5-2468 Filed 5-16-05; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

(A-421-811)

Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from the Netherlands

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

SUMMARY: On December 16, 2004, the U.S. Department of Commerce (the Department) made its preliminary determination in the antidumping duty investigation of purified carboxymethylcellulose (CMC) from the Netherlands, which was amended on February 3, 2005, pursuant to comments received by Noviant B.V. We gave interested parties an opportunity to comment on the preliminary and amended determinations. Based upon the results of verification and our analysis of the comments received, we have made certain changes. We continue to find that purified CMC from the Netherlands was sold in the United States below normal value during the period of investigation. The final weighted-average dumping margins are listed below in the section entitled "Continuation of Suspension of Liquidation."

EFFECTIVE DATE: May 17, 2005.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza, John Drury, David Kurt Kraus or Judy Lao, AD/CVD

Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3019, (202) 482-0195, (202) 482-7871, or (202) 482-7924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 16, 2004, the Department determined that purified CMC from the Netherlands is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act). See *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose from the Netherlands*, 69 FR 77205 (December 27, 2004) (*Preliminary Determination*). The two companies that the Department is investigating are Noviant B.V. (Noviant) and Akzo Nobel Surface Chemistry (ANSC). The Department released disclosure materials to interested parties on December 21, 2004.

On December 27, 2004, respondent Noviant submitted a letter to the Department alleging significant ministerial errors as defined by section 351.224(g) of the Department's regulations. On December 30, 2004, Aqualon Company (petitioner) also submitted a letter to the Department alleging an additional ministerial error. ANSC did not allege ministerial errors with respect to the Department's calculation of its preliminary dumping margin.

On January 21, 2005, petitioner and Noviant requested that a public hearing be held for this case. From January 31, 2005, through February 4, 2005, Department officials verified constructed value information submitted by Noviant. See Memorandum to Neal M. Halper, Director, Office of Accounting, through Theresa L. Caherty, Program Manager, "Verification Report on the Constructed Value Data Submitted by Noviant BV," dated March 17, 2005.

On February 3, 2005, the Department published its amended preliminary determination of the antidumping duty investigation of purified CMC from the Netherlands. See *Amended Preliminary Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from the Netherlands*, 70 FR 5609 (February 3, 2005) (*Amended Preliminary Determination*). See also Memorandum to Richard O. Weible, Director, Office 7,

"Allegation of Significant Ministerial Errors; Preliminary Determination in the Antidumping Duty Investigation of Purified Carboxymethylcellulose from the Netherlands" dated January 27, 2005, a public version of which is on file in room B-099 of the main Commerce building. Since the *Amended Preliminary Determination*, the following events have occurred:

From February 14, 2005, through February 16, 2005, the Department verified U.S. sales information submitted by Noviant Inc. See the Memorandum to the File, through Abdelali Elouaradia, Program Manager, Office 7, "Verification of U.S. Sales Information Submitted by Noviant Inc.," dated March 17, 2005. From February 21, 2005, through February 23, 2005, the Department verified U.S. sales information submitted by Akzo Nobel Cellulosic Specialties, Inc. (AN-US), ANSC's U.S. affiliate. See the Memorandum to the File, through Abdelali Elouaradia, Program Manager, Office 7, "Verification of U.S. Sales Information Submitted by AN-US," dated March 24, 2005. From February 21, 2005, through February 25, 2005, Department officials verified third country and U.S. sales information submitted by Noviant. See the Memorandum to the File, through Abdelali Elouaradia, Program Manager, Office 7, "Verification of Third Country and U.S. Sales Information Submitted by Noviant B.V. (Noviant BV)," dated March 17, 2005. From February 28, 2005, to March 4, 2005, Department officials verified home and U.S. market sales data submitted by ANSC. See the Memorandum to the File, through Abdelali Elouaradia, Program Manager, Office 7, "Verification of Home Market and U.S. sales in the Netherlands," dated March 31, 2005.

On March 24, 2005, petitioner submitted comments for consideration in the Department's final margin calculation for Noviant and withdrew its request for a public hearing; and Noviant submitted its case brief. On March 25, 2005, Noviant withdrew its January 21, 2005, request for a public hearing. Since both parties withdrew their hearing requests, we did not hold a public hearing for this case. On March 29, 2005, petitioner filed its rebuttal brief in response to arguments made by Noviant in its case brief. Noviant did not file a rebuttal brief. On April 6, 2005, ANSC filed its case brief regarding the Department's March 31, 2005, verification report. Petitioner did not file any briefs or rebuttal briefs to coincide with ANSC's submission.

Scope of Investigation

For purposes of this investigation, the products covered are all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 2003, through March 31, 2004. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition on June 9, 2004.

Fair Value Comparisons

We calculated constructed export price, export price, and normal value based on the same methodologies used in the *Preliminary Determination and Amended Preliminary Determination* for Noviant. However, we made the following changes:

Noviant

We used the third country and U.S. sales databases submitted by Noviant after verification, which included revisions for minor corrections and findings from verification. We revised our treatment of the indirect selling expense calculation of Noviant Pte., an affiliate of Noviant that handles all of its sales to Asia. See the Memorandum from Barbara E. Tillman to Joseph A. Spetrini, "Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Purified Carboxymethylcellulose from the Netherlands," dated May 10, 2005 (Decision Memo) at Comment 2. We corrected an inadvertent error in the Department's preliminary calculation of certain movement expenses incurred on sales by Noviant, which was not

corrected in our *Amended Preliminary Determination*. See Decision Memo at Comment 3. We applied facts available to account for certain unreported U.S. sales of subject merchandise. We made an adjustment to account for the bad debt expenses incurred by Noviant. We revised Noviant's reported inventory carrying costs to reflect corrections presented at verification and to correct for errors discovered in our preliminary inventory carrying cost calculations. We used the shipment dates as the date of sale for sales where the date of shipment occurred prior to the issuance of an invoice. For a detailed discussion of the changes made to Noviant's final margin calculation, see the Memorandum to File, through Abdelali Elouaradia, Program Manager, Office 7, "Noviant's Final Determination Calculation Memorandum," dated May 10, 2005.

ANSC

We used the U.S. database submitted by ANSC after verification in our margin calculations, which includes the minor corrections presented at verification. We made no changes to ANSC's final margin calculation, see the Memorandum to File, through Abdelali Elouaradia, Program Manager, Office 7, "ANSC's Final Determination Calculation Memorandum," dated May 10, 2005.

Constructed Value

We calculated constructed value (CV) for Noviant based on the same

methodologies used in the *Preliminary Determination*. However, we revised Noviant's general and administrative (G&A), research and development (R&D) and financial expense ratios consistent with the summary of findings section of the cost verification report. See Memorandum to Neal Halper, Director, Office of Accounting, through Theresa L. Caherty, Program Manager, "Constructed Value Calculation Adjustments for the Final Determination - Noviant BV," dated May 10, 2005.

Verifications

As provided in section 782(i)(1) of the Act, we verified the information submitted by the respondents during January and February 2005. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondents.

Analysis of Comments Received

All issues raised in the petitioner's and the respondents' case and rebuttal briefs are addressed in the May 10, 2005, Decision Memo, which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues that the petitioner and the respondents have raised and to which we have responded in the Decision Memo. Parties can find a complete discussion of all issues raised in this investigation and the corresponding

recommendations in this public memorandum, which is on file in the Department's Central Record Unit (CRU), room B-099 of the main Commerce building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/summary/list.htm>. The paper copy and electronic version of the Decision Memo are identical in content.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing the U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all imports of subject merchandise from the Netherlands that are entered, or withdrawn from warehouse, for consumption on or after December 27, 2004, the date of publication of the *Preliminary Determination* in the **Federal Register**. The CBP shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/Exporter	POI	Weighted-Average Margin (percent)
Akzo Nobel Surface Chemistry	04/01/03 - 03/31/04	13.39
Noviant BV	04/01/03 - 03/31/04	14.88
All Others	04/01/03 - 03/31/04	14.57

See Memoranda to the File, Final Determination Analysis for ANSC and Noviant, respectively, dated May 10, 2005. Public versions of our analysis memoranda are on file in the CRU.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the U.S. International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. 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.

Notification to Interested Parties

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 section 351.305 of the Department's regulations. 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 10, 2005.

Joseph A. Spetrini,
Acting Assistant Secretary for Import Administration.

APPENDIX

List of Issues

Noviant

1. Request for Scope Modification to Exclude Certain CMC Products
2. Treatment of Noviant Pte. Ltd.'s Indirect Selling Expenses
3. Ministerial Error Allegation Relating to Noviant's Net U.S. Price Calculations

ANSC

4. ANSC's Reporting Methodology for Certain U.S. Sales

[FR Doc. E5-2466 Filed 5-16-05; 8:45 am]

[Billing Code: 3510-DS-S]

DEPARTMENT OF COMMERCE

International Trade Administration

(A-401-808)

Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Sweden

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

SUMMARY: On December 27, 2004, the Department of Commerce published the preliminary determination in the antidumping duty investigation of purified carboxymethylcellulose (CMC) from Sweden. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Sweden*, 69 FR 77213 (“*Preliminary Determination*”). The period of investigation (POI) is April 1, 2003, through March 31, 2004. The mandatory respondent, Noviant AB, did not respond to Sections B and C of the Department’s questionnaire.

Accordingly, we based the preliminary determination on adverse facts available, and applied the highest estimated dumping margin set forth in the notice of initiation. We gave interested parties an opportunity to comment on the preliminary determination, but no comments were received and no hearing was requested. Therefore, we have made no changes from the preliminary determination that CMC was sold in the United States at less than fair value (LTFV) during the period of investigation. The final weighted-average dumping margins are listed below in the section entitled “Continuation of Suspension of Liquidation.”

EFFECTIVE DATE: May 17, 2005.

FOR FURTHER INFORMATION CONTACT: Helen M. Kramer at 202-482-0405 or Abdelali Elouaradia at 202-482-1374, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Period of Investigation

The POI corresponds to the four most recent fiscal quarters prior to the filing of the petition, April 1, 2003, through March 31, 2004. See 19 CFR 351.204(b)(1).

Scope of Investigation

For purposes of this investigation, the products covered are all purified

carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium carboxymethylcellulose that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this investigation is dispositive.

Final Determination

The Department of Commerce (the Department) has determined that purified carboxymethylcellulose (CMC) from Sweden is being sold, or is 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 final weighted-average dumping margins are listed below in the section entitled “Continuation of Suspension of Liquidation.”

Use of Facts Otherwise Available

As explained in the *Preliminary Determination*, because Noviant AB failed to respond to our request for information that is necessary to calculate the dumping margin, we have found that the company failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, we have used an adverse inference in selecting from the facts available for the margin for this company.

As adverse facts available, we have applied the highest estimated dumping margin set forth in the notice of initiation, which is the margin alleged in the petition, adjusted by the Department for currency conversion. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. Information from the petitioner constitutes secondary information. The Statement

of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1, at 870 (1994), provides that the word “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value. We examined the key elements of the export price and normal value calculations on which the margin in the petition was based. We found that the estimated margin has probative value, adjusted by the Department for currency conversion. See Memorandum to the File from Helen M. Kramer, International Trade Compliance Analyst, Re: Preliminary Determination in the Antidumping Investigation of Purified Carboxymethylcellulose (CMC) from Sweden: Total Facts Available Corroboration Memorandum, dated December 16, 2004. Furthermore, there is no information on the record that demonstrates that the rate we have selected is an inappropriate total adverse facts available rate for the company in question. Accordingly, we find that the highest margin based on that information, 25.29 percent, is corroborated within the meaning of section 776(c) of the Act. Therefore, we consider the selected rate to have probative value with respect to Noviant AB and to reflect the appropriate adverse inference.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing U.S. Customs and Border Protection (“CBP”) to continue to suspend liquidation of all entries of purified CMC from Sweden that are entered, or withdrawn from warehouse, for consumption on or after December 27, 2004, the date of publication of the Preliminary Determination in the **Federal Register**. CBP shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-Average Margin (percent)
Noviant AB	25.29
All Others	25.29

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, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. 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.

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 pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: May 10, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5-2467 Filed 5-16-05; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

(A-405-803)

Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland

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

SUMMARY: The Department of Commerce (the Department) determines that purified carboxymethylcellulose (CMC) from Finland is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Tariff Act). The final weighted-average dumping margins are listed below in the section entitled “Continuation of Suspension of Liquidation.”

EFFECTIVE DATE: May 17, 2005.

FOR FURTHER INFORMATION CONTACT: Brian J. Sheba, or Robert M. James, 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) 482-0145 or (202) 482-0469 respectively.

SUPPLEMENTARY INFORMATION:

Background

Since the publication of the preliminary determination of this investigation (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216 (December 27, 2004) (*Preliminary Determination*)), the following events have occurred.

On January 28, 2005, we received a case brief from Aqualon Company (the petitioner) and on February 2, 2005, we received a rebuttal brief from Noviant OY (Noviant). Noviant did not file a case brief. Petitioner withdrew its request for a public hearing on March 4, 2005.

Scope of the Investigation

For purposes of this investigation, the products covered are all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium carboxymethylcellulose that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this investigation is dispositive.

Period of Investigation

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

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the “Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of

Purified Carboxymethylcellulose from Finland” from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated May 10, 2005 (Decision Memorandum), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Department’s Central Records Unit (CRU). In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Adverse Facts Available

For the final determination, the Department continues to find that Noviant, a producer and exporter of purified CMC from Finland, and mandatory respondent in these proceedings, did not act to the best of its ability by failing to provide information requested by the Department. Thus, the Department continues to find the use of adverse facts available (AFA) is warranted under section 776(a)(2) of the Tariff Act. See Preliminary Determination at 77217 - 77219.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Tariff Act, we are directing U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all imports of subject merchandise from Finland that are entered, or withdrawn from warehouse, for consumption on or after *December 27, 2004, the date of publication of the Preliminary Determination in the Federal Register*. CBP shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value (NV) exceeds the export price (EP) or constructed export price (CEP), as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-Average Margin (percent)
Noviant OY	6.65

Manufacturer/exporter	Weighted-Average Margin (percent)
All Others	6.65

ITC Notification

In accordance with section 735(d) of the Tariff Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. 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 pursuant to section 736(a) of the Act.

Notification Regarding APOs

This notice also serves as the only reminder to parties subject to the 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), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulation 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 10, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix I: List of Comments in the Issues and Decision Memorandum

1. Selection of Adverse Facts Available Margin

[FR Doc. E5-2469 Filed 5-16-05; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

(A-201-834)

Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from Mexico

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

SUMMARY: On December 27, 2004, the U.S. Department of Commerce (the Department) published a preliminary determination in the antidumping duty investigation of purified carboxymethylcellulose (CMC) from Mexico (69 FR 77201). The petitioner is Aqualon Company (Aqualon or petitioner), a division of Hercules Incorporated. The respondent is Quimica Amtex S.A. de C.V. of Mexico (Amtex). We gave interested parties an opportunity to comment on the preliminary determination. No interested party submitted case briefs, and no hearing was held. Based upon the results of verification, we have made certain minor changes to the dumping calculations. We continue to find that purified CMC from Mexico is being, or is likely to be, sold in the United States at less than fair value (LTFV) as provided in section 735 of the Tariff Act. The final weighted-average dumping margins are listed below in the section entitled "Continuation of Suspension of Liquidation."

EFFECTIVE DATE: May 17, 2005.

FOR FURTHER INFORMATION CONTACT:

Mark Flessner or Robert James, 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) 482-6312 or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 16, 2004, the Department determined that purified CMC from Mexico is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). See *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose from Mexico*, 69 FR 77201 (December 27, 2004) (*Preliminary Determination*). The Department released disclosure materials to interested parties on December 22, 2004.

From February 21, 2005, through February 25, 2005, the Department verified the questionnaire responses of Amtex. See Memorandum to the File, from Robert James and Mark Flessner, Office VII, "Purified Carboxymethylcellulose from Mexico: Verification of Quimica Amtex, S.A. de C.V.," dated April 8, 2005 (*Verification Report*).

On December 21, 2004, Amtex submitted a proposal for a suspension

agreement in this investigation. On January 18, 2005, petitioner filed a letter expressing support for the Amtex proposal. The Department did not find that the circumstances surrounding this investigation warranted departing from the Department's normal course in concluding an investigation. (See Letter from Grant D. Aldonas, Under Secretary for International Trade, to Lic. Juan Antonio Garcia Villa, Subsecretario de Normatividad, dated March 4, 2005, and Letter from Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, to the Honorable Ken Smith Ramos, Director General for International Trade Negotiations, dated May 6, 2005, which is on the public file in the Department's Central Record Unit (CRU), room B-099 of the main Commerce building.)

Neither party submitted case briefs, and no hearing was held.

Scope of Investigation

For purposes of this investigation, the products covered are all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 2003, through March 31, 2004. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition on June 9, 2004.

Fair Value Comparisons

We calculated export price and normal value based on the same methodologies used in the *Preliminary Determination*. We used the home market and U.S. sales databases submitted by Amtex after verification, which included minor corrections

presented at the beginning of verification and findings from verification. (See Memorandum to the File from Mark Flessner, Case Analyst, through Robert James, Program Manager, dated May 10, 2005 (*Analysis Memo*), at section II; see also *Verification Report*.)

Cost of Production and Constructed Value

We calculated the cost of production and constructed value for Amtex based on the same methodologies used in the *Preliminary Determination*.

Verifications

As provided in section 782(i)(1) of the Act, we verified the information submitted by respondents during the

period February 21 through 25, 2005. See *Verification Report*. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondents.

Analysis of Comments Received

We did not receive any interested party comments on our preliminary decision or on our *Verification Report*. Therefore, there is no Issues and Decisions Memorandum for this final determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are

directing the U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all imports of subject merchandise from Mexico that are entered, or withdrawn from warehouse, for consumption on or after December 27, 2004, the date of publication of the *Preliminary Determination* in the **Federal Register**. The CBP shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer	POI	Weighted-Average Margin (percent)
Quimica Amtex, S.A. de C.V.	04/01/03 - 03/31/04	12.61
All Others	04/01/03 - 03/31/04	12.61

See Memorandum to the File, Final Determination Analysis for Quimica Amtex, S.A. de C.V., dated May 10, 2005. Public versions of the analysis memorandum are on file in the CRU.

ITC 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, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the United States industry. 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.

Notification to Interested Parties

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 10, 2005.
Joseph A. Spetrini,
Acting Assistant Secretary for Import Administration.
 [FR Doc. E5-2470 Filed 5-16-05; 8:45 am]
BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

Date: May 20, 2005.
Time: 9 a.m. to 3 p.m.
Place: MWH Global, 175 W. Jackson Blvd., Suite 1900, Chicago, IL.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) will hold a plenary meeting on May 20, 2005, at the MWH Global. The ETTAC will discuss Trade Liberalization of Environmental Goods and Services in the World Trade Organization and the results of the ETTAC Survey on Priority Markets. The afternoon session will include a discussion of the Environmental Law and Policy Center's work with Renewable Energy Sources. The meeting is open to the public and time will be permitted for public comment.

Written comments concerning ETTAC affairs are welcome anytime before or after the meeting.

Minutes will be available within 30 days of this meeting.

The ETTAC is mandated by Public Law 103-392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently rechartered until May 30, 2006.

For further information phone Joseph Ayoub, Office of Environmental Technologies Industries (ETI), International Trade Administration, U.S. Department of Commerce at (202) 482-0313 or 5225. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at (202) 482-5225.

Carlos F. Montouliou,
Office of Energy and Environmental Industries.
 [FR Doc. E5-2464 Filed 5-16-05; 8:45 am]
BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE**National Institute of Standards and Technology****Malcolm Baldrige National Quality Award Board of Overseers**

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on June 8, 2005. The Board of Overseers is composed of eleven members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology with the members of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Discussions on Nonprofit Eligibility Rules, Baldrige Marketing Team Activities, Baldrige Program/Applicant Metrics, and Use of Loaned Executives to Analyze Baldrige Application Data, a Program and Budget Update and Issues from June 7 Judges' Meeting. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Virginia Davis no later than Monday, June 6, 2005, and she will provide you with instructions for admittance. Ms. Davis' e-mail address is virginia.davis@nist.gov and her phone number is (301) 975-2361.

DATES: The meeting will convene June 8, 2005, at 8:30 a.m. and adjourn at 3 p.m. on June 8, 2005.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room A, Gaithersburg, Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2361.

Dated: May 6, 2005.
Hratch G. Semerjian,
Acting Director.
 [FR Doc. 05-9790 Filed 5-16-05; 8:45 am]
BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE**National Institute of Standards and Technology****Judges Panel of the Malcolm Baldrige National Quality Award**

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Tuesday, June 7, 2005. The Judges Panel is composed of eleven members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to Review the 2005 Baldrige Award Cycle; Discussion of Senior Examiner Training for Site Visits and Final Judging Interaction; Judges' Survey of Applicants; and Judging Process Improvement Discussion for Final Judges' Meeting Preparation. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register 48 hours in advance in order to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Virginia Davis no later than Friday, June 3, 2005, and she will provide you with instructions for admittance. Ms. Davis' e-mail address is virginia.davis@nist.gov and her phone number is 301/975-2361.

DATES: The meeting will convene June 7, 2005, at 9 a.m. and adjourn at 4:30 p.m. on June 7, 2005. It is estimated that the closed portion of the meeting will last from 10 a.m. until 2 p.m. and the open portion of the meeting will last from 9 a.m. until 10 a.m. and from 2 p.m. until 4:30 p.m.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room A, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 20, 2004, that the meeting of the Judges Panel will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409. The meeting, which involves examination of Award applicant data from U.S. companies and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with section 552b(c)(4) of Title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: May 6, 2005.
Hratch G. Semerjian,
Acting Director.
 [FR Doc. 05-9792 Filed 5-16-05; 8:45 am]
BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[I.D. 051105E]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Oversight Committee in June, 2005 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Wednesday, June 1, 2005 at 9 a.m. and on Thursday, June 2, 2005 at 8:30 a.m.

ADDRESSES: The meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739-3000.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION: The Oversight Committee will receive a preliminary report on the updated scallop stock assessment and an Advisory Panel report on prioritization of management issues for a framework adjustment. The Committee will identify the types of actions that the Council should consider for Framework Adjustment 18 (FW 18), which will set specifications and make management adjustments for the 2006 and 2007 fishing years. In addition, the Committee will discuss whether more immediate action is needed in 2005 to address changes in the resource condition, including those in the Hudson Canyon Area. FW 18 alternatives may include, but are not limited to the following general management measures: triggered adjustments to annual allocations and area closures through Notice Action; General Category fishery management; bag tags and standard bags (landings monitoring and compliance); allocations for vessels with small dredge permits; research proposal review process; research priorities; and fishing year alignment and framework adjustment frequency.

In addition, the Committee may consider the following changes for the controlled access areas: rotation management fishing mortality targets by area; allocations of trips or pounds in controlled access areas; Hudson Canyon Area rotation management area policy; Elephant Trunk Area allocations for 2007; crew limits in controlled access areas; IFQ allocations in controlled access areas; sector allocations (harvest cooperatives or other entities); temporary transferability/stacking of controlled access allocations; improvements in the broken trip exemption program, and seasonal access to minimize bycatch and effects on spawning (Georges Bank access areas and Elephant Trunk Area in 2007). The Committee may also consider setting hard or target total allowable catch limits (TAC) for open fishing areas. Their recommendations will be presented to the Council at the initial FW 18 meeting in June 2005.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. 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 Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 12, 2005.

Tracey L. Thompson,

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

[FR Doc. E5-2460 Filed 5-16-05; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Independent Review Panel To Study the Relationships Between Military Department General Counsels and Judge Advocates General—Open Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 96-463, notice is hereby given that the Independent Review Panel to Study the Relationships between Military Department General Counsels and Judge Advocates General will hold an open meeting at the Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, Virginia 22202, on June 1-2, 2005, from 8:30 a.m. to 11:30 p.m. and 1 p.m. to 4 p.m.

Purpose: The Panel will meet on June 1-2, 2005, from 8:30 a.m. to 11:30 a.m. and 1 p.m. to 4 p.m., in order to hear testimony from current and former senior Defense Department officials concerning the relationships between the legal elements of their respective Military Departments. These sessions will be open to the public, subject to the availability of space. In keeping with the spirit of FACA, the Panel welcomes written comments concerning its work from the public at any time. Interested citizens are encouraged to attend the sessions.

DATES: June 1-2, 2005: 8:30 a.m.-11:30 a.m., and 1 p.m.-4 p.m.

Location: Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this meeting or wishing to submit written comments may contact: Mr. James R. Schwenk, Designated Federal Official, Department of Defense Office of the General Counsel, 1600 Defense Pentagon, Arlington, Virginia 20301-1600, Telephone: (703) 697-9343, Fax: (703) 693-7616, *schwenkj@dodgc.osd.mil*.

Interested persons may submit a written statement for consideration by the Panel at any time prior to June 10, 2005.

Dated: May 12, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05-9819 Filed 5-16-05; 8:45 am]

BILLING CODE 5001-06-M

DENALI COMMISSION

Denali Commission Five Year Strategic Plan (2005-2009) and Fiscal Year 2006 Work Plan

Introduction

The Denali Commission Act of 1998 (Title III, Pub. L. 105-277, 42 U.S.C. 3121) created a State-Federal partnership to address crucial needs of rural Alaskan communities, particularly isolated Native villages and other communities lacking access to the national highway system, affordable power, adequate health facilities and other impediments to economic self sufficiency. Guided by five Commissioners representing statewide non-governmental organizations, the unprecedented results to date testify to the efficacy of inter-agency teamwork, effective training, and the setting of high sustainability standards by those closest to the problems at hand. The Commission is a highly effective catalyst for enhanced collaboration among Federal, State, tribal and local governments as well as private sector, non-profit and other interests. The overarching goal of enabling economic self sufficiency is based on effective community comprehensive planning, and regional support.

This document will guide the reader through:

- An introduction of the Denali Commission's purposes and mission.
- The Denali Commission's Work Plan for Fiscal Year 2005.
- The Five-year strategic plan.

Denali Commission, Jeffrey Staser, Federal Co-Chair, 510 L Street, Suite 410, Anchorage, Alaska 99501, Phone:

(907) 271-1414, Fax: (907) 271-1415, <http://www.denali.gov>.

Purpose of the Commission

The Denali Commission Act of 1998, as amended (Division C, Title III, Pub. L. 105-277) states that the purposes of the Denali Commission are:

To deliver the services of the Federal government in the most cost-effective manner practicable by reducing administrative and overhead costs.

To provide job training and other economic development services in rural communities, particularly distressed communities (many of which have a rate of unemployment that exceeds 50 percent).

To promote rural development, provide power generation and transmission facilities, modern communication systems, bulk fuel storage tanks, water and sewer systems and other infrastructure needs.

Vision

Alaska will have a healthy, well-trained labor force working in a diversified and sustainable economy that is supported by a fully developed and well-maintained infrastructure.

Mission

The Denali Commission will partner with tribal, Federal, State, and local governments and collaborate with all Alaskans to improve the effectiveness and efficiency of government services, to develop a well-trained labor force employed in a diversified and sustainable economy, and to build and ensure the operation and maintenance of Alaska's basic infrastructure.

Values

Catalyst for Positive Change—The Commission will be an organization through which agencies of government, including tribal governments, may collaborate guided by the people of Alaska, to aggressively do the right things in the right ways.

Respect for People and Cultures—The Commission will be guided by the people of Alaska in seeking to preserve the principles of self-determination, respect for diversity, and consideration of the rights of individuals.

Inclusive—The Commission will provide the opportunity for all interested parties to participate in decisionmaking and carefully reflect their input in the design, selection, and implementation of programs and projects.

Sustainability—The Commission will promote programs and projects that meet the current needs of communities

and provide for the anticipated needs of future generations.

Accountability—The Commission will set measurable standards of effectiveness and efficiency for both internal and external activities.

Goals

The goals generated by the strategic planning process define conditions that must be created to realize the Denali Commission Vision.

1. All Alaska, no matter how isolated, will have the physical infrastructure necessary to protect health and safety and to support self-sustaining economic development.

2. Local residents in Alaskan communities will be provided the opportunity to acquire the skills and knowledge necessary to be employed on the construction, operation and management jobs created by publicly funded physical infrastructure in their communities.

3. Alaskans will have access to financial and technical resources necessary to build a cash economy to supplement the existing subsistence economy.

4. Federal and State agencies will simplify procedures, share information, and improve coordination to ensure equitable delivery of services to all Alaskan communities.

Implementation Guiding Principles

- Projects must be sustainable. To assist with the implementation of this principle, an *Investment Strategy* has been drafted to ensure that the level of funding provided by the Denali Commission to infrastructure projects in small, declining and/or environmentally threatened communities serves a public purpose and is invested in the most conscientious and sustainable manner possible. (The *Investment Strategy* is available on the Denali Commission Web site: <http://www.denali.gov>.)

- The Denali Commission will generally not select individual projects for funding nor manage individual projects, but will work through existing State, Federal or other appropriate organizations to accomplish its mission.

- Projects in economically distressed communities will have priority for Denali Commission assistance.

- Projects should be compatible with local cultures and values.

- Projects that provide substantial health and safety benefit, and/or enhance traditional community values, will generally receive priority over those that provide more narrow benefits.

- Projects should be community-based and regionally supported.

- Projects should have broad public involvement and support. Evidence of

support might include endorsement by affected local government councils (municipal, tribal, IRA, etc.), participation by local governments in planning and overseeing work, and local cost sharing on an "ability to pay" basis.

- Priority will generally be given to projects with substantial cost sharing.

- Priority will generally be given to projects with a demonstrated commitment to local hire.

- Denali Commission funds may supplement existing funding, but will not replace existing Federal, State, local government, or private funding.

- The Denali Commission will give priority to funding needs that are most clearly a Federal responsibility.

- Denali Commission funds will not be used to create unfair competition with private enterprise.

Additional Guiding Principles for Infrastructure:

- A project should be consistent with a comprehensive community or regional plan.

- Any organization seeking funding assistance must have a demonstrated commitment to operation and maintenance of the facility for its design life. This commitment would normally include an institutional structure to levy and collect user fees if necessary, to account for and manage financial resources, and having trained and certified personnel necessary to operate and maintain the facility.

Additional Guiding Principles for Economic Development:

- Priority will be given to projects that enhance employment in high unemployment areas of the State (economically distressed), with emphasis on sustainable, long-term local jobs or career opportunities.

- Projects should be consistent with statewide or regional plans.

- The Denali Commission may fund demonstration projects that are not a part of a regional or statewide economic development plan if such projects have significant potential to contribute to economic development.

Additional Guiding Principles for Training:

- Training should increase the skills and knowledge of local residents to become employed on jobs created by the Government's investment in public facilities in a community.

Intergovernmental Coordination—The Memorandum of Understanding:

The Denali Commission Act recognizes that our mission can be accomplished only through a collaborative, coordinated effort by the State of Alaska and key Federal agencies. The State of Alaska also recognizes benefits can be furthered if

State agencies work in a collaborative and coordinated effort. With this in mind, Denali Commission has drawn up a Memorandum of Understanding (MOU), which more than 20 agencies have agreed to, that outlines some points of agreement that will facilitate the collaboration and coordination necessary for achievement of the purposes of the Denali Commission and related missions of agencies who are parties to the MOU.

The points of the MOU are:

- *Sustainability.* Federal and State agencies recognize the importance of utilizing sustainability principles when investing in public infrastructure projects.

- *Regional Strategies.* Systematic planning and coordination on a local,

regional and statewide basis are necessary to achieve the most effective results from investment in infrastructure, economic development, and training.

- *Community Plans.* A single community strategic plan should be sufficient to identify and establish the priorities of each rural community.

- *Sharing Information.* Sharing information increases efficiencies and decreases duplication of services by State and Federal agencies.

- *Economic Development.* Economic development facilitates and supports the growth of self-sufficient communities.

- *Non-Profit Organizations and Other Community Organizations.* Non-profit and other organizations in Alaska are a

valuable resource for State and Federal agencies. They provide regional planning, program support and partnering opportunities.

- *Workforce Development (Vocational and Career Training).* Workforce development is a critical component to building sustainable public infrastructure and self-sufficient communities in Alaska.

Fiscal Year 2006 Work Plan

The Commission has determined that the scope and scale of infrastructure issues facing rural Alaska are staggering. The total of *known* basic infrastructure needs for Alaskan communities is estimated to be over \$13 billion. These infrastructure needs include:

• Infrastructure	—Housing Construction/Development —Multi-use Facilities —Power Utilities —Bulk Fuel Storage —Drinking Water and Wastewater Facilities —Solid Waste Management Facilities —Health Care Facilities —Airport Facilities —Road and Trail Construction —Port, Dock and other Marine Facilities —Telecommunications —Community Facilities
• Economic Development	—Comprehensive Planning
• Job Training, Education, Capacity Building	—Comprehensive Planning

In Fiscal Year 2006, the Denali Commission will continue to collaborate with other funding agencies and with all impacted and interested parties to address identified needs on a priority basis. The President's FY06 Budget states that Denali Commission will receive \$2,562,000 through the Energy & Water Development Appropriations Act. In addition, the Commission expects to receive approximately \$4 million in

interest from the Trans Alaska Pipeline Liability (TAPL) fund.

Prioritization of Projects for FY06

Of necessity, the Commission's work must be phased over a number of years based on the urgency of competing needs and availability of funding. The theme of rural energy, as one important prerequisite to all other utilities and economic development, was selected as the Commission's top priority for

infrastructure funding. Primary health care facilities were identified as the second infrastructure theme for the Commission beginning in FY00. These two themes will continue to be the top priorities for infrastructure funds through FY06, and the Commission, consistent with Congressional intent, may add one or more additional themes.

For planning purposes, the Commission has allocated a total of \$6,562,000 for FY06 as follows:

	FY06 projected funding	TAPL interest funds	FY06 & TAPL combined
Bulk Fuel Storage Facilities		\$3,800,000	\$3,800,000
Operations	\$2,562,000	200,000	2,762,000
Total	2,562,000	4,000,000	6,562,000

In accordance with the Denali Commission Code, Administrative funds (5%) are solely the responsibility of the Federal Co-Chairman. Allocation of the balance of funds (95%) will be made by the full Denali Commission, utilizing the guiding principles previously outlined in this document, and priority systems designed specifically for each budget category.

Project implementation will generally be accomplished through State, local or Federal government entities, regulated utilities, or non-profit organizations. It shall be the responsibility of all such implementing organizations to comply with all applicable laws. Any special requirements will be articulated in the funding agreement between the Denali Commission and the funding recipient.

The MOU will serve to guide intergovernmental coordination and collaboration among agencies.

Projects resulting from funding of infrastructure themes generally are consistent with high priorities identified in community plans. The existence of community plans greatly facilitates the location, design, and completion of

infrastructure projects within a community.

Performance Indicators for FY 2006

Energy:

- Reduce the backlog of non-compliant bulk fuel storage facilities in rural Alaska by renovating or building a bulk fuel storage facility in 2 communities.

Financial and Technical Resources:

- Produce reliable and timely performance and other financial information from the financial management system for managing current operations.

- Prepare accurate and timely financial reports on Budget Execution in accordance with generally accepted accounting principles and meeting the requirements of the Office of Management and Budget and U.S. Treasury.

- Maintain administrative expenses of Denali Commission at 5 percent or less of appropriated funds.

Government Coordination:

- Hold Denali Commission partners to the lowest reasonable overhead costs needed to complete projects.

Work Toward the President's Management Agenda:

President George W. Bush has set forth a strategy to improve management of the Federal government through government-wide goals in five mutually reinforcing areas:

- Human Capital.
- Competitive Sourcing.
- Improved Financial Management.
- Expanded e-Government.
- Budget and Performance Integration.

The Denali Commission is making progress in these strategic areas in the following ways:

Human Capital

The Denali Commission attempts to be innovative in its recruitment and retention of staff. With a small permanent staff and "on-loan" staff from partner agencies and organizations, the Denali Commission has a flat organization chart, making it simple for customers to reach the staff they need to and get the answers they require, through electronic messaging, telephone, or in-person.

An additional advantage of a small organization is the ease of managing the accurate measurement and appropriate rewarding of staff for performance. Denali Commission utilizes many human capital investment-oriented strategies for retaining qualified and effective staff, such as preventive health programs, and appropriate training.

Competitive Sourcing

As a very small agency headquarters, the Denali Commission is highly motivated, by necessity, to comply with this initiative. Although formal assessments have not been carried out on the competitive sourcing opportunities, the Denali Commission regularly utilizes contractors and private enterprise for many of our tasks. Examples include; development of innovative database and accounting systems, computer maintenance, and document scanning services.

Improved Financial Management

Five of the Denali Commission permanent staff are responsible for all operations and finance. Limited to 5 percent overhead, the agency has, and will continue to, enthusiastically participate and pursue automation and forward-thinking technology whenever possible. Through advances in technology, Denali Commission continues to realize internal efficiencies and increases in effectiveness.

To keep pace with the Government-Wide-Accounting (GWA) initiative, a new accounting system was developed in FY04. The Commission utilizes the Veterans Affairs (VA) Financial Services Enterprise Center as consultants on this project. This accounting system maintains the highest quality of accuracy in reporting to OMB, Congress and the public.

Staff is working, in conjunction with other Federal agencies, to accomplish automation to the extent feasible, with Federal Treasury payment and collection systems (IPAC, ASAP and SPS).

We are currently a pilot test site for the Internet Payment Platform (IPP) which is being developed by Treasury for the efficient and timely payment of vendors.

Expanded e-Government

The Denali Commission is committed to managing our projects more effectively and more transparently to partners, customers and the public. The Denali Commission Project Database is a significant step in this direction. The Denali Commission Project Database, now operational on our Web site, is an initiative that permeates several of the five strategic areas of the President's Management Agenda. To enhance project management and information sharing with our partners and the public, the Denali Commission has developed an Internet-based database of all Commission projects. This tool is for tracking and managing Denali Commission and partner project data.

The database is built to provide information that is easy to use, has the highest degree of integrity and maintainability, and is accessible for all interested parties. In keeping with the Denali Commission mission, the system allows for collaboration to improve the effectiveness and efficiency of government services. Within the database, managers and grantees perform on-line reporting; provide project financial information, project photos and other information on all Commission funded projects. Also available within the database are priority lists of projects yet to be funded in communities across Alaska. Across the State of Alaska, Federal, State and local entities (including regional non-profits, health corporations, and tribal governments) share a vision for developing a shared, central database (or portal) to further improve the transparency of government.

The Denali Commission now has an active link to our agency Web site located on <http://www.FirstGov.gov> to help citizens find information and obtain services from that central location. We are working to place Denali Commission grant opportunities on the <http://www.Grants.gov> Web site as well. Additional e-Government projects that the Denali Commission is monitoring and will participate in include e-Travel and e-Authentication. To maximize IT partnerships (and coordination) with other Federal agencies, the Denali Commission works with the Federal Aviation Administration (FAA) and Department of the Interior (DOI) to support our local computer network.

Our commitment to internet and electronic payment and collection systems is hailed by our vendors and customers, especially in this large State with sometimes slow and unpredictable mail and telephone (Internet) services. These systems assist with streamlining and ensuring timely and accurate transactions.

As we build and develop strong IT infrastructure at the Denali Commission, we maintain a high level of vigilance that proper and adequate security is set in place. Our plan for IT development always includes an assessment of value to the public, avoidance of duplication and the goal of transparency and accountability.

Budget and Performance Integration

The Denali Commission, by legislation, is limited to 5 percent overhead/administrative rate. So, 95 percent of our funds go directly into making progress toward our vision:

Alaska will have a healthy, well-trained labor force working in a diversified and

sustainable economy that is supported by a fully developed and well-maintained infrastructure.

The Denali Commission has set in motion the tools to assist the staff in measuring performance—the Project Database and the new accounting system

We require our grantees to establish and meet milestones, and we publish those on the Project Database. We set goals at an agency level for construction projects reaching completion each year. That is the bottom line that will improve the lives of the residents of Alaska. And we set internal benchmarks for the quality and efficiency of services provided to our customers. That keeps the Denali Commission staff on track in prioritizing individuals' work time. We measure ourselves against these standards constantly and check on them as a team monthly.

Strategic Plan—2005 Through 2009

Challenges to Development and Economic Self-Sufficiency in Alaska

Geography/Climate—The State of Alaska encompasses twenty percent of

the landmass of the United States, encompassing 5 climatic zones from the arctic desert to moderate rain forests in the south.

Isolation—Approximately 220 Alaskan communities are accessible only by air or small boat. Some village communities are separated by hundreds of miles from the nearest regional hub community or urban center. The average community is over 1,000 miles from the state capital.

Unemployment—The economy of rural Alaska is a mix of government or government-funded jobs, natural resource extraction and traditional Native subsistence activities. Many rural Alaskans depend on subsistence hunting, fishing and gathering for a significant portion of their foods, but also depend on cash income to provide the means to pursue subsistence activities. Cash-paying employment opportunities in rural Alaska are scarce and are highly seasonal in many areas; unemployment rates exceed 50 percent in 147 communities.

High Cost and Low Standard of Living—Over 180 communities suffer

from inadequate sanitation or a lack of safe drinking water. Residents face high electric costs: 61 cents per kilowatt-hour for electricity in a few communities (average in rural Alaska is approximately 40 cents per kilowatt-hour which is over six times the National average of 6.75 cents) even with State subsidies.

The Commission determined that the scope and scale of infrastructure issues facing rural Alaska are staggering. Assessment of needs and refinement of estimates will be an ongoing process. The total of *known* infrastructure needs is estimated to be over \$13 billion. Training and economic development needs have not been quantified, but the unmet needs in these areas are also believed to be quite large. Consequently, it is imperative that efforts to address the most essential needs be both focused and strategic.

Funding category	Category/class	Identified needs	Total (\$)
Infrastructure	Housing Construction/Development	1,800,000,000	
	Power Utilities	300,800,000	
	Bulk Fuel Storage	362,500,000	
	Drinking Water and Wastewater Facilities	650,000,000	
	Solid Waste Management Facilities	Unknown	
	Primary Health Care Facilities	481,000,000	
	Other Health Facilities	514,000,000	
	Airport Facilities	1,300,000,000	
	Road Construction	8,600,000,000	
	Port Facilities	300,000,000	
	Telecommunications	Unknown	
	Community Facilities	Unknown	
	Other	Unknown	
	Subtotal		
Economic Development	Comprehensive Planning	Unknown	
	Other	Unknown	
Job Training, Education, Capacity Building	Comprehensive Planning	Unknown	
	Other	Unknown	
Total			13,794,300,000

* Supporting information for the assessed need by category is provided in *Appendix A*.

Goals, Objectives and Key Activities

Goal #1: All Alaska, no matter how isolated, will have the physical infrastructure necessary to protect health and safety and to support self-sustaining economic development.

Objectives:

1. Energy facilities (bulk fuel storage, power generation and transmission) will be constructed and upgraded at a significantly accelerated pace.

2. All Alaskans will have reasonable access to primary health care services.

3. All Alaskans will have safe drinking water and sanitary waste disposal systems.

4. All Alaskans will have reasonable access to telecommunication services comparable to those available in major urban centers at comparable costs.

5. Construction of other basic physical infrastructure, including but not limited to, roads, ports, airports, and community facilities will be accelerated on a priority basis.

Key Activities To Achieve Goals and Objectives:

- Complete a statewide energy strategy to clearly identify needs and set priorities for completion of bulk fuel storage facilities, power generation facilities including innovative and alternative facilities and power transmission facilities. The strategy will identify institutional structures and measures to achieve sustainable operation and maintenance of completed physical systems.

- Complete a statewide needs assessment for primary health care facilities and develop a system to

establish priorities for completion of needed facilities.

- Collaborate with Federal agencies and assist the State of Alaska as necessary in identifying gaps in funding for physical infrastructure that can be filled first by existing federal programs or, if necessary, by Denali Commission funding.

- Utilize the annual work plan development process to allocate funds to physical infrastructure categories. Allocation of funds to specific projects will generally be guided by statewide priority systems and comprehensive plans developed at the community and regional levels.

- Reduce the backlog of non-compliant bulk fuel storage facilities in rural Alaska in 6 communities annually.

- Increase the reliability, efficiency and sustainability of power generation and/or transmission in 6 communities annually.

- Complete construction or renovation of primary health care facilities for at least 5 communities is anticipated annually.

- Enter into formal agreements with State and Federal agencies and others as appropriate to ensure accomplishment of objectives 3 through 5.

Goal #2: Local residents in Alaskan communities will have the opportunity to acquire skills and knowledge necessary to be employed on the construction, operation and management jobs created by publicly funded physical infrastructure in their communities.

Objectives:

1. Local residents will have access to skills and knowledge training that is necessary for employment on publicly funded physical infrastructure in their communities.

2. The Denali Commission's investment in physical infrastructure will be protected by local residents trained to operate and maintain facilities.

3. Workers from outside a community will not need to be imported to fill construction, operations and maintenance jobs necessary for publicly funded physical infrastructure.

4. Communities will benefit from the increase in earnings from local residents employed on publicly funded physical infrastructure.

Key Activities To Achieve Goals and Objectives:

- Provide funding to a coordinated training system including, regional and local coordination, career pathway information, specific training courses, union apprenticeship-based training and non-union based training.

- Partner with the State of Alaska, native non-profit corporations, private sector, union-based training organizations, non-union based training organizations and other Federal agencies to create a coordinated system to meet the training needs of local residents.

- Provide financial assistance to communities and organizations that will provide specific training to local residents to become employed on construction, operations and maintenance jobs created by publicly funded physical infrastructure projects.

Performance Indicators:

- Increase the number of local area residents trained on construction, operations and maintenance of Denali Commission-funded physical infrastructure in Alaska by 5 percent annually.

- Increase the local resident payroll on Denali Commission funded projects by 2 percent annually.

- Increase the annual earnings of each local resident that completes Denali Commission funded training by 5 percent.

Goal #3: Rural Alaskans will have access to financial and technical resources necessary to build a cash economy to supplement the existing subsistence economy.

Objectives:

1. All Alaskans will have access to programs that provide entrepreneurial education. Technical assistance and business services will be available to entrepreneurs and business owners.

2. Entrepreneurs will have access to capital resources appropriate for their circumstances including bank loans, micro loans, BIDCO loans, venture capital, SBA loans, USDA Rural Development loans, U.S. Department of Commerce EDA loans or grants.

3. Support access to partnership funding for community based utilities, infrastructure and health delivery projects.

Key Activities To Achieve Goals and Objectives:

- Financial assistance will be provided through the State Department of Community and Economic Development and the First Alaskans Foundation to assist entrepreneurs, communities and regional entities to develop economic capacity.

- Financial assistance will be provided to Alaska Growth Capital to enable that company to make loans and provide hands on technical assistance to entrepreneurs in economically distressed areas of Alaska.

- The Denali Commission will work with financial institutions, foundations

and other entities as appropriate to create a revolving loan fund expressly for funding feasibility studies.

- A minimum of 2 partnerships will be facilitated annually leading to completed projects within five years.

Performance Indicators:

- Minimum annual disbursement of financing by Alaska Growth Capital to business in communities defined as distressed by the Denali Commission will be \$275,000.

- Annual payroll of projects financed through Alaska Growth Capital will be at least \$90,000 and will increase annually by at least \$30,000.

- A minimum of 5 feasibility studies for new business startups in economically distressed areas of Alaska will be funded annually from the revolving loan fund.

Goal #4: Federal and State agencies will simplify procedures, share information, and improve coordination to enhance and improve the efficiency of the delivery of services to Alaskans and the communities in which they reside.

Objectives:

1. The Denali Commission will limit its own administrative expenses to no more than 5 percent of its total budget and will ensure that all Denali Commission partners are kept to the lowest possible overhead needed to complete a project.

2. The Denali Commission will work to gain acceptance of a single community developed comprehensive plan as the basis for all Federal and State agency funding.

3. The Denali Commission will work to gain acceptance and utilization of a single comprehensive database for information (plans and project information) for rural Alaskan communities.

Key Activities To Achieve Goals and Objectives:

- The Denali Commission will work with key State and Federal agencies to complete and periodically update a memorandum of agreement that outlines key actions necessary to achieve this goal.

- The Denali Commission will actively engage the Alaska Federal Executives Association, consistent with its charter, as a means to achieve this goal.

- The Denali Commission will seek the guidance and assistance of the State Co-Chair as he/she works with the Governor's cabinet to assist in meeting these goals and objectives.

- Agreements with Denali Commission program implementation

partners will be negotiated to achieve the minimum practicable overhead rates.

Performance Indicators:

- Administrative expenses of Denali Commission will be 5 percent or less.
- Denali Commission partners will be held to the lowest reasonable overhead costs needed to complete projects.
- An MOU will be reviewed annually, and updated as necessary to memorialize the commitment of federal and state agencies to this goal.
- Progress in meeting these goals and objectives will be documented annually.

Implementation Guiding Principles

- Projects must be sustainable. To assist with the implementation of this principle, an Investment Strategy has been drafted to ensure that the level of funding provided by the Denali Commission to infrastructure projects in small, declining and/or environmentally threatened communities serves a public purpose and is invested in the most conscientious and sustainable manner possible. (The Investment Strategy is available on the Denali Commission Web site: <http://www.denali.gov>)
- The Denali Commission will generally not select individual projects for funding nor manage individual projects, but will work through existing State, Federal or other appropriate organizations to accomplish its mission.
- Projects in economically distressed communities will have priority for Denali Commission assistance.
- Projects should be compatible with local cultures and values.
- Projects that provide substantial health and safety benefit, and/or enhance traditional community values, will generally receive priority over those that provide more narrow benefits.
- Projects should be community-based and regionally supported.
- Projects should have broad public involvement and support. Evidence of support might include endorsement by affected local government councils (municipal, tribal, IRA, etc.), participation by local governments in planning and overseeing work, and local cost sharing on an "ability to pay" basis.
- Priority will generally be given to projects with substantial cost sharing.
- Priority will generally be given to projects with a demonstrated commitment to local hire.
- Denali Commission funds may supplement existing funding, but will not replace existing Federal, State, local government, or private funding.
- The Denali Commission will give priority to funding needs that are most clearly a federal responsibility.

• Denali Commission funds will not be used to create unfair competition with private enterprise.

Additional Guiding Principles for Infrastructure:

- A project should be consistent with a comprehensive community or regional plan.
- Any organization seeking funding assistance must have a demonstrated commitment to operation and maintenance of the facility for its design life. This commitment would normally include an institutional structure to levy and collect user fees if necessary, to account for and manage financial resources, and having trained and certified personnel necessary to operate and maintain the facility.

Additional Guiding Principles for Economic Development:

- Priority will be given to projects that enhance employment in high unemployment areas of the State (economically distressed), with emphasis on sustainable, long-term local jobs or career opportunities.
- Projects should be consistent with statewide or regional plans.
- The Denali Commission may fund demonstration projects that are not a part of a regional or statewide economic development plan if such projects have significant potential to contribute to economic development.

Additional Guiding Principles for Training:

- Training should increase the skills and knowledge of local residents to become employed on jobs created by the Government's investment in public facilities in a community.

Intergovernmental Coordination—The Memorandum of Understanding:

The Denali Commission Act recognizes that our mission can be accomplished only through a collaborative, coordinated effort by the State of Alaska and key Federal agencies. The State of Alaska also recognizes benefits can be furthered if State agencies work in a collaborative and coordinated effort. With this in mind, Denali Commission has drawn up a Memorandum of Understanding (MOU), which more than 20 agencies have agreed to, that outlines some points of agreement that will facilitate the collaboration and coordination necessary for achievement of the purposes of the Denali Commission and related missions of agencies who are parties to the MOU.

The points of the MOU are:

- *Sustainability.* Federal and State agencies recognize the importance of utilizing sustainability principles when investing in public infrastructure projects.

• *Regional Strategies.* Systematic planning and coordination on a local, regional and statewide basis are necessary to achieve the most effective results from investment in infrastructure, economic development, and training.

• *Community Plans.* A single community strategic plan should be sufficient to identify and establish the priorities of each rural community.

• *Sharing Information.* Sharing information increases efficiencies and decreases duplication of services by State and Federal agencies.

• *Economic Development.* Economic development facilitates and supports the growth of self-sufficient communities.

• *Non-Profit Organizations and Other Community Organizations.* Non-profit and other organizations in Alaska are a valuable resource for State and Federal agencies. They provide regional planning, program support and partnering opportunities.

• *Workforce Development (Vocational and Career Training).* Workforce development is a critical component to building sustainable public infrastructure and self-sufficient communities in Alaska.

Appendix A

Needs Assessment Supporting Information

Power Utilities

Identified Need: \$300.8 million.

Annual Funding: Denali Commission to establish.

Source: AEA Assessment, 2000.

Background: 178 communities were surveyed by the Alaska Energy Authority (AEA) which was completed in 2000. The total need for power utilities which includes power plant construction, rehabilitation, distribution, and cost reduction projects totals \$300.8 million. The information presented below is separated by needs of communities that are part of the Alaska Village Electric Cooperative (AVEC) and all other remote communities.

AVEC

\$76,000,000—Power Plant Construction and Rehabilitation.

\$18,000,000—Wind Power Generation Projects.

\$1,800,000—Other Power Distribution.

Total AVEC: \$93,800,000.

Other Communities

\$131,000,000—Power Plant Construction and Rehabilitation.

\$20,000,000—Power Distribution Construction and Rehabilitation.

\$56,000,000—Energy Cost Reduction Projects*.

Total for other communities: \$207,000,000.

Based upon current and projected funding, AEA anticipates completing the program of upgrading projects for communities outside of AVEC by 2015.

*Energy Cost Reduction Projects include: Alternative Energy Projects (wind \$30 million and hydro \$20 million) and Energy Efficiency Upgrades \$6 million.

Bulk Fuel Storage

Identified Need: \$362.5 million.

Annual Funding: \$55 to \$65 million Denali Commission Funding.

Source: AEA Assessment, 2000.

Background: The Alaska Energy Authority (AEA) initiated an assessment of bulk fuel tank farms in rural Alaska communities in 1996. This assessment was completed in 2000. In September 2003, staff was requested to undertake an analysis of what it would take to complete the bulk fuel program in four more years of funding for the remaining communities in the AEA assessment. For Federal Fiscal Years 1999 through 2003, the Commission allocated \$97.5 million to bulk fuel projects. Thirty three bulk fuel facilities have been completed with at least partial Commission funding. Another 13 fuel facilities are in construction, and 53 projects

have received some level of design funding. AEA is responsible for 141 projects while the Alaska Village Electric Cooperative (AVEC) has assumed responsibility for 51 communities under construction agreements between the Commission and AVEC. To date (including the 2003 construction season), AEA has upgraded 9,500,000 gallons of capacity and has projected that 11,000,000 of capacity remain to be upgraded. AVEC has completed 2.5 million gallons of fuel facility upgrades and has projected another 15.9 million gallons remain to be upgraded.

The average project size AEA has undertaken is decreasing in size from an average of \$2,100,000 in 2001 to a projected cost of \$1,700,000 in 2004. The average cost of upgrading since 2001 (including the 2003 Construction Season) is approximately \$15.00 per gallon. It was not anticipated that this cost would increase over the next few years, however there has recently been a 50 percent increase in the cost of steel, so material costs are rising. AVEC projects tend

to be larger, more expensive projects than AEA projects since they are generally in larger communities.

The four year funding plan for bulk fuel indicates a need for \$50 to \$55 million for bulk fuel in FY04, and \$55 to \$65 million a year for the following three years, if projects are completed under our current standards and practices. This aggressive funding plan would result in completion of the known bulk fuel upgrade needs by the end of 2010.

Water and Wastewater

Identified Need: \$650 million (current). (FY02 estimate for Alaska Natives only). (Funded Fiscal years 1960–2002: \$1.33 billion).

Annual Funding: There are 6 existing primary funding sources for developing and improving water and wastewater facilities in rural Alaska. Those sources and the amounts contributed in Federal fiscal year 2002 are shown below.

U.S. Public Health Service—Indian Health Service	\$17,863,000
U.S. Environmental Protection Agency Drinking Water Tribal Set-Aside	3,958,200
U.S. Environmental Protection Agency Clean Water Tribal Set-Aside	7,053,100
U.S. Environmental Protection Agency Infrastructure Grant	36,494,500
U.S. Department of Agriculture-Rural Development	23,120,000
State of Alaska, Village Safe Water	19,873,370
Total	108,362,170

While these amounts vary from year to year, the annual average for fiscal years 1997 through 2002 is \$85.7 million. The trend has been towards increased funding levels.

Background: Assistance in developing water and wastewater facilities in rural Alaska is provided to communities through two programs. The Alaska Native Tribal Health Consortium (ANTHC) is the organization responsible for administering Indian Health Service, and EPA Indian Set-Aside sanitation construction funds in Alaska. The Alaska Department of Environmental Conservation's Village Safe Water (VSW) program is the organization responsible for administering sanitation construction funds provided by the State, EPA (non-Tribal Set-Aside), and the USDA-Rural Development.

Both ANTHC and VSW work with rural communities to plan design and construct sanitation systems. ANTHC and VSW have developed a close working relationship despite the relative recent transfer of the sanitation program from IHS to ANTHC in October 1998. The priority funding lists of both organizations are coordinated and generally complement each other. ANTHC predominately works in Alaska communities with Native-owned homes, whereas VSW works in all rural communities (Native and non-Native). A lead agency is designated for each community receiving assistance. Lead agencies typically have responsibility for administering all State and Federal funding in the community.

Existing funding streams and programs are making progress towards satisfying the overall need for sanitation facilities in rural Alaska. An estimated remaining need of \$650 million and a current funding level of \$108

million combine to suggest a six-year timeframe for meeting the need.

The Denali Commission has not targeted water and wastewater improvements as a major initiative for infrastructure funding due to the level of funding and effort already underway in this sector of critical infrastructure. However, the Commission is involved in improving planning and interagency coordination.

Primary Health Care Facilities

Identified Need: \$145 million from the Commission to fully address clinic needs.

Annual Funding: Typically \$25 to \$30 million.

Source: Annual funding is a mixture of Health Resources Services Administration (HRSA) funding and Denali Commission funding.

Background: It is estimated that funding of \$220 million will be needed in order to address the expected demand for primary care clinics after the FY04 funding cycle. At current match requirements, the Denali Commission estimated funding requirement will be \$145 million.

The Commission has adopted a seven-year plan for development of primary care clinics based upon annual funding cycles of \$25 to \$30 million. With this sustained funding level the Commission and its partners should be able to build or renovate a primary care clinic in every community in Alaska that wants such a facility and can demonstrate that clinic and the services are sustainable for 30 years. The Commission is beginning Year 3 of the plan with a goal to discontinue funding in FY09 for primary care clinics except for expansions due to medical equipment upgrades and some renovations.

“Other Than” Primary Health Care Facilities

Identified Need: \$322,000,000—new hospitals. \$130,000,000—expansion of existing Hospitals. \$62,000,000—expansion of Behavioral Health Facilities.

Annual Funding: Typically \$6 million.

Source: Annual funding is a mixture of Health Resources Services Administration (HRSA) funding and Denali Commission Base funding.

Background: The estimated need for “Other Than” Primary Health Facilities which includes Hospitals, and Behavioral Health Facilities comes from the Denali Commission's April 16, 2003 White Paper on Expanding the Commission's Primary Care Program which can be found at the following link: [http://www.denali.gov/Health_Care/Program_Documents/White_Paper—Potential for Expanding the Denali Commission Primary Care Program to Other Types of Health Care Facilities.pdf](http://www.denali.gov/Health_Care/Program_Documents/White_Paper—Potential_for_Expanding_the_Denali_Commission_Primary_Care_Program_to_Other_Types_of_Health_Care_Facilities.pdf).

Airport Facilities

Identified Need: \$1.3 billion.

Annual Funding: \$65—\$90 million.

Source: *Transportation Needs and Priorities in Alaska (November 2002) and Transportation Investment Analysis (Spring 2002)*, published by the State of Alaska Department of Transportation and Public Facilities (ADOT&PF).

Background: Alaska's extensive aviation system plays a crucial role in the movement of people and goods throughout the State. In many parts of rural Alaska, aviation serves as the principal link between communities. There are 1,112 designated airports, seaplane bases, and aircraft landing areas in the State of Alaska. The ADOT&PF owns and operates 261 public airports, the majority of Alaska's

public airports. Twenty three public airports are owned and operated by local governments.

Nearly all of Alaska's airport capital improvements rely on funding from the Federal Aviation Trust Fund. This fund, supported by Federal taxes on airline tickets, cargo, and fuel, supplies monies for capital improvements through the Airport Improvement Program (AIP), which is authorized for funding on an annual basis. In recent years, AIP entitlement funds for Alaska's airports varied from approximately \$65 million to \$90 million annually. The State or local sponsor is required to contribute 6.25% in the form of match. The current AIP authorizing legislation expires on September 30, 2003, and at this time, it is unknown what changes Congress may incorporate into the AIP legislation.

Road Construction and Major Maintenance

Identified Need: \$8.6 billion.

Annual Funding: \$260–\$350 million.

Source: *Transportation Needs and Priorities in Alaska (November 2002)* and *Transportation Investment Analysis (Spring 2002)*, published by the State of Alaska Department of Transportation and Public Facilities (ADOT&PF).

Background: Improved surface transportation can have many positive effects including lowering costs for goods and services, improving village to village interaction, and allowing for State and Federal investments in schools, clinics, airports, harbors, and tank farms to serve more communities per project. Because of its vast geographic expanse and young age as a state, Alaska continues to require significant resources for transportation improvements.

The list of unmet surface transportation needs in Alaska is about 1,950 projects with a total estimated cost approximating \$8.6 billion. The primary funding source for surface transportation projects in Alaska is Federal-aid highway funding, which flows through the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA). State funds are required to match these Federal funds; for most highway projects, the Federal ratio is 91 percent.

The State of Alaska administers most of the FHWA funding allocated to Alaska with the exception of money specifically designated for the Bureau of Indian Affairs (BIA), which currently amounts to approximately \$17 million per year. One important distinction between FHWA and BIA funding for roads is the long-term maintenance obligation. Under FHWA, the recipient is responsible for maintenance in perpetuity, with no Federal support for this activity. Under the BIA funding system, such roads are then added to the Indian Reservation Road system (IRR) and are eligible for a share of a national pot of money allocated to maintenance of IRR roads.

Through the recent TEA–21 era, average funding levels have been approximately \$350 million per year, up substantially from the approximately \$220 million under ISTEA (1991–1997). Most FHWA funding received by the State stays in larger auto-dependent communities, with some funding going to

rural communities largely for sanitation roads and trail markings. Funding for projects off the road system goes primarily to the larger hub communities.

Port Facilities

Identified Need: \$300 million.

Annual Funding: \$7 to \$15 million.

Source: *Transportation Needs and Priorities in Alaska (November 2002)* and *Transportation Investment Analysis (Spring 2002)*, published by the State of Alaska Department of Transportation and Public Facilities (ADOT&PF).

Background: With over 30,000 miles of shoreline, relatively few roads, and 90 percent of the state's population living within ten miles of the coast or along a major river, Alaska's marine facilities are integral to the local, statewide, and international transportation of goods and people.

Ports and harbors have no Federal capital assistance program comparable to the highway and airport funding programs. Federal funds for ports and harbors come through the U.S. Army Corps of Engineers. The Corps distributes funding on a nationally competitive, project-by-project basis. State and local communities in Alaska have been awarded between \$7 and \$15 million annually in Federal funding for all Corps of Engineers programs in recent years. For construction, the Corps requires between 20 and 35 percent match for projects such as dredging basins, docks, floats, grids, and upland facilities. Though not a dedicated funding source, the *Marine Users Fuel Tax* is the traditional foundation of small boat harbor improvements in the State, and general obligation bonds have been the foundation of State assisted port development.

Telecommunications

Identified Need: Unknown.

Annual Funding: \$15 million in FY03 and FY04 funding for Regulatory Commission of Alaska's Rural Broadband Internet Grant Program. Several other funding support mechanisms including Universal Service Fund also exist.

Background: In January 2001, the Denali Commission, in partnership with the State of Alaska, completed an inventory of available telecommunication services in rural Alaska. Among other findings, the inventory found that 61 percent of all Alaskan communities do not have access to local dial-up Internet service. This identified need is being addressed through the Regulatory Commission of Alaska's Rural Broadband Internet Grant Program, Telecommunications Industry investment resulting in expansion of Internet offerings in most rural communities in the next one to three years.

Solid Waste Disposal Facilities

Identified Need: Unknown.

Annual Funding: Generally less than \$1,000,000.

Background: Solid waste disposal is a necessity for all rural Alaska communities as it is for every community in the country. Observation would indicate that the majority of rural Alaska communities do not have facilities that meet basic legal requirements for solid waste disposal. The Denali

Commission received \$1 million in FY04 funding from USDA for the development of solid waste facilities in rural Alaska. Development of this innovative program and identification of projects is ongoing.

Community Facilities

Identified Need: Unknown.

Annual Funding: Unknown.

Background: Communities have a need for community assembly facilities for various purposes, including planning, meetings, traditional functions, and recreation for youth. These facilities, when available, are heavily used in rural communities.

Appendix B

Program Principles—Supporting Information

Rural Infrastructure Development

In the evolution of the Denali Commission and its approach to infrastructure development some principles have been established. These include the following:

- Selection of infrastructure themes for allocating funds. In FY99 rural energy was selected as the primary infrastructure theme. That priority was continued in FY00, and is expected to continue in FY01 and beyond. In FY00 rural health care facilities were selected as the second infrastructure theme. Other themes may be selected in future years.

- Selection of program/project partners to carry out infrastructure development. The Alaska Energy Authority (AEA) was selected as the Denali Commission's first partner for rural energy projects. AEA was selected because of its demonstrated capability to prioritize and implement rural energy projects. The Alaska Village Electric Cooperative was selected as the second energy partner and Alaska Native Tribal Health Consortium was selected as the Commission's primary partner for clinic design and construction. The overriding point in selection of a program/project partner is that the Commission wishes to utilize existing capabilities provided by State or Federal agencies or other organizations. More than one partner may be identified to participate in carrying out Commission sponsored programs/projects for a particular theme.

- Project selection by the Commission and/or the program/project partner must be defensible and credible. In the case of AEA, two separate comprehensive statewide project priority lists had been developed—one for bulk fuel storage facilities, and a second for power generation/distribution projects. As in the case of AEA the Commission will utilize existing credible priority systems. Where a credible statewide priority methodology for a selected theme does not exist, the Commission in cooperation with appropriate organizations will foster the development of a system. This is illustrated by the Commission's efforts in partnership with the Alaska Department of Health and Social Services, the Indian Health Service, and the Alaska Native Tribal Health Consortium to develop a prioritization methodology for primary health care facilities.

- Theme selection is a methodical process. The Commission has stressed the importance

of comprehensive investigation and exploration of infrastructure themes so that Commission resources are strategically funneled to "gaps" in State and Federal funding streams. Carrying out needs assessments on various infrastructure themes is central to the development of a theme. Energy, telecommunications, and rural primary health care facilities are examples of assessments that were initiated in conjunction with interested State and Federal agencies in the Commission's first year.

- Commission partners are responsible for compliance with procedural and substantive legal requirements. It is the expectation of the Denali Commission that partners will comply with all applicable local, State and Federal laws in carrying out Commission funded programs/projects. For example, the partner must address NEPA and OSHA regulations, Federal auditing requirements, competitive procurement issues and so forth. As a result, the Commission will look to partners who have demonstrated both administrative and program/project management success.

- Adherence to the successful project management elements of time, budget and quality. Each of these factors is central to Denali Commission agreements with partners. The Commission wants to put our partners in a position of success in meeting the triple constraint of project management; deliver the project on time, on budget and completion of the full project scope in a cost effective manner. The challenge to the Commission is to allow sufficient flexibility for each partner to carry out the programs/projects within their own established methods while assuring confident project completion and meeting all requirements of applicable laws and regulations. For example, the AEA employs a project methodology that relies heavily on force account construction (locally sponsored government crews). AEA also uses construction contracting to a lesser degree. In short, each agreement with a partner organization must be tailored to fit their approach to program/project management.

Rural Energy Approach

AEA has employed a two-step approach to bulk fuel project funding that is strongly supported by the Commission. Starting at the top of the AEA priority list, projects are provided 35% design funds one or more years before being eligible for capital funding. This allows for more accurate project cost estimates, resolution of easement and land issues, development of agreements between various local parties in site selection and tank farm ownership/maintenance. This step also serves to filter projects that are not ready for construction, for one reason or another, from advancing to the second step of project funding. This two-step approach ensures that funding does not sit unused by projects that are not ready for construction. Once a project has resolved any obstacles at the 35% design stage, then they are eligible for capital funding.

AEA will reevaluate its priority list from time to time in order to factor in new information, particularly information from the statewide energy strategy. This reevaluation may result in some modification

of the list. Funding priorities will also be subject to "readiness to proceed" considerations as described in part above.

Rural Primary Care Facilities Approach

In the past, communities constructed clinics based upon available grant funds (typically community development block grants of \$200,000 to \$500,000). Consequently clinic square footage was based upon available funding and not necessarily upon health care delivery service appropriate for the population and demographics of the community. Many clinics are therefore undersized. In FY99 the Commission allocated \$300,000 to undertake a needs assessment for rural primary care facilities. The needs assessment was completed in October 2000 and included a database of primary health care facility needs statewide as well as a project prioritization methodology. The Commission's investments in rural health facilities is based on this needs assessment.

Job Training Strategy

The Commission realizes that proper and prudent investment in public infrastructure must include a component for training local residents to maintain and operate publicly funded infrastructure. The Commission further realizes that through its investment in public infrastructure, such as bulk fuel storage facilities, it is creating numerous jobs related to the construction of these facilities and must develop a strategy to ensure local residents are properly trained to receive these jobs.

The Denali Commission's Training Strategy creates a statewide system to increase the local employment rates in Alaskan communities through the development of skills necessary to construct, maintain, and operate public infrastructure.

The Commission has approved 10% of the FY00-FY03 funding for implementation of the Training Strategy. In FY04 the Commission received appropriation direction for funding from the U.S. Department of Labor. Through this funding the Commission ensures local residents are employed on public facility construction projects in their communities, while also protecting the Denali Commission's investment in infrastructure by ensuring local residents are properly trained in the operations and maintenance of completed facilities.

The Denali Commission's Training Strategy involves several components that create a statewide system for job training outreach, coordination and delivery in rural Alaska. The Commission has partnered with several statewide organizations that will perform the necessary functions that make up the Denali Commission's Training Strategy.

The Training Strategy provides the Denali Commission the flexibility for future investment in job training needs statewide. Currently the Commission's partners and the Denali Training Fund are focusing on jobs created by the construction of energy and health related projects. In the future, the Training Strategy will focus its efforts on other areas where the Commission is investing.

Economic Development Strategy

The Denali Commission is not a funding agency for traditional economic development activities. The Commission has a strategy that outlines the appropriate role of the Commission in the area of economic development. The strategy includes the following components:

- The Commission, where appropriate will play the role of convener, bringing potential economic development participants together to support projects that meet Commission Standards outlined in paragraph IV below.

- The Commission will act as a facilitator to assist in matching high priority, high potential public or private investment opportunities with available funding sources.

- The Commission will serve as a catalyst for identification and removal of unnecessary economic development barriers by government.

In Fiscal Year 2004, a statewide Economic Development Committee was established under the authority of the Denali Commission.

Regional Development Strategy

The Denali Commission encourages communities/tribes to build a local comprehensive plan and strategy, a component of which will be economic development. A comprehensive plan may also be referred to as a Development Strategy.

Communities are encouraged to work with regional organizations such as ARDOR's, regional non-profit corporations, borough governments and regional for-profit organizations to develop comprehensive strategies of which economic development will be a component. Regional strategies should take into consideration existing regional planning and strategy efforts including, but not limited to, the efforts of the FAA, HUD, Alaska DOT, ANTHC, Alaska VSW, State Division of Public Health, Alaska Department of Public Safety, regional non-profits and others.

The Denali Commission encourages the state to assist with technical support and funding at the local and regional level to build local and regional development strategies. The Denali Commission also encourages State and Federal governments to utilize the local and regional development strategies when prioritizing projects in the state or in a region.

Jeffrey B. Staser,

Federal Co-Chair.

[FR Doc. 05-9768 Filed 5-16-05; 8:45 am]

BILLING CODE 3300-01-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 16, 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 12, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: State Progress Report—School Renovation, IDEA, and Technology Grants Program.

Frequency: On Occasion.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 15.

Burden Hours: 30.

Abstract: ED will collect the information required in the legislation from States and Outlying areas to document the progress of the School Renovation Program in achieving the legislative goals of improving school facilities and ensuring the health and safety of students and staff.

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 2710. 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. 05-9769 Filed 5-16-05; 8:45 am]

BILLING CODE 4000-01-P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: Election Assistance Commission.

ACTION: Notice of Public Meeting Agenda.

DATE AND TIME: Tuesday, May 24, 2005, 10 a.m.—Noon.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave., NW., Suite 1100, Washington, DC 20005 (Metro Stop: Metro Center).

AGENDA: The Commission will receive the following reports: Title II Requirements Payments Update; Statewide Voter Registration List Guidance Update; Provisional Voting and Voter Identification Study Update; Election Day Survey Analysis Update; Military and Overseas Citizens Survey Update; California Audit Update; Voluntary Voting System Guidelines Update; and updates on other administrative matters. The Commission will receive presentations on the following topic: Setting an Effective

Date for the Voluntary Voting System Guidelines.

This meeting will be open to the public.

* * * * *

PERSON TO CONTACT FOR INFORMATION:

Bryan Whitener, Telephone: (202) 566-3100.

* * * * *

Carol A. Paquette,

Interim Executive Director, U.S. Election Assistance Commission.

[FR Doc. 05-9939 Filed 5-13-05; 2:24 pm]

BILLING CODE 6820-YN-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2586]

Alabama Electric Cooperative, Inc.; Notice of Authorization for Continued Project Operation

May 11, 2005.

On April 29, 2003, Alabama Electric Cooperative, Inc., licensee for the Conecuh River Project No. 2586, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations. Project No. 2586 is located on the Conecuh River in Covington County, Alabama.

The license for Project No. 2586 was issued for a period ending April 30, 2005. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2586 is issued to Alabama Electric Cooperative, Inc. for a period effective May 1, 2005 through April 30, 2006, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before May 1, 2006, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Alabama Electric Cooperative, Inc. is authorized to continue operation of the Conecuh River Project No. 2586 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,
Secretary.

[FR Doc. E5-2473 Filed 5-16-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Soliciting Comments, Motions To Intervene, and Protests

May 9, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Shoreline Management Plan.
- b. *Project No.:* 2169-028.
- c. *Date Filed:* October 1, 2004.
- d. *Applicant:* Alcoa Power Generating Inc. (APGI).
- e. *Name of Project:* Tapoco Hydroelectric Project.
- f. *Location:* The project is located on the Cheoah and Little Tennessee Rivers in Graham and Swain Counties, North Carolina and Blount and Monroe Counties, Tennessee.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).
- h. *Applicant Contact:* Gene Ellis, Relicensing and Property Manager, Alcoa Power Generating Inc., Tapoco Division, 300 North Hall Road, Alcoa, Tennessee 37701-2516, (704) 422-5606.
- i. *FERC Contact:* Any questions on this notice should be addressed to Isis

Johnson at (202) 502-6346, or by e-mail: isis.johnson@ferc.gov.

j. *Deadline for filing comments and/or motions:* June 10, 2005.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, DHAC, PJ-12.1, 888 First Street, NE., Washington, DC 20426. Please include the project number (2169-028) on any comments or motions filed. 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.

k. *Description of Proposal:* APGI, licensee for the Tapoco Project developed a Shoreline Management Plan (SMP) to comply with provisions set forth in the project's Relicensing Settlement Agreement, which requires the development of a SMP for inclusion in the new license. The SMP is a comprehensive plan to manage the multiple resources and uses of the project's shorelines in a manner that is consistent with license requirements and project purposes, and to address the needs of the local public. The SMP introduces strategies to modify some existing policies regarding private facility development, erosion control and vegetation removal and was further developed to protect environmental, cultural, recreational, and aesthetic resources, land conservation, economic development, and recreational success.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or call toll-free 1-866-208-3676, or for TTY, call (202) 502-8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the

Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,
Secretary.

[FR Doc. E5-2459 Filed 5-16-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00-70-014]

Algonquin Gas Transmission, LLC; Notice of Compliance Filing

May 10, 2005.

Take notice that on May 3, 2005, Algonquin Gas Transmission, LLC (Algonquin) submitted a compliance filing pursuant to Algonquin Gas Transmission, LLC, Docket No. RP0070-012, Letter Order (2005), issued on April 29, 2005.

Algonquin states that copies of the filing were served upon all affected customers of Algonquin and interested state commissions, as well as upon all parties on the Commission's official service list in the captioned proceedings.

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.

Magalie R. Salas,
Secretary.

[FR Doc. E5-2447 Filed 5-16-05; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00-305-023]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Negotiated Rate

May 10, 2005.

Take notice that on May 5, 2005, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing and approval a negotiated rate agreement between MRT and ConocoPhillips Company, to be effective April 1, 2006.

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 email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E5-2446 Filed 5-16-05; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-328-000]

Eastern Shore Natural Gas Company; Notice of Interruptible Revenue Sharing Report

May 10, 2005.

Take notice that on May 3, 2005, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing its Interruptible Revenue Sharing Report pursuant to section 37 of the general terms and conditions of its FERC Tariff and Article V, Paragraph 6 of the

Stipulation and Agreement in Docket No. RP02-34-000.

Eastern Shore states that copies of the filing have been mailed to Eastern Shore's 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 on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Intervention and Protest Date: 5 p.m. Eastern Time on May 17, 2005.

Magalie R. Salas,
Secretary.

[FR Doc. E5-2453 Filed 5-16-05; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP05-329-000]

**Enbridge Pipelines (AlaTenn) L.L.C.;
Notice of Proposed Changes in FERC
Gas Tariff**

May 10, 2005.

Take notice that on May 5, 2005, Enbridge Pipelines (AlaTenn) L.L.C. (AlaTenn) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, to become effective May 6, 2005:

Second Revised Sheet No. 117
Original Sheet No. 117A
Original Sheet No. 117B
Third Revised Sheet No. 118
First Revised Sheet No. 303
First Revised Sheet No. 309
Original Sheet No. 310A
Original Sheet No. 310B
Original Sheet No. 310C
Original Sheet No. 310D
First Revised Sheet No. 314
First Revised Sheet No. 320
Original Sheet No. 321A
Original Sheet No. 321B
Original Sheet No. 321C
Original Sheet No. 321D
First Revised Sheet No. 323
Original Sheet No. 328A
Original Sheet No. 328B
First Revised Sheet No. 332
First Revised Sheet No. 337
Original Sheet No. 337A
Original Sheet No. 337B
Original Sheet No. 337C
Original Sheet No. 337D

AlaTenn states that it is filing these tariff sheets to amend its general terms and conditions to provide for specific types of discounts in its tariff, consistent with Commission policy.

AlaTenn states that copies of its filing have been mailed to all affected customers of AlaTenn and interested State commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone

filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,*Secretary.*

[FR Doc. E5-2454 Filed 5-16-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP05-330-000]

**Enbridge Pipelines (Midla) L.L.C.;
Notice of Proposed Changes in FERC
Gas Tariff**

May 10, 2005.

Take notice that on May 5, 2005, Enbridge Pipelines (Midla) L.L.C. (Midla) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective May 6, 2005:

Second Revised Sheet No. 1A
Second Revised Sheet No. 141
Second Revised Sheet No. 188
Original Sheet No. 188A
Original Sheet No. 188B
First Revised Sheet No. 310
Original Sheet No. 310A
First Revised Sheet No. 320
Original Sheet No. 320A
First Revised Sheet No. 330
Original Sheet No. 330A
First Revised Sheet No. 340
Original Sheet No. 340A
First Revised Sheet No. 350
Original Sheet No. 350A

Midla states that it is filing these tariff sheets to amend its general terms and

conditions to provide for specific types of discounts in its tariff, consistent with Commission policy.

Midla states that copies of its filing have been mailed to all affected customers of Midla and interested State commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,*Secretary.*

[FR Doc. E5-2455 Filed 5-16-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP05-331-000]

Enbridge Pipelines (UTOS) LLC; Notice of Proposed Changes in FERC Gas Tariff

May 10, 2005.

Take notice that on May 5, 2005, Enbridge Pipelines UTOS L.L.C. (UTOS) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective May 6, 2005:

First Revised Sheet No. 27
Original Sheet No. 31A
Original Sheet No. 31B
First Revised Sheet No. 36
Original Sheet No. 39A
Original Sheet No. 39B
Third Revised Sheet No. 100
Second Revised Sheet No. 127
First Revised Sheet No. 163
Original Sheet No. 163A

UTOS states that it is filing these tariff sheets to amend its general terms and conditions to provide for specific types of discounts in its tariff, consistent with Commission policy.

UTOS states that copies of its filing have been mailed to all affected customers of UTOS and interested State commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,*Secretary.*

[FR Doc. E5-2456 Filed 5-16-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP05-332-000]

Enbridge Pipelines (KPC); Notice of Proposed Changes In FERC Gas Tariff

May 10, 2005.

Take notice that on May 5, 2005, Enbridge Pipelines (KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective May 6, 2005:

First Revised Sheet No. 100A
Second Revised Sheet No. 125
Original Sheet No. 125A
Second Revised Sheet No. 302
Original Sheet No. 310B
Original Sheet No. 310C
First Revised Sheet No. 313
Original Sheet No. 322B
Original Sheet No. 322C
Second Revised Sheet No. 324
Original Sheet No. 333B
Original Sheet No. 333C
First Revised Sheet No. 337
Original Sheet No. 343A
Original Sheet No. 343B
Second Revised Sheet No. 346
Original Sheet No. 355B
Original Sheet No. 355C
First Revised Sheet No. 358
Original Sheet No. 366B
Original Sheet No. 366C

KPC states that it is filing these tariff sheets to amend its general terms and conditions to provide for specific types of discounts in its tariff, consistent with Commission policy.

KPC states that copies of its filing have been mailed to all affected customers of KPC and interested state commissions.

Any person desiring to intervene or to protest this filing must file in

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,*Secretary.*

[FR Doc. E5-2457 Filed 5-16-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP05-336-000]

Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 11, 2005.

Take notice that on May 9, 2005, Garden Banks Gas Pipeline, LLC (Garden Banks) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff

sheets, to become effective May 10, 2005:

Seventh Revised Sheet No. 2
 Seventh Revised Sheet No. 257
 First Revised Sheet No. 134
 First Revised Sheet No. 135
 First Revised Sheet No. 138
 Sheet Nos. 138–209
 First Revised Sheet No. 212
 Original Sheet No. 220A
 Original Sheet No. 220B
 First Revised Sheet No. 224
 Original Sheet No. 232A
 Original Sheet No. 232B
 Second Revised Sheet No. 235
 Original Sheet No. 243
 Original Sheet No. 244
 Sheet Nos. 245–274
 First Revised Sheet No. 279
 First Revised Sheet No. 283
 Original Sheet No. 283A
 Original Sheet No. 283B

Garden Banks states that it is filing these tariff sheets to amend its general terms and conditions to provide for specific types of discounts in its tariff, consistent with Commission policy.

Garden Banks states that copies of its filing have been mailed to all affected customers of Garden Banks and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC.

There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5-2472 Filed 5-17-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03-403-004]

Gas Transmission Northwest Corporation; Notice of Compliance Filing

May 10, 2005.

Take notice that on May 4, 2005, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1-A, First Revised Sheet No. 231, to become effective May 5, 2005.

GTN states that this tariff sheet is being submitted to reflect compliance with certain North American Energy Standards Board Version 1.6 standards adopted in FERC Order No. 587-R.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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 email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5-2448 Filed 5-16-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-335-000]

Mississippi Canyon Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 11, 2005.

Take notice that on May 9, 2005, Mississippi Canyon Gas Pipeline, LLC (Mississippi Canyon) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective May 10, 2005:

Second Revised Sheet No. 149
 First Revised Sheet No. 150
 First Revised Sheet No. 241
 Original Sheet No. 249A
 Original Sheet No. 249B
 Original Sheet No. 249C
 First Revised Sheet No. 252
 Original Sheet No. 260A
 Original Sheet No. 260B
 Original Sheet No. 260C
 First Revised Sheet No. 263
 Original Sheet No. 271
 Original Sheet No. 272
 Original Sheet No. 273
 Sheet Nos. 274–289 (sheets reserved for future use)
 First Revised Sheet No. 294
 Original Sheet No. 298A
 Original Sheet No. 298B
 Original Sheet No. 298C

Mississippi Canyon states that it is filing these tariff sheets to amend its general terms and conditions to provide for specific types of discounts in its tariff, consistent with Commission policy.

Mississippi Canyon states that copies of its filing have been mailed to all affected customers of Mississippi Canyon and interested state commissions.

Any person desiring to intervene or to protest this filing must file in

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E5-2478 Filed 5-16-05; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-326-000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Tariff

May 10, 2005.

Take notice that on May 4, 2005, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following

tariff sheets, to become effective May 1, 2005:

First Revised Sheet No. 26W
Ninth Revised Sheet No. 414

Natural states that the purpose of this filing is to implement the permanent release of an existing negotiated rate transaction.

Natural states that copies of the filing are being mailed to 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 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.

Magalie R. Salas,
Secretary.

[FR Doc. E5-2451 Filed 5-16-05; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-25-003]

North Baja Pipeline, LLC; Notice of Compliance Filing

May 10, 2005.

Take notice that, on May 6, 2005, North Baja Pipeline, LLC (NBP) submitted a compliance filing pursuant to the Commission's Order on Rehearing, Clarification, and Compliance of April 19, 2005, in Docket Nos. RP05-25-000, *et al.*

NBP states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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. E5-2450 Filed 5-16-05; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP05-333-000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 10, 2005.

Take notice that on May 5, 2005, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective June 4, 2005:

First Revised Sheet No. 303.01

Northern Border states that the purpose of this filing is to remove the tariff provision implementing the Commission's CIG/Granite State policy as now permitted by the Commission in a March 3, 2005 order in *Williston Basin Interstate Pipeline Company*, Docket No. RP00-463-006 (110 FERC ¶ 61,210).

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. E5-2458 Filed 5-16-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP96-272-057]

Northern Natural Gas Company; Notice of Compliance Filing

May 10, 2005.

Take notice that on May 6, 2005, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute 30 Revised Sheet No. 66A, proposed to be effective on April 1, 2005.

Northern states that it is filing the above-referenced tariff sheet in compliance with the Commission's April 27, 2005 Letter Order, reflecting the term of the negotiated rate agreement with Conoco Phillips.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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. E5-2445 Filed 5-16-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket RP05-266-001]

Northern Natural Gas Company; Notice of Compliance Filing

May 11, 2005.

Take notice that on May 9, 2005, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of May 5, 2005:

Substitute Eighth Revised Sheet No. 101
Substitute Fourth Revised Sheet No. 116
Substitute Second Revised Sheet No. 308

Northern states that it is filing the above-referenced tariff sheets in compliance with the Commission's May 4, 2005 Order in this docket requiring Northern to make the full requirements option available to all Rate Schedule TF and Rate Schedule TFX shippers.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an

original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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. E5-2476 Filed 5-16-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 178]

Pacific Gas and Electric Company; Notice of Authorization for Continued Project Operation

May 11, 2005.

On April 14, 2003, Pacific Gas and Electric Company, licensee for the Kern Canyon Project No. 178, filed an application pursuant to the Federal Power Act (FPA) and the Commission's regulations. Project No. 178 is located on the Kern River in Kern County, California.

The license for Project No. 178 was issued for a period ending April 30, 2005. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on

its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 178 is issued to Pacific Gas and Electric Company for a period effective May 1, 2005 through April 30, 2006, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before May 1, 2006, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Pacific Gas and Electric Company is authorized to continue operation of the Kern Canyon Project No. 178 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,
Secretary.

[FR Doc. E5-2479 Filed 5-16-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. PR05-13-000]

Regency Intrastate Gas, LLC; Notice of Petition for Rate Approval

May 10, 2005.

Take notice that on May 2, 2005, Regency Intrastate Gas, LLC (Regency Intrastate) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's Regulations. Regency Intrastate requests the Commission to approve a maximum monthly reservation charge of \$5.42 per MMBtu for firm transportation service, a maximum firm commodity charge of \$.0746 per MMBtu, and a maximum rate of \$.2529 per MMBtu for interruptible transportation service under section 311 of the Natural Gas Policy Act.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426,

in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the date as indicated below. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits of the docket number field to access the document. For Assistant, call (202) 502-8222 or for TTY, (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 31, 2005.

Magalie R. Salas,
Secretary.

[FR Doc. E5-2449 Filed 5-16-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

South Carolina Electric & Gas Company; Notice of Intent To File Application for New License

May 11, 2005.

a. *Type of Filing:* Notice of intent to file application for a new license.

b. *Project No.:* P-516-000.

c. *Date Filed:* May 2, 2005.

d. *Submitted By:* South Carolina Electric & Gas Company.

e. *Name of Project:* Saluda Hydroelectric Project.

f. *Location:* On the Saluda River, in Lexington, Richland, Newberry, and Saluda Counties, South Carolina. The project does not occupy any Federal lands.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act; 18 CFR 16.6 of the Commission's regulations.

h. *Effective Date of Current License:* June 1, 1984.

i. *Expiration Date of Current License:* August 31, 2010.

j. *The Project Consists of:* (1) A 7,800-foot-long earth-fill dam; (2) a reservoir (Lake Murray) with a full-pool surface

area of about 48,400 acres; (3) five concrete and steel intake towers with associated penstocks; (4) a 305-foot-long concrete spillway structure containing 6 radial gates; (5) a 327-foot-long concrete, brick, and steel powerhouse with 5 generating units, having a rated plant capacity of 207.3 megawatts; and (6) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available through: James M. Landreth, Vice President, Fossil & Hydro Operations; South Carolina Electric & Gas Company; 111 Research Drive, Columbia, SC 29203; telephone: (803) 217-7224; Fax: (803) 217-9568; e-mail: jlandreth@scana.com.

l. *FERC Contact*: Allan Creamer, (202) 502-8365 or allan.creamer@ferc.gov.

m. The licensee states its unequivocal intent to submit an application for a new license for Project No. 516-000. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by August 31, 2008.

n. A copy of this filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number to access the document excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or TTY 202-502-8659. A copy is also available for inspection and reproduction at the address in item (k) above.

o. Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support as shown in the paragraph above.

p. By this notice, the Commission is seeking corrections and updates to the attached mailing list for the Saluda Hydroelectric Project. Updates should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Magalie R. Salas,
Secretary.

[FR Doc. E5-2475 Filed 5-16-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-334-000]

Stingray Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 11, 2005.

Take notice that on May 9, 2005, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective May 10, 2005:

Eighth Revised Sheet No. 2
Second Revised Sheet No. 140A
Original Sheet No. 140B
First Revised Sheet No. 204
Fourth Revised Sheet No. 301
Original Sheet No. 302A
Original Sheet No. 302B
First Revised Sheet No. 305
Original Sheet No. 305A
Original Sheet No. 305B
First Revised Sheet No. 314
First Revised Sheet No. 316
Original Sheet No. 317

Stingray states that it is filing these tariff sheets to amend its general terms and conditions to provide for specific types of discounts in its tariff, consistent with Commission policy.

Stingray states that copies of its filing have been mailed to all affected customers of Stingray and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E5-2477 Filed 5-16-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-327-000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

May 10, 2005.

Take notice that on May 4, 2005, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing to become a part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective May 4, 2005:

Thirteenth Revised Sheet No. 375

Williston Basin states that it has revised the above-referenced tariff sheet found in section 48 of the general terms and conditions of its tariff to remove a retired receipt point, Point ID No. 04842 (Piney Creek), from Williston Basin's Billy Creek Pool.

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. E5-2452 Filed 5-16-05; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[ORD-2004-0016; FRL-7913-2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Application of Measures of Spontaneous Motor Activity for Behavioral Assessment in Human Infants, EPA ICR Number 2166.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 16, 2005.

ADDRESSES: Submit your comments, referencing docket ID number ORD-2004-0016, to (1) EPA online using EDOCKET (our preferred method), by e-

mail to ord.docket@pa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, ORD Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Suzanne McMaster, Office of Research and Development, Mail Code 58A, 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 November 2, 2004 (69 FR 63527), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. ORD-2004-0016, which is available for public viewing at the Office of Research and Development (ORD) 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 ORD 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: Application of Measures of Spontaneous Motor Activity for Behavioral Assessment in Human Infants.

Abstract: The goal of the proposed information collection is to test a method to collect data that would be used to quantitatively characterize spontaneous motor activity in young children between the ages of 6 and 24 months. Data from the study will be used to (1) identify sources of variance in infants' and toddlers' daily activity levels, (2) estimate the number of days of activity measurement that would be necessary to reliably measure these activities, and (3) investigate the potential association between activity measures averaged over long periods of time (e.g., days) and activity measures averaged over the duration of a specific event. Data will be analyzed and used to help EPA determine the best way to gather reliable data to further examine the effects of exposure to neurotoxics on development in young children. The information will appear in the form of final EPA reports and journal articles and will be made publically available.

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 is 8 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of

information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are families with children between 6 and 24 months of age residing in the Research Triangle Park, NC area.

Estimated Number of Respondents: 110.

Frequency of Response: Daily for 7 days.

Estimated Total Annual Hour Burden: 963.

Estimated Total Annual Cost: \$16,000, includes \$0 annualized capital or O&M costs.

Dated: May 5, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05-9779 Filed 5-16-05; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL ELECTION COMMISSION

[Notice 2005-14]

Filing Dates for the Ohio Special Election in the 2nd Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Ohio has scheduled special elections on June 14, 2005, and August 2, 2005, to fill the U.S. House of Representatives seat in the 2nd Congressional District vacated by Representative Rob Portman.

Committees required to file reports in connection with the Special Primary Election on June 14, 2005, shall file a 12-day Pre-Primary Report. Committees required to file reports in connection with both the Special Primary and Special General Election on August 2, 2005, shall file a 12-day Pre-Primary Report, a 12-day Pre-General Report, and a Post-General Report.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; telephone: (202) 694-1100; toll free (800) 424-9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Ohio Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on June 2, 2005; a Pre-General Report on July 21, 2005; and a Post-General Report on September 1, 2005. (See chart below for the closing date for each report.)

All principal campaign committees of candidates *only* participating in the Special Primary Election shall file a 12-day Pre-Primary Report on June 2, 2005. (See chart below for the closing date for each report.)

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a semiannual basis in 2005 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Ohio Special Primary or Special General Elections by the close of books for the

applicable report(s). (See chart below for the closing date for each report.)

Committees filing monthly that support candidates in the Ohio Special Primary or Special General Election should continue to file according to the monthly reporting schedule.

Disclosure of Electioneering Communications (Individuals and Other Unregistered Organizations)

As required by the Bipartisan Campaign Reform Act of 2002, the Federal Election Commission promulgated new electioneering communications rules governing television and radio communications that refer to a clearly identified Federal candidate and are distributed within 30 days prior to a special primary election or 60 days prior to a special general election. 11 CFR 100.29. The statute and regulations require, among other things, that individuals and other groups not registered with the FEC who make electioneering communications costing more than \$10,000 in the aggregate in a calendar year disclose that activity to the Commission within 24 hours of the distribution of the communication. See 11 CFR 104.20.

The 30-day electioneering communications period in connection with the Ohio Special Primary runs from May 15, 2005, through June 14, 2005. The 60-day electioneering communications period in connection with the Ohio Special General runs from June 3, 2005, through August 2, 2005.

Calendar of Reporting Dates for Ohio Special Elections

COMMITTEES INVOLVED IN ONLY THE SPECIAL PRIMARY (06/14/05) MUST FILE

Report	Close of books ¹	Reg./cert. & overnight mailing date	Filing date
Pre-Primary	05/25/05	05/30/05 ²	06/02/05.
July Quarterly	06/30/05	07/15/05	07/15/05.

¹ The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

² Notice that the registered, certified and overnight mailing date falls on a weekend or Federal holiday. The report should be postmarked before that date.

COMMITTEES INVOLVED IN THE SPECIAL PRIMARY (06/14/05) AND SPECIAL GENERAL (08/02/05) MUST FILE

Report	Close of books ¹	Reg./cert. & overnight mailing date	Filing date
Pre-Primary	05/25/05	05/30/05 ²	06/02/05.
July Quarterly		—waived—	
Pre-General	07/13/05	07/18/05	07/21/05.
Post-General	08/22/05	09/01/05	09/01/05.
October Quarterly	09/30/05	10/15/05	10/15/05. ³

¹ The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

² Notice that the registered, certified and overnight mailing date falls on a weekend or Federal holiday. The report should be postmarked before that date.

³ Notice that this deadline falls on a weekend. Filing dates are not extended when they fall on nonworking days.

COMMITTEES INVOLVED ONLY IN THE SPECIAL GENERAL (08/02/05) MUST FILE

Report	Close of books ¹	Reg./cert. & overnight mailing date	Filing date
July Quarterly		—waived—	
Pre-General	07/13/05	07/18/05	07/21/05.
Post-General	08/22/05	09/01/05	09/01/05.
October Quarterly	09/30/05	10/15/05	10/15/05. ³

¹ The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

³ Notice that this deadline falls on a weekend. Filing dates are not extended when they fall on nonworking days.

Dated: May 11, 2005.

Michael E. Toner,

Vice Chairman, Federal Election Commission.

[FR Doc. 05-9774 Filed 5-16-05; 8:45 am]

BILLING CODE 6715-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 31, 2005.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Raymond Thomas Arnold*, South Hill, Virginia, individually and together with the following members of his immediate family: Janice B. Arnold, South Hill, Virginia; Julie Arnold Witten, Chase City, Virginia; Darren Whitten, Richmond, Virginia; Sheri Arnold Sparkman and Michael R. Sparkman, both of South Hill, Virginia; to acquire additional voting shares of Citizens Community Bank, South Hill, Virginia.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs

Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *Larry Hellrung and Patricia A. Hellrung*, both of Alton, Illinois; to retain voting shares of Liberty Bancshares, Inc., Alton, Illinois, and thereby indirectly retain voting shares of Liberty Bank, Alton, Illinois.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Rodney A. Abrams*, Northbrook, Illinois; the 2003 Abrams Family Trust, Richard W. Hillsberg, trustee, Buffalo Grove, Illinois; Funeral Financial Services, Ltd., Northfield, Illinois; Mortuary Financial Services, Inc., Richardson, Texas; Richard N. Abrams, Fort Worth, Texas; Karen Abrams Fox, Northbrook, Illinois; Jodie Abrams Engfer, North Oaks, Minnesota; and Beverly Adams, Highland Park, Illinois, to acquire voting shares of Surety Capital Corporation, Fort Worth, Texas, and indirectly acquire voting shares of Surety Bank, National Association, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, May 11, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05-9746 Filed 5-16-05; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 1, 2005.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Hugh F. Wilkins and Gertrude Schneider*, both of Geneva, Nebraska; Thomas S. Wilkins, Riverside, Illinois; Richard Buse, Charlotte Buse, Mary Jo Nitsch, and Richard Schneider, all of Omaha, Nebraska; and Robert C. Schneider, Phoenix, Arizona; to acquire voting shares of Fairmont Farmers State Company, and thereby indirectly acquire voting shares of Farmers State Bank, both of Fairmont, Nebraska.

Board of Governors of the Federal Reserve System, May 12, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05-9796 Filed 5-16-05; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 10, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. *GB Bank Group, Inc.*, Glennville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Glennville Bank, Glennville, Georgia.

2. *GB Bank Group, Inc.*, Glennville, Georgia; to merge with Tippins Bankshares, Inc., and thereby indirectly acquire Tippins Bank & Trust Company, both of Claxton, Georgia.

Board of Governors of the Federal Reserve System, May 11, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05-9747 Filed 5-16-05; 8:45 am]

BILLING CODE 6210-01-S

Federal Reserve System

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, May 23, 2005.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions)

involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202-452-2955.

SUPPLEMENTARY INFORMATION: You may call 202-452-3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at <http://www.federalreserve.gov> for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, May 13, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05-9948 Filed 5-13-05; 3:12 pm]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Implementing Community-Level Strategies for Fetal Alcohol Syndrome Prevention and Surveillance in South Africa

Announcement Type: New.
Funding Opportunity Number: RFA DD05-118.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates: Letter of Intent Deadline: June 16, 2005.

Application Deadline: July 1, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under sections 307, 317(k)(2), and 317(C) of the Public Health Service Act [42 U.S.C., sections 242(l), 247b(k)2 and 247b-4], as amended].

Purpose: The purpose of this program is to: (a) Identify urban and rural communities in South Africa with high proportions of childbearing-aged women who are at risk for an alcohol exposed pregnancy that could result in Fetal Alcohol Syndrome (FAS); and (b) to develop a model prevention program aimed at reducing hazardous alcohol use and/or promoting pregnancy delay until alcohol abuse is resolved in those women at highest risk. The model prevention program should have three stages.

Stage 1: The formative research stage is composed of qualitative and quantitative research documenting the knowledge, attitudes and practices among all groups described: (a) Women of childbearing-age at high risk of an alcohol-exposed pregnancy and women with children with FAS; (b) spouses and partners of high risk women; (c) community health care providers, obstetricians and nurses, especially providers including alcohol treatment and substance abuse services; and (d) community leaders, social support organizations and networks addressing use of alcohol in pregnancy, use of contraception, knowledge of FAS, as well as issues such as identification of services and barriers to services.

The formative research will conclude with a description of the socio-demographic characteristics and attributes of the targeted community(ies) at risk, identification of constraints and opportunities for behavior change, and allow the initiation and conduct of community and person-level interventions under Stage 2.

Stage 2: This protocol and intervention development stage will use the information gathered in Stage 1 in combination with previous evidence-based research in FAS and HIV prevention in the U.S. and South Africa to develop a model intervention.

Stage 3: This stage will test the feasibility of the model program in the high risk FAS community(ies) targeted by the applicant in this announcement, including outcome measures.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center on Birth Defects and Developmental Disabilities (NCBDDD): Prevent birth defects and developmental disabilities.

Background and Research Objectives: FAS is caused by maternal alcohol use during pregnancy and is one of the leading causes of preventable birth defects and disabilities. Recently, the highest prevalence of FAS worldwide was reported among children living in the winery area of the Western and Northern Cape region of South Africa with FAS prevalence rates ranging from 40.5 to 46.4 per 1,000 children. In the Gauteng region of South Africa (outside the wine-growing region) FAS prevalence rates range from 11.8 to 41.0 per 1,000 children. In addition, CDC has implemented a monitoring system in the area of De AAR, where the FAS prevalence rate was \approx 80 per 1,000 live births. These rates show that FAS is a serious public health problem in some areas or subgroups of the South African population.

Important risk factors associated with heavy alcohol use among childbearing-age women include use of tobacco and other drugs, co-existing psychiatric conditions, history of sexual or physical abuse during childhood and/or adulthood, and a previous alcohol-exposed pregnancy.

Studies have found that the strongest predictor of alcohol use during pregnancy is the level of alcohol use prior to pregnancy.

Most of the same risk factors in women at risk of an alcohol-exposed pregnancy are also found in women at high risk for HIV infection.

Essential strategies for preventing alcohol-exposed pregnancies among high-risk women who are heavy alcohol users can include individual, group and community level interventions.

Examples of individual level interventions are: (a) Provide one-on-one client services that offer counseling to reduce or abstain from alcohol intake; (b) assist clients in assessing their own behavior and planning individual behavior change; (c) support and sustain behavior change; and (d) facilitate linkages to community health services (*i.e.*, alcohol treatment services) in support of behaviors and practices that prevent FAS.

Such efforts must be coupled with strategies which address pregnancy postponement until the risk of prenatal alcohol use can be overcome. These approaches can be enhanced by developing local capacity through education and training of key public and private providers in the community.

Group level interventions shift the delivery of service from individuals to groups of varying sizes. Group level interventions should (a) provide education and support in group settings to promote and reinforce safer behaviors; and (b) provide interpersonal skills training in negotiating and sustaining appropriate behavior change to childbearing-age women at increased risk for FAS. Community level interventions are directed at: (a) Changing community norms; and (b) increasing community support of the behaviors known to reduce the risk of FAS. Change in community attitudes, norms, and practices are brought about through health communication, social (prevention) marketing, community mobilization and organization, and community-wide events.

Under this announcement, applicants must identify urban and rural areas in which they will conduct formative, epidemiologic, and intervention study activities as described under Purpose. Geographic areas proposed for inclusion in this study should demonstrate high

rates of alcohol misuse, unintended pregnancy, and HIV/STD among childbearing-age women. An entire province could be defined as a project geographical area or several regions or counties could be combined (containing applicant-selected urban or rural populations) in meeting the announcement requirement for FAS cases or populations at risk.

Applicants must be able to demonstrate that the area(s) selected include both urban and rural populations (within one defined geographical area or in two or more geographical areas with separate urban and rural populations).

The geographical area(s) selected must include both urban and rural settings and one or more of the populations described below in a–c:

(a) A population with at least 350,000 urban and rural childbearing-age women (aged 12–44 years) with at least 10% reporting hazardous alcohol use (greater than 7 drinks per week and/or binge drinking which is defined as 4 or more drinks on any one occasion);

(b) A birth cohort comprising at least 25,000 births a year with a minimum FAS prevalence rate of 10 per 1,000 live births;

(c) Defined communities with a 10% prevalence of HIV—recognizing the fact that FAS populations share common behavior patterns of substance abuse and sexual behavior.

It is the responsibility of the applicant to clearly document their basis and rationale for selecting at least one of these three areas (a,b,c). That documentation will be a factor in the evaluation of your proposal.

A woman who is at high risk for an alcohol-exposed pregnancy is one who engages in moderate (7–13 drinks per week) to heavy alcohol use (14 or more drinks per week) or binge drinking (four or more drinks in a single occasion), is sexually active, and is not effectively practicing contraception.

The development of a model FAS prevention program for high risk communities in South Africa, as specified in this announcement should include the aforementioned three stages.

Stage I: Formative research will be undertaken in the first year of the project, and should include conducting a community-based assessment to determine childbearing-aged women who are at highest risk within the community. This assessment could draw on existing data (through FAS surveillance systems) or on newly collected population-based data. Within the scope of this work, applicants should be conducting a needs assessment of the spouses and partners

of high-risk women. It should also reach out to health providers as to the services provided to the targeted populations including any perceived or real gaps between needs, expectations, and services delivered.

This process includes determining the characteristics of women who already had a child with FAS; those engaging in alcohol misuse, are sexually active, and are not effectively using contraception; and women at risk for an HIV/STD infection.

Environmental factors that could contribute to FAS and potential venues for enrolling these populations for intervention services to prevent FAS must also be identified.

Stage II: The protocol and intervention development stage is expected to begin in the first year and should be implemented during the first half of year two. Interventions should be developed to address the specific priority needs identified in Stage 1 including preparation of a study protocol to test the feasibility, acceptability, operational requirements of the interventions, and the development of an intervention evaluation plan including appropriate process and outcome measures. The protocol will include choices of sites, selection criteria for childbearing-age women at risk of an alcohol-exposed pregnancy, interventions and implementation methods, and the study evaluation. Piloting the protocol should be included in Stage II.

Stage III: The feasibility and evaluation stage is to be accomplished in the second half of year two and during year three of the project. It includes the implementation and evaluation of the model intervention(s) to assess whether the intervention can be appropriately utilized and replicated.

Activities: Awardee activities for this program are as follows:

1. Design an effective, coherent research approach and methods that identify and prioritize key elements that are essential to FAS prevention activities in the target populations (*i.e.*, individual, group, and community levels).

2. Develop a protocol to conduct community-based epidemiological and behavioral data gathering in childbearing-age women populations that can include maternal alcohol exposure, drinking behavior, sexual behavior patterns, social networks, substance abuse behavior, perceptions of social sexual norms, attitudes, self-efficacy, perception of current FAS prevention interventions, healthcare and health information seeking behaviors, and identifying influences on

behavior in order to determine the most appropriate intervention strategies to be used.

3. Conduct needs assessment of health providers and other services provided to childbearing-aged women. Identify gaps between the needs of high risk women and the services they receive.

4. Develop and implement a feasibility protocol for prevention of FAS in a targeted geographic region as determined by the project that has increased rates of women at high risk for an alcohol-exposed pregnancy and/or increased rates of infants and children with FAS.

5. Identify, recruit, obtain informed consent forms, and enroll and follow to completion participants as determined by the project-developed study protocol. Ensure that the protocol developed by the recipient details the study design, includes sample size calculations, denotes a study timeline, and conveys provisions to maintain confidentiality of study subjects.

6. Design and implement a provider education component for health personnel involved in intervention and surveillance and monitoring activities.

7. Strengthen and improve public health infrastructure to prevent FAS supporting additional services and links with existing, community-based programs that provide preventive health services.

8. Collaborate with CDC as needed by requesting assistance in process and operational procedures.

9. Collect and analyze study data and prepare a final report of the outcomes of the study with recommendations for future research and prevention efforts, including the development of peer review and publication of study findings.

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:

CDC Scientists (Scientific Collaborators) within the National Center on Birth Defects and Developmental Disabilities (NCBDDD) will be an equal partner with scientific and programmatic involvement during the conduct of the project through technical assistance, advice, and coordination. These Scientific Collaborators will:

(1) Use their experience in studies of this nature to advise the project on specific questions regarding the project-developed protocol.

(2) As requested, assist the project in responding to inquiries regarding such areas as data management, data analysis, formats for presenting research findings,

and in comparing project-developed evaluation formats with other research projects and activities known to CDC.

(3) Provide scientific consultation and technical assistance as requested on questions related to epidemiology, statistical and power calculations, and data storage and tracking formats used in other CDC-sponsored research that could be advantageous to the project.

(4) Suggest to the project, upon request, processes for analysis, interpretation, and reporting of findings in the literature that can serve domestic and international scientific interests.

(5) In working with the selected foreign entity, provide technical assistance and advice, and participate as an advisor in the collecting of information from the government's nationals.

(6) Work with the Principal Investigator from the awardee institution on coordination activities. This coordinating function will help formulate a plan for cooperative research. This work can include: (a) Making recommendations on the study protocol and data collection approaches; (b) discussing the target populations that have been or will be recruited; (c) identifying and recommending solutions to unexpected study problems; and (d) discussing ways to efficiently coordinate study activities and best practices.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Mechanism of Support: U84.

Fiscal Year Funds: 2005.

Approximate Total Funding: \$300,000. (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: \$300,000. (This amount is for the first 12-month budget period.)

Floor of Award Range: None.

Ceiling of Award Range: \$300,000.

Anticipated Award Date: August 31, 2005.

Budget Period Length: 12 months.

Project Period Length: Three 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

Support will be provided to non-profit non-government organizations (NGOs), including faith-based organizations, or Universities in South Africa or those NGOs or Universities located outside of South Africa that can perform this activity. Applicants must identify and document their capacity to address all of the components of work as contained in the Activities section of this announcement. Furthermore, applicants must provide evidence of their ability to effectively demonstrate capacity to progress through all Stages of the project. Providing precise information as to how these data and other requirements will be met is essential to the consideration of your application for review.

Applicants located outside of South Africa must provide documentation of their experience and performance in implementing health services research in South Africa and demonstrate their capacity to reach the target populations specified in this announcement.

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.

- Applicants must document their present infrastructure, capacity, expertise, and experience (within organization or within organizations of collaborators) in conducting research directly related to the awardee activities cited in this announcement. Applicants must provide specific evidence to substantiate this capacity, experience, and expertise. Through documentation of a maximum of three pages in length, applicants must demonstrate that they can fully meet all eligibility criteria in order to be considered for formal review, and that they can conduct all

project operations as noted under the listed stages for this program. This information must be included as part of the application and inserted immediately after the Face Page of the application.

• **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 under-represented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

Additional Principal Investigator qualifications are as follows:

• One of the Principal Investigators with responsibility for directing this research must reside in South Africa.

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: 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 online, 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): The LOI must be written in the following format:

- Maximum number of pages: Two.
- Font size: 12-point un-reduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One-inch margins.
- Printed only on one side of page.
- Single-spaced.
- Written in English; avoid jargon.

The 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.
- Designations of collaborating institutions and entities.
- An outline of the proposed work.
- Recruitment approach.
- Expected outcomes.

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 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/pubcomm1.htm>

This announcement uses the non-modular budgeting format. Follow the PHS 398 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 Time

Letter of Intent (LOI) Deadline Date: June 16, 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 will allow CDC to plan the application review.

Application Deadline Date: July 1, 2005.

Explanation of Deadlines:

Applications must be received in the CDC Office of Public Health Research 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 of the application by the closing date and time. If CDC receives your application 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 carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission addresses and deadlines. It supersedes information provided in the PHS Form 398 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 your application 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 about your application, contact the PGO-TIM staff at: 770-488-2700. If you still have a question about your LOI, contact OPHR staff at 414-371-5253. 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

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget are:

- Project funds cannot be used to supplant other available applicant or collaborating agency funds for construction or for lease or purchase of facilities or space.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by CDC officials must be requested in writing.

- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut and the World Health Organization, indirect costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

- The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).

- All requests for funds contained in the budget, shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

- You must obtain annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

- A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

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, Mailstop D-72, Decatur, Georgia 30030, United States of America. Telephone Number 404-371-5277. Fax 404-371-5215. E-mail address: 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 "RFA# DD05-118, Procurement and Grants Office, 2920 Brandywine Road, Atlanta, Georgia 30341, United States of America. Applications may not be submitted by fax or e-mail at this time.

At the time of submission, four additional copies of the application, and all appendices must be sent by express mail to: Mary Lerchen, DrPH, Scientific Review Administrator, CDC, Office of Public Health Research, One West Court

Square, Suite 7000, Mailstop D-72, Decatur, Georgia 30030, United States of America.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that relate to the performance goals stated in the "Purpose" section of this announcement, and that will demonstrate the accomplishment of the various identified objectives for each stage of the model prevention program and for the Awardee Activities. 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 or clinical practice be advanced? What will be the effect of these studies on the concepts, methods, technologies, treatments, services, or preventative interventions that drive this field?

Approach: Are the conceptual or clinical framework, design, methods, and analyses adequately developed, well integrated, well reasoned, and appropriate to the aims of the project? The applicant's research plan must adequately address the Purpose, Research Objectives, and Awardee Activities as cited in the announcement. The research plan must describe the work that will be done, and how and through what tasks and activities the work will be undertaken. Does the

applicant acknowledge potential problem areas and consider alternative tactics?

Innovation: Is the project original and innovative? For example: Does the project challenge existing paradigms or clinical practice; address an innovative hypothesis or critical barrier to progress in the field? Does the project develop or employ novel concepts, approaches, methodologies, tools, or technologies for this area?

Investigators: Are the investigators 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? Does the investigative team bring complementary and integrated expertise to the project (if applicable)? One of the Principal Investigators with responsibility for directing this research must reside in South Africa.

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed studies employ useful collaborative arrangements or benefit from unique features of the scientific environment, or subject populations? Do the geographic areas and populations proposed for inclusion in the study meet the requirements under "Purpose" and "Objectives" in the announcement? 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:

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 CFR 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. Does the proposed budget comply with the requirements in IV.5. "Funding Restrictions" in the announcement?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness by the Office of Public Health Research. 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 convened by the Office of Public Health Research in accordance with the review criteria listed above. As part of the initial merit review, all applications may:

- 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 Scientific Program Administrator in the National Center for Birth Defects and Developmental Disabilities.

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 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.

VI.2. Administrative and National Policy Requirements

45 CFR parts 74 and 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 Requirement for Inclusion of Women and Racial and Ethnic Minorities in Research.
- AR-9 Paperwork Reduction Act Requirements.
- AR-10 Smoke-Free Workplace Requirements.
- AR-12 Lobbying Restrictions.
- AR-14 Accounting Systems Requirements.
- AR-15 Proof of Non-Profit Status.
- AR-22 Research Integrity.
- 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 Requirements

You must provide CDC with an original, plus two copies of the following reports:

1. Interim progress report, (PHS 2590, OMB Number 0925-0001, rev. 9/2004), on a date to be determined for your project for each subsequent budget year. The progress report will serve as your non-competing continuation application, and must contain the following additional elements:
 - a. Current budget period progress toward meeting all objectives.
 - b. Problems identified and solutions applied.
 - c. Discussion of financial expenditures and impact on project operations.
 - d. Discussion of staffing and collaborations to enhance performance toward meeting goals.
 - e. Progress toward Measures of Effectiveness.
 - f. 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 sent 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, Georgia 30341, United States of America. Telephone: 770-488-2700.

For scientific/research issues, contact: Don Lollar, Ed.D., Extramural Program Official, National Center on Birth Defects and Developmental Disabilities, CDC, 1600 Clifton Road, Mailstop E-87, Atlanta, Georgia 30333, United States of America. E-mail Address: dlollar@cdc.gov. Telephone: 404-498-3041.

For questions about peer review, contact: Mary Lerchen, DrPH, Scientific Review Administrator, CDC, Office of Public Health Research, One West Court Square, Suite 7000, Mailstop D-72, Decatur, GA 30030, United States of America. Telephone: 404-371-5277. E-mail: MLerchen@cdc.gov.

For financial, grants management, or budget assistance, contact: Steward Nichols, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, Georgia 30341, United States of America. Telephone: 770-488-2788. E-mail: snh8@cdc.gov.

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements."

Dated: May 11, 2005.

Alan A. Kotch,

Acting Deputy Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05-9767 Filed 5-16-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease

Control and Prevention (CDC) announces the following meeting.

Name: Healthcare Infection Control Practices Advisory Committee.

Times and Dates: 8:30 a.m.–5 p.m., June 6, 2005; 8:30 a.m.–4 p.m., June 7, 2005.

Place: Sheraton Colony Square, 188 14th Street, NE., Atlanta, Georgia 30361.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary; the Assistant Secretary for Health; the Director, CDC; and the Director, National Center for Infectious Diseases (NCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (e.g., nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters to be Discussed: Agenda items will include recommendations for the use of vancomycin; recommendations for isolation precautions to prevent transmission of infectious agents in healthcare settings; pandemic influenza planning for healthcare facilities; and updates on CDC activities of interest to the committee.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Harriett Lynch, Committee Management Specialist, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, 1600 Clifton Road, NE, M/S A-07, Atlanta, Georgia 30333, telephone 404/498-1182.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 11, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05-9765 Filed 5-16-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD13-05-012]

Implementation of Sector Seattle

AGENCY: Coast Guard, DHS.

ACTION: Notice of organizational change.

SUMMARY: The Coast Guard announces the stand-up of Sector Seattle. Sector Seattle is an internal reorganization that combines Group Seattle, Vessel Traffic

Service Puget Sound and Marine Safety Office Puget Sound into a single command. The Coast Guard has established a continuity of operations whereby all previous practices and procedures will remain in effect until superseded by an authorized Coast Guard official or document.

DATES: This notice is effective May 10, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD13-05-012 and are available for inspection or copying at Commander (r), Thirteenth Coast Guard District, 915 Second Avenue, Room 3492, Seattle, Washington, 98174-1067 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Geoffrey Trivers, Thirteenth District Resources Division at (206) 220-7041.

SUPPLEMENTARY INFORMATION:

Discussion of Notice

Sector Seattle is located at 1519 Alaskan Way S., Seattle, WA 98134 and contains a single Command Center. Sector Seattle is composed of a Response Department, Prevention Department, and Logistics Department. Effective May 10, 2005, all existing missions and functions performed by Group Seattle, Vessel Traffic Service Puget Sound and Marine Safety Office Puget Sound will be performed by Sector Seattle. Group Seattle, Vessel Traffic Service Puget Sound and Marine Safety Office Puget Sound will no longer exist as organizational entities.

Sector Seattle is responsible for all Coast Guard Missions in the following zone: the boundary of Sector Seattle, Washington starts at the northeastern most point of Whatcom County and the Canadian border at 49°00'00" N latitude, 120°51'34" W longitude; then proceeds along the Canadian border eastward to the Montana-North Dakota boundary; thence southerly along this boundary to the Wyoming State line; thence westerly and southerly along the Montana-Wyoming boundary to the Idaho State line; thence northwesterly along the Montana-Idaho boundary to 46°55'00" N latitude; thence westerly along 46°55'00" N latitude to a point at 46°55'00" N latitude, 123°18'00" W longitude; thence northerly to a point at 47°58'06" N latitude, 123°18'00" W longitude; thence easterly to Double Bluff Point at 47°58'06" N latitude, 122°32'48" W longitude; thence northward along the western shore of Whidbey Island to West Point then southeasterly along the eastern shore of

Whidbey Island at Strawberry Point 48°17'53" N latitude, 122°30'21" W longitude; thence easterly across Skagit Bay along the Skagit Snohomish County line to the southeastern most point of Skagit County; thence along the eastern boundaries of Skagit and Whatcom Counties to the point of origin.

There are no changes to the Puget Sound Marine Inspection Zone and Puget Sound Captain of the Port Zone, which encompasses the combined areas of responsibility of Sector Seattle and Sector/Air Station Port Angeles. The Puget Sound Marine Inspection Zone and Puget Sound Captain of the Port Zone are delineated in 33 CFR § 3.65-10.

The Sector Seattle Commander is vested with all the rights, responsibilities, duties, and authority of a Group Commander; Commanding Officer, Vessel Traffic Service; and Commanding Officer, Marine Safety Office, as provided for in Coast Guard regulations, and is the successor in command to the Commanding Officers of Group Seattle, Vessel Traffic Service Puget Sound and Marine Safety Office Puget Sound. The Sector Seattle Commander is designated: (a) Captain of the Port (COTP) for the Puget Sound COTP zone; (b) Federal Maritime Security Coordinator (FMSC) for the Puget Sound COTP zone; (c) Federal On Scene Coordinator (FOSC) for the Puget Sound COTP zone, consistent with the National Contingency Plan; (d) Officer in Charge of Marine Inspection (OCMI) for the Puget Sound Marine Inspection Zone; and (e) Search and Rescue Mission Coordinator (SMC) for the smaller Sector Seattle area of responsibility, which is described above. The Deputy Sector Commander is designated alternate COTP, FMSC, FOSC, SMC, and Acting OCMI. A continuity of operations order has been issued ensuring that all previous Group Seattle, Vessel Traffic Service Puget Sound and Marine Safety Office Puget Sound practices and procedures will remain in effect until superseded by Commander, Sector Seattle. This continuity of operations order addresses existing COTP regulations, orders, directives, and policies.

The following information is a list of updated command titles, addresses and points of contact to facilitate requests from the public and assist with entry into security or safety zones:

Name: Sector Seattle.

Address: Commander, U.S. Coast Guard Sector Seattle, 1519 Alaskan Way S., Seattle, WA 98134

Contact: General Number, (206) 217-6200; Sector Commander: Captain Danny Ellis; Deputy Sector Commander:

Commander Mark Dix Chief, Prevention Department: (206) 217-6180; Chief, Response Department: (206) 217-6070; Chief, Logistics Department: (206) 217-6065; Contingency Planning & Force Readiness Staff: (206) 217-6193 Sector Command Center: (206) 217-6001.

Dated: May 5, 2005.

R.C. Parker,

*Captain, U.S. Coast Guard, Acting
Commander, Thirteenth Coast Guard District.*
[FR Doc. 05-9807 Filed 5-12-05; 2:44 pm]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Application for Waiver of Passport and/or Visa (I-193)

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Application for Waiver of Passport and/or Visa (I-193). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (70 FR 11682) on March 9, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 16, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally

comments may be submitted to OMB via facsimile to (202) 395-6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

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

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Application for Waiver of Passport and/or Visa.

OMB Number: 1651-0107.

Form Number: I-193.

Abstract: This information collection is used by CBP to determine an applicant's eligibility to enter the United States. This form is used by aliens who wish to waive the documentary requirements for passport's and/or visas due to an unforeseen emergency.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals.

Estimated Number of Respondents: 25,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 4,150.

Estimated Total Annualized Cost on the Public: \$4,916,500.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at (202) 344-1429.

Dated: May 10, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05-9752 Filed 5-16-05; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Application To Payoff or Discharge Alien Crewman (I-408)

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Application to Payoff or Discharge Alien Crewman (I-408). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (70 FR 11685) on March 9, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 16, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or

continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Application to Pay Off or Discharge Alien Crewman.

OMB Number: 1651-0106.

Form Number: I-408.

Abstract: This form is used by owner, agent, consignee, master or commanding of any vessel or aircraft to obtain permission from CBP to pay off or discharge any alien crewman.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit institutions.

Estimated Number of Respondents: 85,000.

Estimated Time Per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 35,360.

Estimated Total Annualized Cost on the Public: \$353,600.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 4,150.

Estimated Total Annualized Cost on the Public: \$4,916,500.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at (202) 344-1429.

Dated: May 10, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05-9753 Filed 5-16-05; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Drawback Process Regulations

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Drawback Process Regulations. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (70 FR 11683-11682) on March 9, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 16, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or

continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Drawback Process Regulations.

OMB Number: 1651-0075.

Form Number: Forms CBP-7551, 7552, 7553.

Abstract: The information is to be used by CBP officers to expedite the filing and processing of drawback claims, while maintaining necessary enforcement information to maintain effective administrative oversight over the drawback program.

Current Actions: This submission is being submitted to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 8,150.

Estimated Time Per Respondent: 11 hours.

Estimated Total Annual Burden Hours: 90,000.

Estimated Total Annualized Cost on the Public: \$3,098,405.86.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, DC 20229, at 202-344-1429.

Dated: May 10, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05-9754 Filed 5-16-05; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF HOMELAND SECURITY**Bureau of Customs and Border Protection****Agency Information Collection
Activities: Automated Clearinghouse Credit**

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Automated Clearinghouse Credit. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (70 FR 11683) on March 9, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 16, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Automated Clearinghouse Credit.

OMB Number: 1651-0078.

Form Number: N/A.

Abstract: The information is to be used by CBP to send information to the company (such as revised format requirements) and to contact participating companies if there is a payment problem.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 65.

Estimated Time Per Respondent: 3.8 hours.

Estimated Total Annual Burden Hours: 249.

Estimated Total Annualized Cost on the Public: \$4,395.85.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202-344-1429.

Dated: May 10, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05-9755 Filed 5-16-05; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF HOMELAND SECURITY**Bureau of Customs and Border Protection****Agency Information Collection
Activities: Documentation
Requirements for Articles Entered
Under Various Special Tariff Treatment Provisions**

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (70 FR 11684) on March 9, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 16, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

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

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions.

OMB Number: 1651-0067.

Form Number: N/A.

Abstract: This collection is used to ensure revenue collections and to provide duty free entry of merchandise eligible for reduced duty treatment under provisions of Harmonized Tariff Schedule of the United States.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 19,433.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 14,575.

Estimated Total Annualized Cost on the Public: \$353,715.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202-344-1429.

Dated: May 10, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05-9756 Filed 5-16-05; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Petition for Remission or Mitigation of Forfeitures and Penalties

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP), invites the general public and other Federal agencies to comment on an information collection requirement concerning the Petition for Remission or Mitigation of Forfeitures and Penalties. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before July 18, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and

included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Petition for Remission or Mitigation of Forfeitures and Penalties.

OMB Number: 1651-0100.

Form Number: CBP Form 4609.

Abstract: Persons whose property is seized or who incur monetary penalties due to violations of the Tariff Act are entitled to seek remission or mitigation by means of an informal appeal. This form gives the violator the opportunity to claim mitigation and provides a record of such administrative appeals.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 28,000.

Estimated Time Per Respondent: 14 minutes.

Estimated Total Annual Burden Hours: 6,500.

Estimated Annualized Cost to the Public: \$157,300.

Dated: May 10, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 05-9757 Filed 5-16-05; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF THE INTERIOR

Establishment of the Advisory Committee on the Bird Banding Laboratory

AGENCY: Geological Survey, Interior.

ACTION: Establishment of the Advisory Committee on the Bird Banding Laboratory Under the Federal Advisory Commitment Act.

SUMMARY: Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior has established the Advisory Committee on the Bird Banding Laboratory under the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Daniel L. James, 12201 Sunrise Valley Drive MS 301, Reston, Virginia 20192; 703-648-4253, dan_james@usgs.gov.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with

Section 9(a) of the Federal Advisory Committee Act of 1972 (Pub. L. 92-643). The purpose of the Advisory Committee will be to represent the interests of the bird banding community, including both game and non-game birds, in advising the U.S. Department of the Interior, U.S. Geological Survey (USGS), on current and future management of the Bird Banding Laboratory. The Committee will develop a clear, concise report defining a vision for the Bird Banding Laboratory over the next ten to fifteen years, and recommend priority actions that should be taken to address the needs of Federal and State regulatory agencies, as well as bird conservation, research, and banding organizations, to ensure the Laboratory's excellence into the 21st century.

In order for the Secretary to hear from the bird banding and data user community, Committee membership will include: The USGS; the U.S. Fish and Wildlife Service; the Canadian Wildlife Service; State wildlife conservation agencies; bird banding organizations; academia; professional and technical ornithological societies; and nonprofit conservation and bird hunting organizations. Expertise in the science of bird banding/markings and the application of the data to address game and non-game bird management, conservation, research, and policy issues, must be represented within the sectors listed above.

The Committee will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. The Charter will be filed under the Act, 15 days from the date of publication of this notice.

Certification

I hereby certify that the establishment of a the Bird Banding Laboratory Advisory Committee is necessary and in the public interest in connection with the performance of duties by the Department of the Interior mandated pursuant to the Migratory Bird Treaty Act of 1918 (16 U.S.C., Pub. L. 703-712; as amended).

Dated: May 5, 2005.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 05-9772 Filed 5-16-05; 8:45 am]

BILLING CODE 3210-AK-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-338-03-1610-00]

Notice of Availability of Record of Decision (ROD) for the King Range National Conservation Area (NCA) Resource Management Plan (RMP)/ Environmental Impact Statement (EIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), the King Range Act and the Bureau of Land Management (BLM) management policies, the BLM announces the availability of the RMP/ROD for the King Range National Conservation Area located in Humboldt and Mendocino Counties, California. California State Director Mike Pool will sign the RMP/ROD, which becomes effective immediately upon this signing.

ADDRESSES: Copies of the King Range NCA RMP/ROD are available upon request from the Field Manager, Arcata Field Office, Bureau of Land Management, 1695 Heindon Road, Arcata, CA 95521 or via the Internet at <http://www.ca.blm.gov/arcata>.

FOR FURTHER INFORMATION CONTACT: Bob Wick, Project Lead, BLM Arcata Field Office, 1695 Heindon Road Arcata, CA 95521. (707) 825-2321. E-mail: rwick@ca.blm.gov.

SUPPLEMENTARY INFORMATION: The King Range NCA RMP/ROD was developed with broad public participation through a two year collaborative planning process. This RMP/ROD addresses management on approximately 62,000 acres of public land in the planning area. The King Range NCA RMP/ROD is designed to achieve or maintain desired future conditions developed through the planning process. It includes a series of management actions to meet the desired resource conditions for upland and riparian vegetation, wildlife habitats, cultural and visual resources, livestock grazing, coastal resources, and recreation.

The approved King Range NCA RMP is essentially the same as the Proposed Plan Alternative in the Proposed King Range NCA RMP/Final Environmental Impact Statement (PRMP/FEIS), published in November, 2004. No inconsistencies with State or local plans, policies, or programs were identified during the Governor Consistency review of the PRMP/FEIS.

BLM received four protests to the PRMP/FEIS. Minor editorial modifications were made in preparing the RMP/ROD as a result of the protests. These modifications corrected errors that were noted in protests and during review of the PRMP/FEIS and provide further clarification for some of the decisions. An errata sheet is included with the RMP/ROD that identifies the location of the corrections in the PRMP/FEIS.

Donald J. Holmstrom,

Acting Arcata Field Manager.

[FR Doc. 05-9744 Filed 5-16-05; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[[ES-960-1420-BJ] ES-053479, Group No. 112, Arkansas]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Arkansas.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Land Management.

The lands we surveyed are:

Fifth Principal Meridian, Arkansas

T. 14 N., R. 18 W.

The plat of survey represents the dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of section 14, Township 14 North, Range 18 West, Fifth Principal Meridian, Arkansas, and was accepted April 25, 2005. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: April 25, 2005.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 05-9761 Filed 5-16-05; 8:45 am]

BILLING CODE 4310-GJ-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

**[[ES-960-1420-BJ-TRST] ES-053478,
Group No. 167, Wisconsin]**

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Wisconsin.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Fourth Principal Meridian, Wisconsin
T. 51 N., R. 5 W.

The plat of survey represents the dependent resurvey of a portion of the north and east boundaries, a portion of the subdivisional lines, and the survey of the subdivision of sections 1, 2, and 3, Township 51 North, Range 5 West, Fourth Principal Meridian, Wisconsin, and was accepted April 21, 2005. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: April 21, 2005.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 05-9760 Filed 5-16-05; 8:45 am]

BILLING CODE 4310-GJ-P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before April 23, 2005. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by June 1, 2005.

Carol D. Shull,
Keeper of the National Register of Historic Places.

ARKANSAS

Benton County

Mitchell—Ward House, 201 N. Nelson, Gentry, 05000486.

Chicot County

McGehee, Dr. E.P., Infirmary, 614 S. Cokley St., Lake Village, 05000487.

Columbia County

Greek Amphitheatre, Jct. East Lane Dr., E. University St. & Crescent Dr., Magnolia, 05000488.

Crawford County

Fairview Cemetery, Bounded by AR 59, McKibben Ave. & Poplar St., Van Buren, 05000489.

Cross County

Johnston, John H., Cotton Gin Historic District, (Cotton and Rice Farm History and Architecture in the Arkansas Delta MPS) Jct. U.S. 64 & AR 163, Levesque, 05000490.

Desha County

Kemp Cotton Gin Historic District, (Cotton and Rice Farm History and Architecture in the Arkansas Delta MPS) Cty.Rd. 227 W. of AR 1, Rohwer, 05000491.

Faulkner County

Hall, Charlie, House, (Mixed Masonry Buildings of Silas Owens, Sr. MPS) 221 Old U.S. 65, Twin Groves, 05000492.

Langley, Farris and Evelyn, House, (Mixed Masonry Buildings of Silas Owens, Sr. MPS) 12 Langley Ln., Republican, 05000493.

Quattlebaum—Pelletier House, (Mixed Masonry Buildings of Silas Owens, Sr. MPS) 43 Ozark, Twin Groves, 05000494.

Salter, James and Jewell, House, (Mixed Masonry Buildings of Silas Owens, Sr. MPS) 159 S. Broadview, Greenbriar, 05000495.

Jefferson County

Pine Bluff Civic Center, 200 E. 8th Ave., Pine Bluff, 05000496.

Logan County

Union Church and School, 2158 Union Rd., Paris, 05000497.

Nevada County

De Ann Cemetery Historic Section, ½ mi. W. of Jct. U.S. 371 & AR 19, Prescott, 05000498.

Pope County

Russellville Masonic Temple, 205 S. Commerce, Russellville, 05000499.

Pulaski County

Climber Motor Car Factory, Unit A, (Arkansas Highway History and Architecture MPS) 1823 E. 17th St., Little Rock, 05000500.

FLORIDA

Sarasota County

Bryson—Crane House, 5050 Brywill Cir., Sarasota, 05000501.

HAWAII

Kauai County

Pu'u'opae Bridge, Pu'u'opae Rd. between Kalama & Kipapa Rds., Kapa'a, 05000536.

ILLINOIS

Cook County

Burnham, Anita Willets, Log House, 1140 Willow Rd., Winnetka, 05000502.

KANSAS

Douglas County

Black Jack Battlefield (Boundary Increase), Jct. E. 2000th & N. 175th Rds., Baldwin City, 05000503.

LOUISIANA

Caddo Parish

Lakeside Municipal Golf Course, 2200 Milam, Shreveport, 05000504.

East Feliciana Parish

1903 Clinton High School, 11050 Bank St., Clinton, 05000505. 1938 Clinton High School, 12525 Cedar, Clinton, 05000506.

Iberville Parish

Plaquemine Historic District, 57725 Court St., Plaquemine, 05000507.

MINNESOTA

Hennepin County

Chicago, Milwaukee and St. Paul Railroad Grade Separation, (Reinforced-Concrete Highway Bridges in Minnesota MPS), Parallel to 29th St. between Humboldt & 20th Aves. S., Minneapolis, 05000508.

MISSOURI**Cape Girardeau County**

Southeast Missourian Building, (Cape Girardeau, Missouri MPS), 301 Broadway, Cape Girardeau, 05000509.

Jackson County

Kansas City Cold Storage Company Building, (Railroad Related Historic Commercial and Industrial Resources in Kansas City, Missouri MPS), 500 E. 3rd St., Kansas City, 05000510.

MONTANA**Beaverhead County**

Canyon Creek Charcoal Kilns, Approx. 5 mi. NW of Glendale on Forest Rd. 187, Glendale, 05000511.

Carbon County

Gebo Barn, (Fromberg MPS), 2.5 mi. S. of Fromberg on River Rd., Fromberg, 05000512.

NEVADA**Lyon County**

Fernley and Lassen Railway Depot, 675 E. Main St., Fernley, 05000513.

NORTH CAROLINA**Madison County**

Murray, Thomas J., Address Restricted, Mars Hill, 05000514.

Martin County

Bear Grass School, 6344 E. Bear Grass Rd., Bear Grass, 05000515.

OREGON**Multnomah County**

Woerner, Louis and Elizabeth, 2815 NE Alameda, Portland, 05000516.

SOUTH CAROLINA**Florence County**

Blooming Grove, E. end of Rogers Court, Florence, 05000517.

Richland County

North Columbia Fire Station No. 7, 2622 N. Main St., Columbia, 05000518.

TEXAS**Gillespie County**

Wrede School, 3929 S. TX 16, Fredericksburg, 05000519.

Hays County

Gen-Tex Wool Mill Historic District, 101 Uhland Rd., San Marcos, 05000520.

VIRGINIA**Albemarle County**

Covesville Historic District, Roughly along RR tracks, U.S. 29, Covesville Ln. & Boaz Rd., Covesville, 05000521.

Fauquier County

Yorkshire House, 405 Winchester St., Warrenton, 05000522.

Henry County

Marshall Field and Company Clubhouse, 2692 River Rd., Fieldale, 05000523.

Lunenburg County

Brickland, 6877 Brickland Rd., Kenbridge, 05000524.

Newport News Independent City

St. Vincent de Paul Catholic Church, 230 33rd St., Newport News, 05000525.

Northumberland County

Claude W. Somers (skipjack), 504 Main St., Reedville, 05000526.

Richmond Independent City

Main Street Banking Historic District, E. Main St. between 7th & Governors Sts., Richmond, 05000527.

Rockingham County

Long Meadow, 2525 Fridleys Gap Rd., Harrisonburg, 05000528.

WISCONSIN**Ashland County**

Coole Park Manor, 351 Old Fort Rd., LaPointe, 05000529.

Milwaukee County

Northwestern Branch, National Home for Disabled Volunteer Soldiers Historic District, 5000 W. National Ave., Milwaukee, 05000530.

Monroe County

Williams, William G. and Anne, House, 220 E. Franklin St., Sparta, 05000531.

Oconto County

White Potato Lake Garden Beds Site, Address Restricted, Brazeau, 05000532.

Portage County

Green, August G. and Theresa, House, 1501 Main St., Stevens Point, 05000533.

Rock County

Huginin, John and Martha, House, 2739 Beloit Ave., Janesville, 05000534.

Sheboygan County

Hetty Taylor (shipwreck), (Great Lakes Shipwreck Sites of Wisconsin MPS) Lake Michigan, 7 mi. SE of Sheboygan R., Sheboygan, 05000535.

[FR Doc. 05-9737 Filed 5-16-05; 8:45 am]

BILLING CODE 4312-51-P

INTERNATIONAL TRADE COMMISSION**Sunshine Act Meeting Notice; USITC SE-05-019**

AGENCY: United States International Trade Commission.

TIME AND DATE: May 24, 2005 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: 1. Agenda for future meetings: none.

2. Minutes

3. Ratification List

4. Inv. Nos. 701-TA-249 and 731-TA-262, 263, and 265 (Second Review) (Certain Iron Construction Castings from Brazil, Canada, and China) briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before June 7, 2005.)

5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 13, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-9932 Filed 5-13-05; 2:22 pm]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE**Bureau of Alcohol, Tobacco, Firearms and Explosives****Agency Information Collection Activities: Proposed Collection; Comments Requested**

ACTION: 60-day notice of information collection under review: Report of Firearms Transactions.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until July 18, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Barbara Terrell, Firearms Enforcement Branch, Room 7400, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your

comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Firearms Transaction.

(3) *Form Number:* ATF F 5300.5. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The information collection documents transactions of firearms for law enforcement purposes. ATF uses the information to determine that the transaction is in accordance with laws and regulations, and establishes the person(s) involved in the transactions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 250 respondents will complete a 1-hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 250 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: May 12, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05-9805 Filed 5-16-05; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 70, Number 11, page 2882 on January 18, 2005, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 16, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, local or tribal government. Other: None. The letter is used by a law enforcement officer to purchase handguns to be used in his/her official duties from a licensed firearm dealer anywhere in the country. The letter shall state that the officer will use the firearm in official duties and that a records check reveals that the purchasing officer has no convictions for misdemeanor crimes of domestic violence.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 50,000 respondents will take 5 seconds to file the letter.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 69 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: May 13, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05-9806 Filed 5-16-05; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF LABOR**Mine Safety and Health Administration****Petitions for Modification**

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Wabash Mine Holding Company

[Docket No. M-2005-030-C]

Wabash Mine Holding Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.364(b)(1) and (b)(4) (Weekly examination) to its Wabash Mine (MSHA I.D. No. 11-00877) located in Wabash County, Illinois. The petitioner requests a modification of the existing standard to permit an alternative method of compliance for examination of certain sealed areas of the Wabash Mine. The petitioner states that certain portions of the mine has been sealed off in the Main South and East seals; air ventilating these seals does ventilate any working section but travels to a nearby return air shaft; roof falls have occurred in several of the airways formerly providing access to the seals; and the remaining entries providing access to the seals have deteriorated roof conditions and hinder safe access to the seals. The petitioner asserts that to examine these seals would result in a diminution of safety to the miners. The petitioner proposes to establish a permanent monitoring station to monitor the air for oxygen and methane after it passes through the affected area of the Main East and Main South seals; to have a certified person evaluate on a weekly basis the air that passes the seals before it reaches the seals in the affected area; and to submit proposed revisions to include initial and refresher training for its approved 30 CFR Part 48 training plan to the District Manager within 60 days after the Proposed Decision and Order becomes final. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Wabash Mine Holding Company

[Docket No. M-2005-031-C]

Wabash Mine Holding Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (Weekly examination) to its Wabash Mine (MSHA I.D. No. 11-

00877) located in Wabash County, Illinois. The petitioner requests a modification of the existing standard to permit an alternative method of compliance for examination of certain sealed areas of the Wabash Mine. Due to deteriorating roof conditions and limited access in the 1N3W air course from the 1W#3b tail area to the west side of the existing 1N3W seals, traveling the air course in its entirety to conduct weekly examinations would be hazardous to the miners. The petitioner proposes to establish an inlet evaluation point, "Intake EP" and two (2) outlet evaluation points "Permanent Outby EP" to be evaluated by a certified person on a weekly basis; and to submit proposed revisions that will include initial and refresher training for its approved 30 CFR part 48 training plan to the District Manager within 60 days after the Proposed Decision and Order becomes final. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Eighty Four Mining Company

[Docket No. M-2005-032-C]

Eighty Four Mining Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241-1421 has filed a petition to modify the application of 30 CFR 75.364(a) (Weekly examination) to its Mine 84 (MSHA I.D. No. 36-00958) located in Washington County, Pennsylvania. The petitioner requests a modification of the existing standard to permit an alternative method of compliance for examination of the worked out area behind the No. 18 belt air dump (sump area) of Mine 84. Due to deteriorating roof conditions, traveling the affected area of the mine would expose workers to hazardous conditions. The petitioner proposes to establish check points G and H to monitor the quantity and quality of air at these check points, and have a certified person to measure the air quality and quantity and record their initials, the date and time in a record book to certify that the examination was conducted. The record book will be kept on the surface for a period of six months and made available for inspection by interested persons. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Coulterville Coal Company, LLC

[Docket No. M-2005-033-C]

Coulterville Coal Company, LLC, 13101 Zeigler 11 Road, P.O. Box 397, Coulterville, Illinois 62237 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements) to its Gateway Mine (MSHA I.D. No. 11-02408) located in Randolph County, Illinois. The petitioner proposes to operate a six-wheel Getman Road Builder, model RDG-1504S, serial number 6739, as it was originally designed without front brakes. The petitioner states that the Getman Road Builder has dual brake systems on the four (4) rear wheels and is designed to prevent loss of braking due to a single component failure. The petitioner will train the grader operators to limit the maximum speed of the Road Builder to 10 miles per hour (MPH) by permanently blocking out any gear that would provide higher speed, or use transmission and differential ratios that would limit the maximum speed to 10 MPH; to recognize the appropriate speeds to use on different roadway conditions and slopes; and to lower the grader blade for additional stopping capability in emergency situations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via Federal eRulemaking Portal: <http://www.regulations.gov>; e-mail: zzMSHA-Comments@dol.gov; fax: (202) 693-9441; or Regular Mail/Hand Delivery/Courier: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before June 16, 2005. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 11th day of May 2005.

Rebecca J. Smith,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 05-9798 Filed 5-16-05; 8:45 am]

BILLING CODE 4510-43-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**[Notice (05-088)]****NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting****AGENCY:** National Aeronautics and Space Administration (NASA).**ACTION:** Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council (NAC), Minority Business Resource Advisory Committee.

DATES: Wednesday, June 8, 2005, 9 a.m. to 4 p.m.**ADDRESSES:** Marriott Residence Inn Hotel, 333 E St. SW., Washington, DC 20024.**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph C. Thomas III, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space Administration, (202) 358-2088.**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Review of Previous Meeting.
- Small Business Participation in Major NASA Contracts.
- Public Comment.
- Discussion of New Process for Priorities.
- Office of Small and Disadvantage Business Utilization National Program Update.
- New Business.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 10, 2005.

P. Diane Rausch,*Advisory Committee Management Officer,
National Aeronautics and Space Administration.*

[FR Doc. 05-9800 Filed 5-16-05; 8:45 am]

BILLING CODE 7510-13-P**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****[Notice (05-089)]****Return to Flight Task Group; Meeting****AGENCY:** National Aeronautics and Space Administration (NASA).**ACTION:** Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the Return to Flight Task Group (RTF TG).

DATES: Wednesday, June 8, 2005, from 8 a.m. until noon central daylight time.**ADDRESSES:** Webster Civic Center, 311 Pennsylvania Avenue, Webster, Texas 77598.**FOR FURTHER INFORMATION CONTACT:** Mr. Vincent D. Watkins at (281) 792-7523.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the meeting room. Attendees will be requested to sign a register. Live audio of the meeting will be available on the Internet at: <http://returntoflight.org>.

The agenda for the meeting is as follows:

- Welcome remarks from Co-Chair.
- Discussion of status of NASA's implementation of selected Columbia Accident. Investigation Board return to flight recommendations.
- Action item summary from Executive Secretary.
- Closing remarks from Co-Chair.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: May 11, 2005.

P. Diane Rausch,*Advisory Committee Management Officer,
National Aeronautics and Space Administration.*

[FR Doc. 05-9801 Filed 5-16-05; 8:45 am]

BILLING CODE 7510-13-P**NATIONAL CREDIT UNION ADMINISTRATION****Sunshine Act Meeting****TIME AND DATE:** 10 a.m., Thursday, May 19, 2005.**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.**STATUS:** Open.**MATTERS TO BE CONSIDERED:**

1. Proposed Rule: Interpretive Ruling and Policy Statement (IRPS) 05-1, Sales of Nondeposit Investments.
2. Proposed Rule: Part 713 of NCUA's Rules and Regulations, Fidelity Bonds and Insurance Coverage for Federal Credit Unions.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: (703) 518-6304.

Mary Rupp,*Secretary of the Board.*

[FR Doc. 05-9851 Filed 5-13-05; 8:52 am]

BILLING CODE 7535-01-M**NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES****Institute of Museum and Library Services; Cooperative Agreement to Develop and Host the 2006 and 2007 Web-Wise Conferences on Libraries and Museums in the Digital World****AGENCY:** Institute of Museum and Library Services (IMLS), NFAH.**ACTION:** Notification of availability.

SUMMARY: The Institute of Museum and Library Services (IMLS) is requesting proposals leading to one (1) award of a Cooperative Agreement to develop and host the 2006 and 2007 Web-Wise Conferences on Libraries and Museums in the Digital World in cooperation and with the support of IMLS. The Web-Wise Conference highlights exemplary projects that have used federal funding to improve library and museum programs using technology, and brings together library and museum professionals and national technology experts to discuss issues of mutual concern. Organizations eligible for the award include public and not-for-profit institutions of higher education, all types of libraries, library consortia, all types of public and not-for-profit museums and museum consortia. Federally operated and for-profit museums and libraries are not eligible for IMLS funds. Professional associations serving the museum or library field are eligible. The Cooperative Agreement will be for up to two years; however, funds for the 2007 conference will be released upon successful completion of the 2006 conference, availability of federal funds, and approval of the IMLS Director. The award amount will be up to \$400,000. Those interested in receiving the Program Solicitation should see the address and contact information below.

DATES: This Program Solicitation is scheduled for release and posting on the Internet on approximately May 16, 2005. Proposals shall be due on July 18, 2005. Awards will be announced by September 30, 2005.

ADDRESSES: The Program Solicitation will be posted to the Institute's Web site at <http://www.imls.gov/webwise> on approximately May 16, 2005. Requests

for the Program Solicitation may also be addressed to Elaina Norlin, Program Officer, Office of Library Services, Institute of Museum and Library Services, 1800 M Street NW., Room 9317, Washington, DC 20036-5802. Telephone (202) 653-4663; E-mail enorlin@imls.gov.

FOR FURTHER INFORMATION CONTACT:

Elaina Norlin, Program Officer, Office of Library Services, Institute of Museum and Library Services, 1800 M Street NW., Room 9317, Washington, DC, 20036-5802. Telephone (202) 653-4663, E-mail enorlin@imls.gov.

Dated: May 10, 2005.

Rebecca Danvers,

Director of Research and Technology.

[FR Doc. 05-9750 Filed 5-16-05; 8:45 am]

BILLING CODE 7036-01-M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Re-submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104-13. This is the third notice for public comment; the first was published in the **Federal Register** at 69 FR 62304, the second notice to accompany the package to the Office of Management and Budget was published in the **Federal Register** at 70 FR 4887, and no comments were received. NSF is re-forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of the appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and

Regulatory Affairs of OMB, Attention: Desk Office for National Science Foundation, 725-17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to splimpto@nsf.gov.

Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (703) 292-7566.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Abstract: The National Science Foundation (NSF), Division of Human Resources Management (HRM), as part of its Workforce Planning efforts, is continuing to reengineer its business processes. Part of this reengineering effort is devoted to making the application and referral process for both internal and external applicants easier to use, more efficient and timely. Applicants apply on-line using a web-based resume, which prompts them to provide pertinent personal data necessary to apply for a position.

Use of the Information: The information is used by NSF to provide applicants with the ability to apply electronically for NSF positions and receive notification as to their qualifications, application dispensation and to request to be notified of future vacancies for which they may qualify.

In order to apply for vacancies, applicants are encouraged to submit certain data in order to receive consideration. Users only need access to the Internet for this system to work. This information is used to determine which applicants are best qualified for a position, based on applicant responses to a series of job related "yes/no" or "multiple choice" questions. The resume portion requires applicants to provide the same information they would provide were they submitting a paper OF-612. The obvious benefit being that the applicant may do so on-line, 24 hours a day/seven days a week and receive electronic notification about the status of their application or information on other vacancies for

which they may qualify. Staff members of the Division of Human Resource Management and the selecting official(s) for specific positions for which applicants apply are the only ones privy to the applicant data. The most significant data is not the applicant personal data such as address or phone number but rather their description of their work experience and their corresponding responses to those questions, which determine their overall rating, ranking, and referral to the selecting official.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 45 minutes to create the on line resume and potentially less than 45 minutes to apply for jobs on-line.

There is no financial burden on the applicant, in fact this relieves much of the burden on the applicant, in fact this relieves much of the burden the former paper-intensive process puts on applicants.

Respondents: Individuals. 7971 applicants applied for NSF vacancies between October 2003 and September 2004.

Average Number of Applicants: Approximately 42 responses per job opening for vacancy announcements between October 2003 and September 2004.

Estimated Total Annual Burden on Respondents: Approximately 45 minutes per respondent total time is all that is needed to complete the on-line application, for a total of 5,978.25 hours annually.

Frequency of Responses: Applicants need only complete the resume one time, and they may use that resume to apply as often as they wish for any NSF job opening.

Dated: May 11, 2005.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05-9775 Filed 5-16-05; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATES: Weeks of May 16, 23, 30, June 6, 13, 20, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of May 16, 2005

There are no meetings scheduled for the week of May 16, 2005.

Week of May 23, 2005—Tentative

Monday, May 23, 2005:

10 a.m.

Discussion of Intergovernmental Issues (Closed—Ex. 9).

1:30 p.m.

Discussion of Security Issues (Closed—Ex. 1).

Wednesday, May 25, 2005:

9:30 a.m.

Briefing on Results of the Agency Action Review Meeting (Public Meeting) (Contact: Lois James, 301-415-1112).

This meeting will be webcast live at the Web address: <http://www.nrc.gov>.

1 p.m.

Briefing on Threat Environment Assessment (Closed—Ex. 1) (New start time).

3 p.m.

Discussion of Security Issues (Closed—Ex. 1).

Week of May 30, 2005—Tentative

Wednesday, June 1, 2005:

9:30 a.m.

Discussion of Security Issues (Closed—Ex. 1).

Thursday, June 2, 2005:

9:30 a.m.

Briefing on Office of International Programs (OIP) Programs, Performance, and Plans (Public Meeting) (Contact: Margie Doane, 301-415-2344).

This meeting will be webcast live at the Web address: <http://www.nrc.gov>.

2:30 p.m.

Discussion of Management Issues (Closed—Ex. 2 & 9). Note: new time, originally scheduled for 1:30 p.m.

Week of June 6, 2005—Tentative

There are no meetings scheduled for the week of June 6, 2005.

Week of June 13, 2005—Tentative

There are no meetings scheduled for the week of June 13, 2005.

Week of June 20, 2005—Tentative

There are no meetings scheduled for the week of June 20, 2005.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292.

Contact person for more information: Dave Gamberoni, (301) 415-1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/what-we-do/policy-making/schedule.html>.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301-415-7080, TDD: 301-415-2100, or by e-mail at aks@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: May 12, 2005.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 05-9867 Filed 5-13-05; 9:24 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

Appointments to Performance Review Boards for Senior Executive Service

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Appointment to Performance Review Boards for Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Performance Review Boards.

The following individuals are appointed as members of the NRC Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives and Senior Level employees:

Samuel J. Collins, Regional Administrator, Region I.

Karen D. Cyr, General Counsel.

James E. Dyer, Director, Office of Nuclear Reactor Regulation.

Jesse L. Funches, Chief Financial Officer.

William F. Kane, Deputy Executive Director for Reactor & Preparedness Programs, Office of the Executive Director for Operations.

Bruce S. Mallett, Regional Administrator, Region IV.

Luis A. Reyes, Executive Director for Operations.

Jacqueline E. Silber, Deputy Executive Director for Information Services and Administration and Chief Information Officer.

Jack R. Strosnider, Director, Office of Nuclear Material Safety and Safeguards.

Michael F. Weber, Deputy Director, Office of Nuclear Security and Incident Response.

James T. Wiggins, Deputy Director, Office of Nuclear Regulatory Research.

The following individuals will serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

Stephen G. Burns, Deputy General Counsel, Office of the General Counsel.

Carl J. Paperiello, Director, Office of Nuclear Regulatory Research.

Martin J. Virgilio, Deputy Executive Director for Materials, Research, State and Compliance Programs.

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

EFFECTIVE DATE: May 17, 2005.

FOR FURTHER INFORMATION CONTACT: Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415-7530.

Dated at Rockville, Maryland, this 4th day of May, 2005.

For the U.S. Nuclear Regulatory Commission.

Carolyn J. Swanson,

Secretary, Executive Resources Board.

[FR Doc. E5-2461 Filed 5-16-05; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51681; File No. SR-Amex-2005-28]

Self-Regulatory Organizations; American Stock Exchange, LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto To Amend Section 1101 of the Amex Company Guide To Make Clarifying and Simplifying Changes Relating To Filing and Notice Requirements Applicable to Amex Listed Issuers

May 11, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 28, 2005, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On March 18, 2005, the Amex filed Amendment No. 1 to the proposed rule change.³ On April 20, 2005, the Amex filed Amendment No. 2 to the proposed rule change.⁴ On May 6, 2005, the Amex filed Amendment No. 3 to the proposed rule change.⁵ 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 Amex proposes to revise Section 1101 of the Amex Company Guide (“Company Guide”) in order to make clarifying and simplifying changes relating to filing and notice requirements to the Exchange that are applicable to Amex listed issuers. The Amex is also proposing conforming changes to Section 134 (Filing Requirements) and Section 1003

(Application of Policies) of the Company Guide.⁶

The text of the proposed rule change, as amended, is available on the Amex’s Web site (<http://www.amex.com>), at the Amex’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex 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

Section 1101 of the Company Guide sets forth the general and specific SEC filing and notice requirements applicable to Amex listed issuers, including, but not limited to, the frequency and the format of such filings. Section 1101 also provides a summary guide to the SEC filing requirements, as well as certain reports and notices that listed companies must file with the Exchange, including the date of such filings, the number of copies to be filed with the Exchange, and the relevant Company Guide sections that correspond with each such filing. These Amex requirements also are separately set forth in the applicable Company Guide sections. However, the summary guide contained in Section 1101, which has been in effect for many years, does not contain a complete itemization of all applicable Amex notice and filing requirements. The Amex believes that this can be confusing to Amex listed issuers. In addition, as a result of recent changes to SEC report designations and filing requirements, the summary guide requires several updating revisions.

In order to ensure that Section 1101 remains accurate without the need for continuous revisions necessitated by changes in SEC and/or Amex requirements, the Amex proposes that the operative language be revised and simplified to provide that listed issuers are required to comply with all

applicable SEC filing requirements, as well as all Amex requirements, with respect to timely notice and submissions.⁷ As noted above, these Amex requirements are set forth separately in other provisions of the Company Guide. The proposed revisions to Section 1101 set forth generally these Amex notice and submission requirements, but the detailed summary guide is proposed to be eliminated. Instead, Amex proposes to post a comparable guide itemizing these requirements on its Web site (<http://www.amex.com>) as a service to Amex listed issuers and proposes to update it as necessary.

Section 1101 currently requires that Amex issuers submit reports with various numbers of duplicates to the Exchange. The quantity of duplicates ranges from zero (0) to five (5). For simplifying purposes, and to be consistent with The National Association of Securities Dealers Automated Quotation Stock Market’s requirements,⁸ the Amex is proposing to require its issuers to file three (3) copies of all reports that are required to be filed with the Exchange.

Section 1101 of the Company Guide currently requires Amex issuers to file three (3) copies of their annual reports to shareholders with the Exchange in hardcopy. The Amex proposes to amend this requirement so that electronic submission of annual reports through the SEC’s Electronic Data Gathering Analysis and Retrieval (“EDGAR”) system satisfies the Exchange’s filing requirement. Reports that are filed via EDGAR are readily accessible to the Exchange; therefore, it is not necessary for companies that file through EDGAR to also submit hardcopies to the Amex.

The Amex is proposing to remove the requirement that issuers file with the Exchange proposed amendments to and certified copies of the Certificate of Incorporation, By-laws, or other similar organization documents because these corporate documents are required to be filed on Form 8-K or other SEC forms. Therefore, these documents no longer need to be filed in hardcopy with the Exchange if they have been submitted through EDGAR. Filing requirements pertaining to the material sent to or released to the press would be required to be submitted to the Exchange pursuant to the proposed new rule text.

⁷ The Commission Notes that Section 1003, concerning compliance with Exchange requirements, has also been amended to clarify that listed companies must meet all SEC requirements, as well as Exchange requirements, and can be removed from listing for failure to comply.

⁸ See NASD Rule 4310(c)(14).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Form 19b-4, dated March 18, 2005, which replaced and superseded the original filing in its entirety (“Amendment No. 1”). Amendment No. 1 made technical and clarifying changes to the proposed rule change.

⁴ See Form 19b-4, dated April 20, 2005, which replaced and superseded Amendment No. 1 in its entirety (“Amendment No. 2”). Amendment No. 2 made technical and clarifying changes to the proposed rule change.

⁵ See Form 19b-4, dated May 6, 2005, which replaced and superseded Amendment No. 2 in its entirety (“Amendment No. 3”). Amendment No. 3 made technical and clarifying changes to the proposed rule change. See note 7, *infra*.

⁶ See Amendment No. 3.

To the extent that the Amex updates its Web site, it would be to reflect changes to the SEC's requirements and Amex rules. The Amex notes that any changes to Amex rules would continue to be filed with the Commission prior to implementing any change and that, subsequent to approval, the Web site would be updated to reflect those changes. The Amex represents that the information on the Web site would be readily accessible to issuers and would reflect the current rules and regulations.

The Amex is also proposing conforming changes to Section 134 (Filing Requirements) and Section 1003 (Application of Policies) of the Company Guide.⁹

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(1) of the Act,¹¹ in particular, in that it is designed to enforce compliance by Exchange members and persons associated with its members with the rules of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the Exchange on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2005-28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2005-28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2005-28 and should be submitted on or before June 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5-2444 Filed 5-16-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51680; File No. SR-CBOE-2004-87]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Trading Rules on the Hybrid System for Index Options and Options on ETFs

May 10, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 17, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On March 23, 2005, the CBOE submitted Amendment No. 1 to the proposed rule change.³ On April 26, 2005, the CBOE submitted Amendment No. 2 to the proposed rule change.⁴ 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 adopt index hybrid trading rules applicable to classes in which there are Designated Primary Market-Makers ("DPMs"), Lead Market-Makers ("LMMs") or, alternatively, Market-Makers ("MMs"). Below is the text of the proposed rule change, as amended. Proposed new language is in *italics*; proposed deletions are in [brackets].

Rule 6.1 Days and Hours of Business

* * * * *

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superseded the originally filed proposed rule change.

⁴ Amendment No. 2 replaced and superseded the originally filed proposed rule change and Amendment No. 1.

⁹ See Amendment No. 3.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(1).

Interpretations and Policies

.01–.03 No change.

.04 For those option classes and within such time periods as the appropriate Floor Procedure Committee, MTS or the President of the Exchange may designate, members may, prior to the scheduled opening rotation, enter option market quote indications based upon the anticipated opening price of the security underlying such designated option class. This interpretation will not impose upon members an affirmative responsibility to provide and post pre-opening option market quote indicators. Generally, pre-opening option market quote indications would be provided by members for options classes whose underlying security is sold over-the-counter and those option classes whose underlying security shows little market volatility. The following procedures shall be followed by members and the Order Book Official, [or] DPM, or LMM when posting pre-opening option market quote indications.

(a) For those options classes designated as eligible for pre-opening option market quote indications the OBO, [or] DPM, or LMM shall, no earlier than 8:15 a.m. (CT), request market quote indications from the members present in the trading crowd.

(b) The members and DPM or LMM may then provide pre-opening option market quote indications at which time the OBO, [or] DPM, or LMM shall post these indications. Upon the opening of the underlying security and in no case earlier than 8:30 a.m. (CT) the OBO, [or] DPM, or LMM shall request verbal confirmation from the trading crowd that such pre-opening option market quote indications reflect the actual market and constitute valid opening quotations. If the crowd indicates that such pre-opening option market quote indications reflect the actual market and constitute valid opening quotations, the OBO, [or] DPM, or LMM shall determine that a simultaneous opening rotation has occurred. If they do not confirm the indications, an opening rotation in accordance with applicable Exchange Rules for all series in which floor brokers in the crowd or the Book hold executable limit or market orders will be held. After such orders have been executed, the OBO, [or] DPM, or LMM shall declare the option class open and the series subject to applicable Exchange Rules.

(c) Notwithstanding paragraphs (a) and (b), the OBO, [or] DPM, or LMM shall direct that an opening rotation take place pursuant to applicable exchange Rules if (i) the OBO, [or] DPM, or LMM fails to receive market quote indications;

or (ii) the underlying security opens substantially higher or lower than the opening price anticipated by the crowd that provided the pre-opening market quote indications; or (iii) there are substantial order imbalances affecting the options class; or (iv) for such other reasons as appropriate Floor Officials, the OBO, the DPM, or LMM or the Exchange may determine.

* * * * *

Rule 6.2 Trading Rotations

* * * * *

Interpretations and Policies

.01 (a) Trading rotations shall be employed at the opening of the Exchange each business day. For each class of option contracts that has been approved for trading, the opening rotation shall be conducted by the [Board Broker,] Designated Primary Market-Maker (“DPM”), Lead Market-Maker (“LMM”), or Order Book Official (“OBO”) acting in such class of options. The opening rotation in each class of options shall be held promptly following the opening of the underlying security on the principal market where it is traded or after 8:30 a.m. for index options. As a rule, a [Board Broker,] DPM, LMM, or OBO acting in more than one class of options should open them in the same order in which the underlying securities are opened.

(b) In conducting each such opening rotation, the [Board Broker,] DPM, LMM, or OBO should ordinarily first open the one or more series of options of a given class having the nearest expiration, then proceed to the series of options having the next most distant expiration, and so forth, until all series have been opened. If both puts and calls covering the same underlying security are traded, the [Board Broker,] DPM, LMM, or OBO shall determine which type of option will open first, and shall alternate the opening of put series and call series. A [Board Broker,] DPM, LMM, or OBO may conduct the opening rotation in another manner only with the approval of two Floor Officials or at the direction of the appropriate Floor Procedure Committee. A modified opening rotation such as that described in Interpretation .02 to Rule 24.13 may be conducted for certain index options classes.

(c) In the event an underlying security has not opened within a reasonable time after 8:30 a.m. (Chicago time), the [Board Broker,] DPM, LMM, or OBO acting in option contracts on such security shall report the delay to a Floor Official and an inquiry shall be made to determine the cause of the delay. The opening rotation for option contracts in such security shall be delayed until the

underlying security has opened unless two Floor Officials determine that the interests of a fair and orderly market are best served by opening trading in the option contracts.

(d) No change.

.02–.05 No change.

Rule 6.2B Hybrid Opening System

(a) For a period of time before the opening of trading in the underlying security (*or in the case of index options, prior to 8:30 a.m., CT*), as determined by the appropriate Floor Procedure Committee (FPC) and announced to the membership via Regulatory Circular, the Hybrid System will accept orders and quotes. The Hybrid System will disseminate to market participants (as defined in Rule 6.45A or 6.45B) information about resting orders in the Book that remain from the prior business day and any orders submitted before the opening. At a randomly selected time within a number of seconds after the primary market for the underlying security disseminates the opening trade or the opening quote (*or after 8:30 a.m. for index options unless unusual circumstances exist*), the System initiates the opening procedure and sends a notice (“Opening Notice”) to market participants who may then submit their opening quotes. The DPM or any appointed LMM for the class must enter opening quotes. Spread orders and contingency orders do not participate in the opening trade or in the determination of the opening price.

(b) After the Opening Notice is sent, the System will calculate and provide the Expected Opening Price (“EOP”) and expected opening size (“EOS”) given the current resting orders during the EOP Period (“EOP Period”). The appropriate FPC will establish the duration of the EOP Period on a class basis at between five and sixty seconds. The EOP, which will be calculated and disseminated to market participants every few seconds, is the price at which the greatest number of orders in the Book are expected to trade. After the Opening Notice is sent, quotes and orders may be submitted without restriction. An EOP may only be calculated if: (i) there are market orders in the Book, or the Book is crossed (highest bid is higher than the lowest offer) or locked (highest bid equals lowest offer), and (ii) the DPM’s quote (*or if there is no DPM appointed to the class, at least one quote from either a market-maker or LMM with an appointment in the class*) is present and complies with the legal width quote requirements of Rule 8.7(b)(iv).

(c)–(d) No change.

(e) The System will not open a series if one of the following conditions is met:

(i) *In classes in which a DPM has been appointed*, [T]here is no quote from the DPM for the series. *In classes in which no DPM has been appointed*, there is no quote from at least one market-maker or LMM with an appointment in the class;

(ii)–(iii) No change.

(f)–(i) No change.

Rule 6.45A Priority and Allocation of Equity Option Trades on the [for] CBOE Hybrid System

Generally: The rules of priority and order allocation procedures set forth in this rule shall apply only to *equity option classes designated by the Exchange to be traded on the CBOE Hybrid System and has no applicability to index option and options on ETF classes*. The term “market participant” as used throughout this rule refers to a Market-Maker, an in-crowd DPM, an e-DPM, a Remote Market-Maker, and a floor broker representing orders in the trading crowd. The term “in-crowd market participant” only includes an in-crowd Market-Maker, in-crowd DPM, and floor broker representing orders in the trading crowd.

(a) Allocation of Incoming Electronic Orders: The Exchange shall apply, for each class of options, the following rules of trading priority.

(i) * * *

(A) No change.

(B) Allocation

(1) No change.

(2) * * *

Component A: No change.

Component B: No change.

Final Weighting: The final weighting formula for equity options, which shall be determined by the appropriate FPC and apply uniformly across all options under its jurisdiction, shall be a weighted average of the percentages derived for Components A and B multiplied by the size of the incoming order. Initially, the weighting of components A and B shall be equal, represented mathematically by the formula: $((\text{Component A Percentage} + \text{Component B Percentage})/2) * \text{incoming order size}$. [The final weighting formula for index options and options on ETFs shall be established by the appropriate FPC and may vary by product. Changes made to the percentage weightings of Components A and B shall be announced to the membership via Regulatory Circular at least one day before implementation of the change.]

(C) No change.

(b) No change.

(c) Interaction of Market Participant’s Quotes and/or Orders with Orders in Electronic Book

* * * * *

(i) No change.

(ii) * * *

Component A: No change.

Component B: No change.

Final Weighting: The final weighting formula for equity options, which shall be determined by the appropriate FPC and apply uniformly across all options under its jurisdiction, shall be a weighted average of the percentages derived for Components A and B, multiplied by the size of the order(s) in the electronic book. Initially, the weighting of components A and B shall be equal, represented mathematically by the formula: $((\text{Component A Percentage} + \text{Component B Percentage})/2) * \text{electronic book order size}$.

[The final weighting formula for index options and options on ETFs shall be established by the appropriate FPC and may vary by product. Changes made to the percentage weightings of Components A and B shall be announced to the membership via Regulatory Circular at least one day before implementation of the change.]

(iii) No change.

(d) No change.

(e) Classes Trading on Hybrid

[By December 31, 2003, Hybrid will be operational in CBOE’s 200 most active equity option classes and, by December 31, 2004, Hybrid will be operational in CBOE’s 500 most active equity option classes.] The Exchange intends to implement Hybrid floorwide in all other equity classes by the fourth quarter of 2006. [Index option classes and options on ETFs specifically designated by the appropriate Floor Procedure Committee may trade on the Hybrid System. In order to be eligible for trading on Hybrid, index option classes and options on ETFs must utilize an in-crowd Designated Primary Market Maker.]

Interpretations and Policies . . . No change.

Rule 6.45B Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System

Generally: The rules of priority and order allocation procedures set forth in this rule shall apply only to *index options and options on ETFs that have been designated by the appropriate Exchange procedures committee for trading on the CBOE Hybrid System*. The term “market participant” as used throughout this rule refers to a Market-Maker, a Remote Market-Maker, an in-crowd DPM or LMM, an e-DPM with an appointment in the subject class, and a

floor broker representing orders in the trading crowd. The term “in-crowd market participant” only includes an in-crowd Market-Maker, in-crowd DPM or LMM, and floor broker representing orders in the trading crowd.

(a) Allocation of Incoming Electronic Orders: The appropriate Exchange procedures committee will determine to apply, for each class of options, one of the following rules of trading priority described in paragraphs (i) or (ii). The Exchange will issue a Regulatory Circular periodically specifying which priority rules will govern which classes of options any time the appropriate Exchange committee changes the priority.

(i) Price-Time or Pro-Rata Priority Price-Time Priority: Under this method, resting quotes and orders in the book are prioritized according to price and time. If there are two or more quotes or orders at the best price then priority is afforded among these quotes or orders in the order in which they were received by the Hybrid System; or

Pro Rata Priority: Under this method, resting quotes and orders in the book are prioritized according to price. If there are two or more quotes or orders at the best price then trades are allocated proportionally according to size (in a pro rata fashion). The executable quantity is allocated to the nearest whole number, with fractions $\frac{1}{2}$ or greater rounded up and fractions less than $\frac{1}{2}$ rounded down. If there are two market participants that both are entitled to an additional $\frac{1}{2}$ contract and there is only one contract remaining to be distributed, the additional contract will be distributed to the market participant whose quote or order has time priority.

Additional Priority Overlays Applicable to Price-Time or Pro-Rata Priority Methods

In addition to the base allocation methodologies set forth above, the appropriate Exchange procedures committee may determine to apply, on a class-by-class basis, either or both of the following designated market participant overlay priorities. The Exchange will issue a Regulatory Circular periodically which will specify which classes of options are subject to these additional priorities as well as any time the appropriate Exchange procedures committee changes these priorities.

(1) Public Customer: When this priority overlay is in effect, the highest bid and lowest offer shall have priority except that public customer orders shall have priority over non-public customer orders at the same price. If there are two or more public customer orders for the

same options series at the same price, priority shall be afforded to such public customer orders in the sequence in which they are received by the System, even if the Pro Rata Priority allocation method is the chosen allocation method. For purposes of this Rule, a Public Customer order is an order for an account in which no member, non-member participant in a joint-venture with a member, or non-member broker-dealer (including a foreign broker-dealer) has an interest.

(2) Participation Entitlement: The appropriate Exchange procedures committee may determine to grant DPMs, LMMs, or e-DPMs participation entitlements pursuant to the provisions of Rule 8.87 or 8.15B. In allocating the participation entitlement, all of the following shall apply:

(A) To be entitled to their participation entitlement, a DPM's or LMM's or e-DPM's order and/or quote must be at the best price on the Exchange.

(B) A DPM or LMM or e-DPM may not be allocated a total quantity greater than the quantity that the DPM or LMM or e-DPM is quoting (including orders not part of quotes) at that price. If Pro Rata Priority is in effect, and the DPM's or LMM's or e-DPM's allocation of an order pursuant to its participation entitlement is greater than its percentage share of quotes/orders at the best price at the time that the participation entitlement is granted, the DPM or LMM or e-DPM shall not receive any further allocation of that order.

(C) In establishing the counterparties to a particular trade, the DPM's or LMM's or e-DPM's participation entitlement must first be counted against the DPM's or LMM's or e-DPM's highest priority bids or offers.

(D) The participation entitlement shall not be in effect unless the Public Customer priority is in effect in a priority sequence ahead of the participation entitlement and then the participation entitlement shall only apply to any remaining balance.

(ii) Ultimate Matching Algorithm ("UMA"): Under this method, a market participant who enters a quotation and whose quote is represented by the disseminated CBOE best bid or offer ("BBO") shall be eligible to receive allocations of incoming electronic orders for up to the size of its quote, in accordance with the principles described below. As an initial matter, if the number of contracts represented in the disseminated quote is less than the number of contracts in an incoming electronic order(s), the incoming electronic order(s) shall only be entitled to receive a number of contracts up to the size of the disseminated quote, in accordance with Rule 6.45B(a)(ii)(B). The balance of the electronic order will be eligible to be filled at the refreshed quote either electronically (in accordance with paragraph (a)(ii)(B) below) or manually (in accordance with Rule 6.45B(b)) and, as such, may receive a split price execution.

(A) Priority of Orders in the Electronic Book

(1) Public Customer Orders: Public customer orders in the electronic book have priority. Multiple public customer orders in the electronic book at the same price are ranked based on time priority. If a public customer order(s) in the electronic book matches, or is matched by, a market participant quote, the public customer order(s) shall have priority, and the balance of the

incoming order, if any, will be allocated pursuant to Rule 6.45B(a)(ii).

(2) Broker-dealer Orders: If pursuant to Rule 7.4(a) the appropriate Exchange procedures committee determines to allow certain types of broker-dealer orders to be placed in the electronic book, then for purposes of this rule, the cumulative number of broker-dealer orders in the electronic book at the best price shall be deemed one "market participant" regardless of the number of broker-dealer orders in the book. The allocation due the broker-dealer orders in the electronic book by virtue of their being deemed a "market participant" shall be distributed among each broker-dealer order comprising the "market participant" pursuant to Rule 6.45B(a)(ii)(B).

(B) Allocation

(1) Market Participant Quoting Alone at BBO: When a market participant is quoting alone at the disseminated CBOE BBO and is not subsequently matched in the quote by other market participants prior to execution, it will be entitled to receive incoming electronic order(s) up to the size of its quote. If another market participant joins in the disseminated quote prior to execution of an incoming electronic order(s) such that more than one market participant is quoting at the BBO, incoming electronic order(s) will be distributed in accordance with (B)(2) below.

(2) More than One Market Participant Quoting at BBO: When more than one market participant is quoting at the BBO, inbound electronic orders shall be allocated pursuant to the following allocation algorithm:

Allocation Algorithm

<p>Incoming Order Size * (Equal Percentage based on number of market participants quoting at BBO) (Component A)</p>	<p>±</p>	<p>(Pro - rata Percentage based on size of market participant quotes) (Component B)</p>
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Where:

Component A: The percentage to be used for Component A shall be an equal percentage, derived by dividing 100 by the number of market participants quoting at the BBO.

Component B: Size Prorata Allocation. The percentage to be used for Component B of the Allocation Algorithm formula is that percentage that the size of each market

participant's quote at the best price represents relative to the total number of contracts in the disseminated quote.

Final Weighting: The final weighting formula, which shall be established by the appropriate Exchange procedures committee and may vary by product, shall be a weighted average of the percentages derived for Components A and B multiplied by the size of the incoming order. Changes made to the

percentage weightings of Components A and B shall be announced to the membership via Regulatory Circular at least one day before implementation of the change.

(C) Participation Entitlement: If a DPM, LMM, or e-DPM is eligible for an allocation pursuant to the operation of the Algorithm described in paragraph (a) of Rule 6.45B, the DPM, LMM, or e-DPM may be entitled to receive an

allocation (not to exceed the size of its quote) equal to either:

(1) The greater of the amount it would be entitled to pursuant to the participation right established pursuant to Rule 8.87 or 8.15B (and Regulatory Circulars issued thereunder) or the amount it would otherwise receive pursuant to the operation of the Algorithm described above provided, however, that in calculating the DPM's or LMM's allocation under the Algorithm, DPMs or LMMs utilizing more than one membership in the trading crowd where the subject class is traded shall count as two market participants for purposes of Component A of the Algorithm; or

(2) The amount it would be entitled to pursuant to the participation right established pursuant to Rule 8.87 or 8.15B (and Regulatory Circulars issued thereunder); or

(3) The amount it would be entitled to receive pursuant to the operation of the Algorithm described above provided, however, that in calculating the DPM's or LMM's allocation under the Algorithm, DPMs or LMMs utilizing more than one membership in the trading crowd where the subject class is traded shall count as two market participants for purposes of Component A of the Algorithm. The appropriate Exchange procedures committee shall determine which of the preceding three entitlement formulas will be in effect on a class by class basis. All pronouncements regarding the entitlement formula shall be made via Regulatory Circular. The participation entitlement percentage is expressed as a percentage of the remaining quantity after all public customer orders in the electronic book have been executed.

(b) Allocation of Orders Represented in Open Outcry: The allocation of orders that are represented in the trading crowd by floor brokers (including DPMs acting as agent under 8.85(b)) shall be as described below in subparagraphs (b)(i) and (b)(ii). With respect to subparagraph (b)(ii), the floor broker representing the order (including DPMs acting as agent under 8.85(b)) shall determine the sequence in which bids (offers) are made.

(i) Priority of Orders in the Electronic Book

(A) Public Customer Orders: Public customer orders in the electronic book have priority. Multiple public customer orders in the electronic book at the same price are ranked based on time priority. If a public customer order(s) in the electronic book matches, or is matched by, an oral bid or offer provided by a member of the trading crowd, the public

customer order(s) shall have priority and the balance of the order, if any, will be allocated in open outcry in accordance with paragraph (b)(ii).

(B) Broker-dealer Orders: If pursuant to Rule 7.4(a) the appropriate Exchange procedures committee determines to allow broker-dealer orders to be placed in the electronic book, then for purposes of this rule, the cumulative number of broker-dealer orders in the electronic book at the best price shall be deemed one "book market participant" regardless of the number of broker-dealer orders in the book. The allocation due the broker-dealer orders in the electronic book by virtue of their being deemed a "book market participant" shall be in accordance with paragraph (ii) below and shall be distributed among each broker-dealer order comprising the "book market participant" in accordance with the Allocation Algorithm formula described in paragraph 6.45B(a)(ii)(B).

(ii) Allocation

(A) The highest bid (lowest offer) shall have priority

(B) If two or more bids or offers represent the best price, each of which is NOT a book market participant, priority shall be afforded in accordance with the allocation principles contained in CBOE Rule 6.45(a) or (b) and NOT Rule 6.45B(b).

If two or more bids (offers) represent the best price, one of which represents a book market participant, priority shall be afforded to the market participants in the sequence in which their bids (offers) were made. Provided however that the first market participant to respond shall be entitled to 70% of the order. The second market participant to respond (if ascertainable) shall be entitled to 70% of the remainder of the order (i.e., 70% of 30%). The balance of the order shall be apportioned equally among the remaining market participants bidding (offering) at the same price and the book market participant (as defined in Rule 6.45B(b)(i)(B) above). If it is not possible to determine the order in which market participants responded, the balance of the order shall be apportioned equally among the remaining market participants bidding (offering) at the same price and, if applicable, the book market participant.

In the event a market participant declines to accept any portion of the available contracts, any remaining contracts shall be apportioned equally among the other participants who bid (offered) at the best price (including the book market participant, if applicable) at the time the market was established until all contracts have been

apportioned. The floor broker representing the order (including DPMs acting as agent under 8.85(b)) shall determine the sequence in which bids (offers) are made.

(iii) Exception: Complex Order Priority:

A member holding a spread, straddle, or combination order (or a stock-option order or security future-option order as defined in Rule 1.1(ii)(b) and Rule 1.1(zz)(b), respectively) and bidding (offering) on a net debit or credit basis (in a multiple of the minimum increment) may execute the order with another member without giving priority to equivalent bids (offers) in the trading crowd or in the electronic book provided at least one leg of the order betters the corresponding bid (offer) in the book. Stock-option orders and security future-option orders, as defined in Rule 1.1(ii)(a) and Rule 1.1(zz)(a), respectively, have priority over bids (offers) of the trading crowd but not over bids (offers) of public customers in the limit order book.

(c) Interaction of Market Participant's Quotes and/or Orders with Orders in Electronic Book

Market participants, as defined in Rule 6.45B, may submit quotes or orders electronically to trade with orders in the electronic book. A floor broker market participant may only represent as agent customer orders or orders from unaffiliated broker-dealers. When a market participant's quote or order interacts with the order in the book, a trade occurs, CBOE will disseminate a last sale report, and the size of the book order will be decremented to reflect the execution. In the limited instance when the appropriate Exchange procedures committee has determined that the allocation of incoming electronic orders shall be pursuant to price-time priority as described in Rule 6.45B(a)(i), allocation of orders in the Electronic Book pursuant to this paragraph shall be based on time-priority (i.e., allocated to the first market participant to interact with the order in the book, up to the size of that market participant's order). In all other instances, the allocation of the book order shall be as follows:

(i) One Market Participant Trades with the Electronic Book: If only one market participant submits an electronic order or quote to trade with an order in the electronic book, that market participant shall be entitled to receive an allocation of the order in the electronic book up to the size of the market participant's order.

(ii) Multiple Market Participant Trade with the Electronic Book: Each market participant that submits an order or

quote to buy (sell) an order in the electronic book within a period of time not to exceed 5-seconds of the first

market participant to submit an order ("N-second group") shall be entitled to receive an allocation of the order in the

electronic book pursuant to the following allocation algorithm:
Allocation Algorithm

Electronic Book Order(s) Size *	(Equal percentage based on number of members of "N - second group")	(Size pro - rata percentage based on size of orders of "N - second group" members)
	(Component A)	(Component B)

Where:

Component A: The percentage to be used for Component A shall be an equal percentage derived by dividing 100 by the number of market participants in the "N-second group."

Component B: Size Prorata Allocation. The percentage to be used for Component B of the Allocation Algorithm formula is that percentage that each market participant of the "N-second group's" quote at the best price represents relative to the total number of contracts of all market participants of the "N-second group." The appropriate Exchange procedures committee may determine that the maximum quote size to be used for each market participant in the Component B calculation shall be no greater than the cumulative size of orders resident in the electronic book at the best price at which market participants are attempting to buy (sell).

Final Weighting: The final weighting formula, which shall be established by the appropriate Exchange procedures committee and may vary by product, shall be a weighted average of the percentages derived for Components A and B, multiplied by the size of the order(s) in the electronic book. Changes made to the percentage weightings of Components A and B shall be announced to the membership via Regulatory Circular at least one day before implementation of the change.

Length of "N-Second Group" Timer: The appropriate Exchange procedures committee will determine the length of the "N-second group" timer on a class by class basis provided, however, that the duration of the "N-second group" timer shall not exceed five seconds. Any changes to the duration of the "N-second group" timer shall be announced via Regulatory Circular.

(iii) Participation Entitlement: There is no DPM or LMM participation entitlement applicable to orders allocated pursuant to this paragraph (c).

(d) Quotes Interacting With Quotes

(i) In the event that a Market-Maker's disseminated quotes interact with the disseminated quote(s) of other Market-

Makers, resulting in the dissemination of a "locked" quote (e.g., \$1.00 bid—1.00 offer), the following shall occur:

(A) The Exchange will disseminate the locked market and both quotes will be deemed "firm" disseminated market quotes.

(B) The Market-Makers whose quotes are locked will receive a quote update notification advising that their quotes are locked, unless the "counting period" referenced below is set to zero seconds.

(C) When the market locks, a "counting period" will begin during which Market-Makers whose quotes are locked may eliminate the locked market. Provided, however, that in accordance with subparagraph (A) above, a Market-Maker will be obligated to execute customer and broker-dealer orders eligible for automatic execution pursuant to Rule 6.13 at his disseminated quote in accordance with Rule 8.51. If at the end of the counting period the quotes remain locked, the locked quotes will automatically execute against each other in accordance with the allocation algorithm described above in Rule 6.45B(a). The length of the counting period will be established by the appropriate Exchange procedures committee, may vary by product, and will not exceed one second.

(ii) Inverted Quotes: The Hybrid System will not disseminate an internally crossed market (i.e., the CBOE best bid is higher than the CBOE best offer). If a Market-Maker submits a quote ("incoming quote") that would invert an existing quote ("existing quote"), the Hybrid System will change the incoming quote such that it locks the first quote and sends a notice to the second Market-Maker indicating that its quote was changed. Locked markets are handled in accordance with paragraph (d)(i) above. During the lock period, if the existing quote is cancelled subsequent to the time the incoming quote is changed, the incoming quote will automatically be restored to its original terms.

Interpretations and Policies . . .

.01 Principal Transactions: Order entry firms may not execute as principal against orders they represent as agent unless: (i) Agency orders are first exposed on the Hybrid System for at least thirty (30) seconds, (ii) the order entry firm has been bidding or offering for at least thirty (30) seconds prior to receiving an agency order that is executable against such bid or offer, or (iii) the order entry firm proceeds in accordance with the crossing rules contained in Rule 6.74.

.02 Solicitation Orders. Order entry firms must expose orders they represent as agent for at least thirty (30) seconds before such orders may be executed electronically via the electronic execution mechanism of the Hybrid System, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders.

Rule 7.4 Obligations for Orders

(a) Eligibility and Acceptance

(1) Eligibility: Public customer orders are eligible for entry into the electronic book. Market participants, as defined in Rule 6.45A[(a)] or 6.45B, shall be eligible to submit orders for entry into the book. The appropriate FPC may determine on an issue-by-issue basis that the following types of orders may also be eligible for entry into the electronic book:

* * * * *

(2) Acceptance: An Order Book Official ("OBO") shall ordinarily be expected to accept orders for all option contracts of the class or classes to which his appointment extends that are properly submitted for entry into the electronic book. An Order Book Official shall not accept orders from any source other than a member or, with respect to orders submitted through the Intermarket Options Linkage in index options classes on the Hybrid Trading System that are not assigned to a DPM, from an exchange (other than CBOE) that is a participant in the Intermarket Options Linkage Plan. For the purposes

of this rule, an order shall be deemed to be from a member if the order is placed with an Order Book Official by a person associated with a member or through the telecommunications system of a member firm.

For Index option classes on the Hybrid Trading System that are not assigned a DPM, the OBO shall be responsible for (1) routing linkage Principal Acting as Agent (P/A) Orders and Satisfaction orders (utilizing the LMM's account for the benefit of an underlying order) to other markets based on prior written instructions that must be provided by the LMM to the OBO; (2) handling all linkage orders or portions of linkage orders received by the Exchange that are not automatically executed.

(b) Types of Orders. Orders which may be placed with an Order Book Official or directly into the electronic book, shall include the following:

(i)–(iii) No change.

(iv) Orders from market participants (as defined in Rule 6.45A[(a)(2)] or 6.45B).

(c)–(g) No change.

Interpretations and Policies . . .

.01–.05 No change.

.06 Electronic execution of certain orders on the Exchange's electronic limit order book is provided for under sub-paragraphs (d)(iv) and (v) of Rule 6.8, subparagraphs (a)–(d) of Rules 6.45A and 6.45B, and subparagraph (b) of Rule 6.13.

Rule 8.14 Index Hybrid Trading System Classes: Market-Maker Participants

(a) Generally: The Exchange procedures committee may authorize for trading on the CBOE Hybrid Trading System or Hybrid 2.0 Program index options and options on ETFs currently trading on the Exchange. The appropriate Exchange procedures committee shall determine the eligible categories of market maker participants for option classes currently trading on the Exchange, which may include:

Designated Primary Market-Makers ("DPM"): Market makers as defined in Rule 8.80 whose activities are governed by, among other rules, CBOE Rules 8.80–8.91.

Lead Market-Makers ("LMM"): Market makers as defined in Rule 8.15A whose activities are governed by, among other rules, CBOE Rule 8.15A.

Electronic DPMs ("e-DPM"): Market makers as defined in Rule 8.92 whose activities are governed by, among other rules, CBOE Rules 8.92–8.94.

Market-Makers ("MM"): Market makers as defined in Rule 8.1 whose

activities are governed by, among other rules, CBOE Rules 8.1–8.11.

(b) Each class designated by the appropriate Exchange committee for trading on Hybrid or the Hybrid 2.0 Platform shall have an assigned DPM or LMM. The appropriate Exchange committee may determine to designate classes for trading on Hybrid or the Hybrid 2.0 Platform without a DPM or LMM provided the following conditions are satisfied:

1. There are at least four (4) market makers quoting in the class;

2. Each market maker with an appointment in the class is subject to the continuous quoting obligations imposed by CBOE Rule 8.7(d);

3. In the event CBOE activates request-for-quote ("RFQ") functionality in index classes, each MM will have an obligation to respond to that percentage of RFQs as determined by the appropriate Exchange procedures committee, provided however, that such percentage shall not be less than 80%. Regarding RFQ responses:

(i) MMs must comply with the bid-ask differential contained in Rule 8.7(b)(iv).

(ii) Responses must be submitted within the amount of time specified by the appropriate Exchange procedures committee from the time the RFQ is entered.

(iii) Responses must be for a minimum of ten contracts or a size specified by the appropriate Exchange procedures committee, whichever is greater.

(iv) MMs responding to an RFQ must maintain a continuous market in that series for a subsequent 30-second period (or for some other time specified by the appropriate EPC) or until his/her quote is filled in its entirety. A MM may change his/her quotes during this 30-second period but he/she may not cancel them without replacing them. If the MM does cancel without replacing the quote his/her response to the RFQ will not count toward the MM's response rate requirement set forth above. A MM will be considered to have responded to the RFQ if he/she has a quote in the market for the series at the time the RFQ is received and he/she maintains it for the appropriate period of time.

4. In order to allow a multiply-listed product trade without a DPM or LMM, the Exchange must amend its Market-Maker obligation rules (and receive Commission approval thereof) to indicate how orders will be submitted to other exchanges on behalf of Market-Makers in accordance with the Intermarket Options Linkage Plan requirements.

Rule 8.15 Lead Market Makers and Supplemental Market Makers in Non-Hybrid Classes

No change.

Rule 8.15A Lead Market Makers in Hybrid Classes

(a) Assignment, Removal, and Evaluation of LMMs: The appropriate Market Performance Committee (the "Committee") may appoint one or more market makers in good standing with an appointment in an option class for which a DPM has not been appointed as Lead Market-Makers ("LMMs").

(i) LMMs shall be appointed on the first day following an expiration for a period of no less than one month ("expiration month") and may be assigned to a class with one or more LMMs.

A. Factors to be considered by the Committee in selecting LMMs include: adequacy of capital, experience in trading index options or options on ETFs, presence in the trading crowd, adherence to Exchange rules and ability to meet the obligations specified below.

An individual may be appointed as an LMM for one expiration month at a time. When individual members are associated with one or more other members, only one member may receive an LMM appointment.

B. Removal of LMMs may be effected by the Committee on the basis of the failure of one or more LMMs assigned to the class to meet the obligations set forth below, or any other applicable Exchange rule. An LMM removed under this rule may seek review of that decision under Chapter XIX of the Rules.

C. If one or more LMMs are removed or if for any reason an LMM shall no longer be eligible for or shall resign his appointment or shall fail to perform his duties, the Committee may appoint an interim LMM to complete the monthly obligations of the former LMM.

D. The Committee shall review and evaluate the conduct of LMMs, including but not limited to compliance with Rules 8.1, 8.2, 8.3, and 8.7 and may hold all LMMs responsible for the performance of each LMM in the class.

(b) LMM Obligations: LMMs are required to:

(i) Provide continuous market quotations that comply with the bid/ask differentials permitted by Rule 8.7(b) in 90% of the option series within their assigned classes;

(ii) Assure that each of its displayed market quotations is honored for at least the number of contracts prescribed pursuant to Rule 8.51;

(iii) Perform the above obligations for a period of one expiration month

commencing on the first day following an expiration. Failure to perform such obligations for such time may result in suspension of up to three months from trading in all series of the option class;

(iv) Participate in the Hybrid Opening System; and

(v) Respond to any open outcry request for quote by a floor broker with a two-sided quote complying with the current quote width requirements of Rule 8.7(b)(iv) for a minimum of ten contracts for non-broker-dealer orders and one contract for broker-dealer orders.

(vi) Act as agent for orders routed to other exchanges that are participants in the Intermarket Options Linkage Plan. The LMM's account shall be used for P/A and Satisfaction orders routed by the Order Book Official for the benefit of an underlying order, and the LMM shall be responsible for any charges incurred from the execution of such orders. LMMs shall also provide written instructions to Order Book Officials regarding the routing of P/A and Satisfaction orders.

8.15B Participation Entitlement of LMMs

(a) The appropriate Market Performance Committee may establish, on a class by class basis, a participation entitlement formula that is applicable to LMMs.

(b) To be entitled to a participation entitlement, the LMM must be quoting at the best bid/offer on the Exchange and the LMM may not be allocated a total quantity greater than the quantity for which the LMM is quoting at the best bid/offer on the Exchange. The participation entitlement is based on the number of contracts remaining after all public customer orders in the book at the best bid/offer on the Exchange have been satisfied.

(c) The LMM participation entitlement shall be: 50% when there is one Market-Maker also quoting at the best bid/offer on the Exchange; 40% when there are two Market-Makers also quoting at the best bid/offer on the Exchange; and, 30% when there are three or more Market-Makers also quoting at the best bid/offer on the Exchange. If more than one LMM is entitled to a participation entitlement, such entitlement shall be distributed equally among all eligible LMMs provided, however, that an LMM may not be allocated a total quantity greater than the quantity for which the LMM is quoting at the best bid/offer on the Exchange.

The appropriate Market Performance Committee may determine, on a class-by-class basis, to decrease the LMM participation entitlement percentages

from the percentages specified in paragraph (c). Such changes will be announced to the membership in advance of implementation via Regulatory Circular.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently trades equity options, index options, and options on exchange-traded funds ("ETFs") on its Hybrid Trading System ("Hybrid"). Currently, one prerequisite for trading a class on Hybrid, that there be a DPM assigned to the class, prevents the Exchange from introducing Hybrid into those classes in which there is no DPM. The Exchange states that the purpose of this rule filing is to extend the Hybrid trading rules to classes of index options and options on ETFs (collectively, "index classes") without an assigned DPM. In this regard, the proposal would allow the trading of these index classes on Hybrid either with a DPM, a LMM, or without a DPM or LMM in classes where there are a requisite number of assigned MMs.

I. Trading Without an LMM or DPM

The Exchange proposes to adopt new CBOE Rule 8.14 to specify the permitted categories of market participants in index classes. The proposed rule allows the appropriate Exchange procedures committee ("EPC"), for classes currently trading on the Exchange, to authorize for trading on the CBOE Hybrid Trading System or Hybrid 2.0 Program index options and options on ETFs. Additionally, the appropriate EPC would determine the eligible categories of market maker participants for each of these option classes currently trading on the Exchange, which may include

DPMs, LMMs, Electronic DPMs ("e-DPMs"), and MMs.⁵ In this regard, the Exchange believes that the appropriate EPC is in the best position to determine which trading platform (Hybrid or Hybrid 2.0) maximizes the competitive position of the Exchange and, accordingly, would make this determination along with the determination of which categories of market participants will trade in the product.

Proposed paragraph (b) of CBOE Rule 8.14 also provides that each class designated for trading on Hybrid must have a DPM or LMM assigned to it, unless there are at least four (4) MMs quoting in the class and each MM that has an appointment in the class is subject to the continuous quoting obligations imposed by CBOE Rule 8.7(d).⁶ In those classes in which there is no DPM or LMM, the proposed rule provides that in the event the CBOE activates request-for-quote ("RFQ") functionality, each MM would have an obligation to respond to that percentage of RFQs as determined by the appropriate EPC provided, however, that such percentage shall not be less than 80%. The following requirements would be applicable to RFQ responses:⁷

- MMs must comply with the bid-ask differential contained in CBOE Rule 8.7(b)(iv);
- Responses must be submitted within the amount of time specified by the appropriate EPC from the time the RFQ is entered;
- Responses must be for a minimum of ten (10) contracts or a size specified by the appropriate EPC, whichever is greater; and
- MMs responding to an RFQ must maintain a continuous market in that series for a subsequent 30-second period (or for some other time specified by the appropriate EPC) or until his/her quote is filled in its entirety. A MM may change his/her quotes during this 30-second period but may not cancel them without replacing them. If the MM does cancel without replacing the quote, his/her response to the RFQ would not count toward the MM's response rate requirement set forth above. A MM would be considered to have responded to the RFQ if he/she has a quote in the market for the series at the time the RFQ is received and he/she maintains it for the appropriate period of time.

⁵ CBOE Rule 8.1 provides that the term "Market-Maker" includes Remote Market-Makers, as defined in CBOE Rule 8.4.

⁶ CBOE Rule 8.7(d) governs the quoting obligations for MMs in Hybrid classes.

⁷ These requirements are based on similar requirements contained in CBOE Rule 44.4(b).

Proposed CBOE Rule 8.14(b)(4) provides that in order to allow a multiply-listed product trade without a DPM or LMM, the Exchange will need to amend its Market-Maker obligation rules (and receive Commission approval thereof) to indicate how orders will be submitted to other exchanges on behalf of Market-Makers in accordance with the Intermarket Options Linkage Plan requirements.

II. Index Classes Trading With an LMM: LMM Obligations

The Exchange operates an LMM system in several index classes. Current CBOE Rule 8.15, Lead Market-Makers and Supplemental Market-Makers, governs the LMM appointment process and imposes obligations upon LMMs. The Exchange proposes to adopt new CBOE Rule 8.15A, Lead Market Makers in Hybrid Classes, which mimics current CBOE Rule 8.15 with few changes.⁸ As an initial matter, the Exchange eliminates reference to Supplemental Market-Makers as they would not exist in Hybrid. Next, with respect to appointments of LMMs, the Exchange eliminates all references in the proposed rules to "zones" as LMMs in Hybrid would not be assigned to zones. Instead, there would only be one LMM at any time in a particular class. The Exchange anticipates that, in any given class, there may be several approved LMMs; however, only one LMM would function at any given time. Current CBOE Rule 8.15(b) governs LMM obligations and the Exchange proposes to adopt similar obligations in proposed paragraph (b) of CBOE Rule 8.15A. In this regard, the Exchange proposes to adopt in paragraph (b)(i) of proposed CBOE Rule 8.15A a continuous quoting obligation to mandate LMMs in a class to quote a legal width market in 90% of the option series. This requirement would apply at all times, not just during the opening rotation. Proposed paragraph (b)(ii) would obligate LMMs to assure that their displayed market quotations are honored for at least the number of contracts prescribed pursuant to CBOE Rule 8.51 (*i.e.*, the firm quote rule). Proposed paragraph (b)(iii) requires an LMM to perform the above obligations for a period of one (1) expiration month commencing on the first day following an expiration. Failure to perform such obligations for such time may result in suspension of up to three (3) months from trading in all series of the option class. Proposed paragraph (b)(iv) requires LMMs to participate in the

⁸ The Exchange proposes to amend CBOE Rule 8.15 to limit its application to non-Hybrid classes.

Hybrid Opening System (as described in CBOE Rule 6.2B). As such, LMMs would be required to submit quotes during the opening rotation. Proposed paragraph (v) requires LMMs to respond to any open outcry request for quote by a floor broker with a two-sided quote complying with the current quote width requirements of CBOE Rule 8.7(b)(iv) for a minimum of ten (10) contracts for non-broker-dealer orders and one (1) contract for broker-dealer orders.

The Exchange also proposes to modify rules to accommodate trading in multiply listed classes that would be subject to the Intermarket Options Linkage. DPMs currently handle linkage functions with respect to routing of linkage orders to other markets on behalf of customer orders and representing inbound linkage orders from other markets that are not automatically executed on the CBOE. The Exchange believes the DPMs linkage obligations can be carried out by Order Book Officials ("OBOs") and LMMs for Index option classes on the Hybrid Trading System that are assigned an LMM. The Exchange states that, in essence, OBOs would represent inbound linkage order and would be responsible for transmitting outbound linkage orders on behalf of underlying customer orders but would do so using the LMMs trading account and with instruction and input from the LMM. An LMM, as opposed to a DPM, currently does not have agency obligations. For this reason, the Exchange proposes to add an LMM obligation in proposed paragraph (vi) of proposed CBOE Rule 8.15A to require an LMM, in multiply-listed products, to act as agent for orders routed to other exchanges that are participants in the Intermarket Options Linkage Plan.⁹ The proposed paragraph also provides that an LMM's account would be used for Principal Acting as Agent ("P/A") and Satisfaction orders routed by the OBO for the benefit of an underlying customer order, and the LMM would be responsible for any charges incurred from the execution of such orders.

The Exchange proposed to make a corresponding change to CBOE Rule 7.4(a)(2) to permit OBOs to receive Linkage orders from exchanges that are participants in the Intermarket Options Linkage Plan (other than CBOE).¹⁰ In

⁹ See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (Aug. 4, 2000) (order approving the Options Intermarket Linkage Plan submitted by the American Stock Exchange LLC, CBOE, and International Securities Exchange LLC ("ISE")).

¹⁰ The Exchange makes minor changes to CBOE Rules 7.4(a)(1) and (b)(iv), and Interpretations and Policies .06 thereto, to include references to CBOE Rule 6.45B in each place where CBOE Rule 6.45A is mentioned.

this regard, the proposed change to CBOE Rule 7.4(a)(2) also provide that, for Index option classes on the Hybrid Trading System that are not assigned a DPM, the OBO shall be responsible for (1) routing linkage P/A and Satisfaction orders (utilizing the LMM's account) to other markets based on prior written instructions that must be provided by the LMM to the OBO; and (2) handling all linkage orders or portions of linkage orders received by the Exchange that are not automatically executed. This proposed amendment to CBOE Rule 7.4(a)(2) provides OBOs with the ability to route outbound linkage orders to other exchanges and to handle inbound linkage orders received from other exchanges. In this regard, orders routed by the OBO in accordance with this rule would be routed in accordance with written instructions provided by the LMM.¹¹ With respect to handling inbound linkage orders, OBOs would handle only those orders that do not automatically execute via the Exchange's systems. The CBOE notes that the vast majority of inbound linkage orders that receive executions are automatically executed.

There are some obligations currently applicable in CBOE Rule 8.15 that the Exchange does not propose to adopt in CBOE Rule 8.15A. First, the Exchange proposes not to adopt the requirement that an LMM facilitate imbalances of customer orders in all series.¹² Instead, the Exchange proposes to replace this obligation with a requirement that LMMs respond to any open outcry RFQ with a two-sided legal-width quote. In practice, LMMs facilitate order imbalances in open outcry. Accordingly, the Exchange believes that obligating an LMM to respond to all floor broker RFQs should achieve the same result. Second, the Exchange also proposes to not adopt in CBOE Rule 8.15A the language contained in CBOE Rule 8.15(d). CBOE Rule 8.15(d) operates under the assumption that only the LMM disseminates a quote, for which the entire trading crowd is required under CBOE Rule 8.51 to be firm. In a Hybrid system, each MM posts its own quotes, hence there is no need for MMs to know which variables an LMM uses in its pricing calculation.

III. LMM Participation Entitlement

Today, LMMs do not receive participation entitlements nor does CBOE Rule 8.87 address granting a participation entitlement to LMMs.

¹¹ All linkage fees incurred for routing P/A and Satisfaction orders for the benefit of underlying orders would be borne by the LMM.

¹² CBOE Rule 8.15(b)(2).

Because LMMs serve in much the same capacity as a DPM and perform many of the same functions as an e-DPM, the Exchange believes that it is reasonable to allow the LMM to receive a participation entitlement. Accordingly, the Exchange proposes to adopt new CBOE Rule 8.15B, Participation Entitlement of LMMs, which is based on CBOE Rule 8.87, Participation Entitlement of DPMs and e-DPMs.

As proposed, paragraph (a) would allow the appropriate Market Performance Committee to establish, on a class by class basis, a participation entitlement formula that is applicable to LMMs. Proposed paragraph (b) states that, to be entitled to a participation entitlement, the LMM must be quoting at the best bid/offer on the Exchange and the LMM may not be allocated a total quantity greater than the quantity for which the LMM is quoting at the best bid/offer on the Exchange.¹³

Paragraph (c) establishes the percentages of the participation entitlement at the same levels currently in effect in CBOE Rule 8.87, which means that the LMM participation entitlement shall be: 50% when there is one Market-Maker also quoting at the best bid/offer on the Exchange; 40% when there are two Market-Makers also quoting at the best bid/offer on the Exchange; and 30% when there are three or more Market-Makers also quoting at the best bid/offer on the Exchange. If more than one LMM is entitled to a participation entitlement, such entitlement shall be distributed equally among all eligible LMMs provided, however, that an LMM may not be allocated a total quantity greater than the quantity for which the LMM is quoting at the best bid/offer on the Exchange.

Finally, proposed paragraph (c) also allows the appropriate Market Performance Committee ("MPC") to determine, on a class-by-class basis, to decrease the LMM participation entitlement percentages from the percentages specified in paragraph (c). The Exchange believes that this ability to decrease the participation entitlement is more important on the index product side, where trading crowds often are significantly larger than they are on the equity side. For example, awarding an LMM a 30% entitlement in a product with 100 quoters could be disproportionate. For this reason, the appropriate MPC may lower the percentages. Any such reductions

would be announced to the membership via Regulatory Circular in advance of implementation. The Exchange states that, in the unlikely event the Exchange seeks to increase the participation entitlement, obviously it will submit a "regular-way" rule filing to the Commission.

The Exchange believes it is reasonable to grant LMMs a participation entitlement for several reasons, chief among them being the LMM would perform many of the same functions that DPMs perform. First, an LMM, like a DPM, has enhanced quoting obligations, as evidenced by the proposed 90% continuous quoting obligation. In this regard, MMs have only a 60% continuous quoting obligation, which means that LMMs must quote 50% more series than MMs.¹⁴ Second, an LMM's proposed obligations are as stringent as are those of e-DPMs, who also receive participation entitlements. In this regard, e-DPMs, who share in the participation entitlement pursuant to CBOE Rule 8.87, have the same 90% continuous quoting obligation as proposed herein for LMMs.¹⁵ Third, LMMs are required to participate in the Hybrid Opening System in the same fashion as DPMs, while there is no such requirement for MMs. These heightened obligations justify the granting of a participation entitlement to LMMs.

IV. Allocation of Trades

Current CBOE Rule 6.45A governs the allocation of trades on the Hybrid System. The Exchange proposes to adopt new CBOE Rule 6.45B, which is substantially similar in most respects to CBOE Rule 6.45A, and restrict its application to index classes. The Exchange proposes to amend current CBOE Rule 6.45A, therefore, to limit its applicability to equity classes only.

A. Allocation of Incoming Electronic Orders: CBOE Rule 6.45B(a)

Regarding the allocation of incoming electronic orders, CBOE Rule 6.45B(a) provides the appropriate EPC with the ability to adopt on a class by class basis one of two allocation models, both of which have been approved by the Commission in different contexts. The first allocation model is a scaled-down version of the Exchange's Screen-Based Trading ("SBT") Rule 43.1, while the second allocation model is the Exchange's current Ultimate Matching Algorithm ("UMA"). The Exchange believes it appropriate for the EPC to

make these determinations because it has the greatest familiarity with the trading dynamics of each product under its jurisdiction, which makes it best-positioned to determine which allocation model to utilize in order to enhance the competitiveness of the Exchange in that product.¹⁶ For example, the EPC may determine that trading of a particular product would be enhanced by utilizing a strict price-time allocation model. At the same time, the EPC may determine that a second index product, which perhaps does not trade as actively as the first index product, may be better suited to using UMA for its allocation model. The ability to choose from several allocation models provides flexibility to the EPC to choose the allocation model it believes is best-suited for a particular product.

1. CBOE Rule 6.45B(a)(i): Price-Time or Pro-Rata Priority

The first allocation model comes from the Exchange's SBT rules and is substantially reproduced in proposed paragraph (a)(i). Pursuant to this model, the Exchange may on a class by class basis adopt either a price-time or pro-rata allocation model.¹⁷ Accordingly, the EPC committee would determine whether to utilize a price-time model in which the first quote or order at the best price has priority. Alternatively, the committee may determine to utilize a pro-rata priority model whereby the size of an individual's allocation of an incoming order is a function of the relative size of his/her quote/order compared to all others at the same price.

Additionally, the Exchange may determine to utilize one or two priority overlays in any class using a price-time or pro-rata allocation model: Public customer priority¹⁸ or participation entitlement priority.¹⁹ A priority overlay functions as an exception to the general priority rule in effect. Under the public customer overlay, public customers have priority over all others, and multiple public customer orders are

¹⁶ The "trading dynamics" of a particular product refers to numerous factors including, but not limited to: Type of order flow (customer vs. institutional); size of order flow (small vs. large); and where execution occurs (in open outcry or electronically).

¹⁷ See CBOE Rule 43.1(a)(1) (price-time priority) and (a)(2) (pro rata priority). The ISE utilizes a pro rata priority model for market-makers and non-customers (see ISE Rule 713.01) while the Boston Options Exchange ("BOX") utilizes the price-time priority model (see BOX Trading Rules, Chapter V, Sec. 16).

¹⁸ See CBOE Rule 43.1(b)(1). Under the public customer priority model, public customers at the highest bid or lowest offer will have priority over non-public customers at the same price.

¹⁹ See CBOE Rule 43.1(b)(3) (trade participation right priority).

¹³ The participation entitlement is based on the number of contracts remaining after all public customer orders in the book at the best bid/offer on the Exchange have been satisfied.

¹⁴ Mathematically, a 90% quoting obligation is 50% greater than a 60% quoting obligation ((90-60)/60).

¹⁵ See CBOE Rule 8.93(i).

ranked based on time priority. Under the participation entitlement overlay, DPMs/e-DPMs/LMMs at the best price receive their participation entitlement provided their order/quote is at the best price on the Exchange.

As an example, in a class using price-time priority with a public customer priority overlay, the first order/quote at the best price has priority, unless there is a public customer order at that best price, in which case the public customer moves to the front of the line and takes priority (up to the size of his/her order). In this example, after the public customer order is satisfied, any remainder of the order would be allocated using the price-time priority principles.

Both priority overlays may be in effect in a particular class at one time or, alternatively, neither need be operational. The participation right overlay is akin to the DPM participation entitlement. In determining which overlays would be in effect, the EPC is bound by the requirement that it may not offer a participation entitlement unless it also offers public customer priority and that the public customer priority overlay applies before the participation entitlement does.²⁰

2. CBOE Rule 6.45B(a)(ii): UMA

Under the proposal, the appropriate EPC would have the ability to use the allocation method currently used in all classes trading on Hybrid. When a market participant is quoting alone at the disseminated CBOE BBO and is not subsequently matched in the quote by other market participants prior to execution, it would be entitled to receive incoming electronic order(s) up to the size of its quote. In this respect, market participants quoting alone at the BBO have priority. When more than one market participant is quoting at the BBO, inbound electronic orders shall be allocated pursuant to UMA. UMA rewards market participants quoting at the best price with allocations of incoming orders. The UMA formula is a weighted average consisting of two components, one based on the number of participants quoting at the best price (Component A), and the second based on the relative size of each participant's quote (Component B), as described below.

Component A: This is the parity component of UMA. In this component, UMA treats as equal all market participants quoting at the relevant best bid or best offer (or both). Accordingly, the percentage used for Component A is an equal percentage, derived by

dividing 100 by the number of market participants quoting at the best price. For instance, if there are four (4) market participants quoting at the best price, each is assigned 25% for Component A (or 100/4). This component rewards and incents market participants that quote at a better price than do their counterparts even if they quote for a smaller size.

Component B: This size prorata component is designed to reward and incite market participants to quote with size. As such, the percentage used for Component B of the Allocation Algorithm formula is that percentage that the size of each market participant's quote at the best price represents relative to the total number of contracts in the disseminated quote. For example, if the disseminated quote represents the quotes of market makers X, Y, and Z who quote for 20, 30, and 50 contracts respectively, then the percentages assigned under Component B are 20% for X, 30% for Y, and 50% for Z.

Final Weighting: The final weighting, which shall be determined by the appropriate EPC, shall be a weighted average of the percentages derived for Components A and B multiplied by the size of the incoming order. Initially, the weighting of Components A and B shall be equal, represented mathematically by the formula: $((\text{Component A Percentage} + \text{Component B Percentage})/2) * \text{incoming order size}$.

Under current CBOE Rule 6.45A, the appropriate index floor procedures committee has the ability, for index options and options on ETFs, to vary the weights of Components A and B on a product by product basis.²¹ Proposed CBOE Rule 6.45B retains this flexibility. All other aspects of the UMA methodology remain unchanged, with the exception of the participation entitlement, as described below.

Currently, the appropriate committee establishes the participation entitlement methodology, which generally must be either: the entitlement percentage established by CBOE Rule 8.87 or the greater of the DPM's (or e-DPM's) UMA share or the amount the DPM/e-DPM would be entitled to by virtue of CBOE Rule 8.87.²² The Exchange proposes in CBOE Rule 6.45B(a)(ii)(C) to retain this provision (simply adding references to LMMs) and to add a third alternative, which would allow the Exchange to not award a participation entitlement.²³ In

²¹ The Exchange proposes to delete this section from current CBOE Rule 6.45A and move it to CBOE Rule 6.45B.

²² See current CBOE Rule 6.45A(a)(i)(C).

²³ The Exchange also amends the references to CBOE Rule 8.87 to include references to new CBOE Rule 8.15B. As such, CBOE Rule 8.87 will govern participation entitlements for DPMs and e-DPMs

this regard, proposed paragraph (a)(ii)(C) incorporates this change by stating that the amount of the DPM's (or LMM's or e-DPM's) entitlement would be equal to the amount it otherwise would receive by virtue of the operation of UMA. Aside from this change, the proposed participation entitlement as it relates to the allocation of incoming electronic orders pursuant to UMA would operate the same as it does today.

B. Allocation of Orders in Open Outcry

With respect to the allocation of orders in the trading crowd, proposed CBOE Rule 6.45B(b) would govern. This rule is substantially similar to current CBOE Rule 6.45A(b). The section "Allocation of Orders Represented in the Trading Crowd" provides two alternative methods for allocating trades occurring in open outcry depending on whether there are any broker-dealer ("BD") orders in the book.²⁴ If there are no BD orders in the book when the trade occurs in open outcry, allocation would be as it is today (*i.e.*, first to respond may take 100%). If, however, there are BD orders in the book, the rule provides an alternative allocation mode. The first person to respond in open outcry would be entitled to take up to 70% of the order, the second person to respond may take 70% of the balance, and all others who responded (including those in the book) shall participate in the remainder of the order pursuant to the UMA allocation methodology, as is currently the case. Throughout both methods, public customers have absolute priority.

The CBOE Hybrid System would continue to utilize the exception to the general priority rules for complex orders in index products. As such, the Exchange proposes to incorporate the existing provision contained in CBOE Rule 6.45(e) and 6.45A(b)(iii). Under this rule, a member holding a spread, straddle, or combination order (or a stock-option order or security future-option order as defined in CBOE Rule 1.1(ii)(b) and CBOE Rule 1.1(zz)(b), respectively) and bidding (offering) on a net debit or credit basis (in a multiple of the minimum increment) may execute the order with another member without giving priority to equivalent bids (offers) in the trading crowd or in the electronic book, provided at least one leg of the order betters the corresponding bid (offer) in the book. Stock-option orders and security future-option orders, as defined in CBOE Rule

while new CBOE Rule 8.15B will govern participation entitlements for LMMs. CBOE Rule 8.15B is discussed in greater detail *supra*.

²⁴ A broker-dealer order is an order for the account of a non-public customer broker-dealer.

²⁰ See proposed CBOE Rule 6.45B(a)(i)(2)(D).

1.1(ii)(a) and CBOE Rule 1.1(zz)(a), respectively, have priority over bids (offers) of the trading crowd but not over bids (offers) of public customers in the limit order book.

C. Interaction of Market Participant's Quotes/Orders With Orders in the Electronic Book

The Exchange proposes to adopt CBOE Rule 6.45B(c) to govern the interaction of market participants' quotes or orders with orders in the book. This rule, with minor modifications, operates in the same manner as does existing CBOE Rule 6.45A(c), which governs the allocation of orders resting in the Exchange's electronic book ("book" or "Ebook") among market participants. Generally, under the existing rule, if only one market participant interacts with the order in the book, he/she would be entitled to full priority. If, however, more than one market participant attempts to interact with the same order in the book, a "quote trigger" process initiates. Under the quote trigger process, the first market participant to interact with the book order starts a counting period lasting N-seconds whereby each market participant that submits an order within that "N-second period" becomes part of the "N-second group" and is entitled to share in the allocation of that order via the formula contained in the rule.

The Exchange proposes minor modifications to the operation of the current rule. First, the second paragraph of proposed section (c) provides that if the appropriate EPC has determined that the allocation of incoming electronic orders shall be pursuant to price-time priority as described in CBOE Rule 6.45B(a)(i), then the allocation of orders in the Electronic Book pursuant to paragraph (c) must also be based on time-priority (*i.e.*, allocated to the first market participant to interact with the order in the book, up to the size of that market participant's order). In all other instances (*i.e.*, when pro-rata priority or UMA is in effect), the allocation of the book order would be as it is today (*i.e.*, allocation via the "N-second group").

Second, whereas the N-second timer must be uniform across equity classes, this proposed rule allows for different durations on a class-by-class basis. The sizes of index option trading crowds vary considerably, from perhaps five traders in a less-active class to more than one hundred traders in options on the S&P 500 ("SPX"). The Exchange states that a 5-second timer in the SPX could result in numerous traders executing against the same order, which could mean very small allocations and rounding nightmares. The ability to vary

the timer would allow the EPC to set a considerably shorter time-period. The Exchange states that, as with equities, changes to the timers would be announced to the membership via Regulatory Circular.

D. Interaction of Market Participants' Quotes

The Exchange also proposes to adopt CBOE Rule 6.45B(d) governing the interaction of quotes when they are locked. Because Hybrid allows for the simultaneous entry of quotes by multiple market participants, there would be instances in which quotes from competing market participants become locked. Currently, CBOE Rule 6.45A(d) provides that when the quotes of two market participants interact (*i.e.*, "quote lock"), either party has one (1) second during which it may move its quote without obligation to trade with the other party. If, however, the quotes remain locked at the conclusion of one second, the quotes trade in full against each other. Proposed CBOE Rule 6.45B(d) is based on the equity rule (CBOE Rule 6.45A(d)) with one modification relating to the length of the timer. The proposal allows the appropriate EPC to vary by product the length of the quote lock timer provided it does not exceed one (1) second.²⁵ The ability to vary the timer by product is more important in an index setting where there are larger trading crowds than there are in an equity setting. In the event the appropriate committee determines to eliminate the timer (*i.e.*, set it to zero seconds), the Exchange would not be required to send out the quote update notification otherwise required in paragraph (d)(i)(B).

Additionally, the Exchange proposes to amend paragraph (e) to CBOE Rule 6.45A in order to remove references to expired dates. Finally, the Exchange removes reference to the listing of index options and options on ETFs, as this would now be addressed in the introductory paragraph of proposed CBOE Rule 6.45B.

V. Other Changes

A. HOSS: CBOE Rule 6.2B

The Exchange proposes to amend certain aspects of its opening rule, CBOE Rule 6.2B, Hybrid Opening System ("HOSS"). HOSS establishes opening procedures and, today, only applies in classes in which there are DPMs. The changes proposed herein would allow HOSS to be utilized in classes in which there is either an LMM, DPM, or neither.

²⁵ Equity classes utilize a one-second timer across-the-board.

The first change, to paragraph (a), provides that HOSS would accept orders and quotes for a period of time prior to 8:30 a.m. Central Time. The absence of an underlying security for index options necessitates this change. Similarly, the second change to paragraph (a) allows the opening process to begin after 8:30 a.m., as opposed to when the underlying security opens. The third change to paragraph (a) obligates the appointed LMM in the class to submit opening quotes. The purpose of this requirement is to ensure the existence of a quote so that the class may open. This is the same requirement that exists for DPMs.

The Exchange proposes to amend paragraph (b) to provide that in classes without a DPM, an expected opening price would be calculated if there is a quote from either an LMM or MM in the class. This requirement recognizes that because a class may trade without a DPM or LMM, the opening procedure would need to operate with only quotes from MMs. Similarly, the proposed change to paragraph (e) provides that HOSS would not open a class unless there is a quote from either a MM or LMM with an appointment in the class. This is equivalent to the equities side, where a class will not open without a quote from the DPM.

B. CBOE Rules 6.1 and 6.2

The Exchange also proposes to amend Interpretation and Policy .04 to CBOE Rule 6.1 and Interpretation and Policy .01 to Rule 6.2 by inserting the term "LMM" next to every reference to DPM. As LMMs would perform essentially the same functions as DPMs, this change is necessary. The Exchange also proposes in CBOE Rule 6.2 to eliminate reference to the term "Board Broker" since there is no such person anymore.

2. Statutory Basis

The Exchange proposes to list and trade on the Exchange's Hybrid System index options and options on ETFs without a DPM pursuant to allocation models that the Commission has previously approved. For the reasons stated above, the Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act²⁶ in general, and furthers the objectives of Section 6(b)(5)²⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(5).

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2004-87 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-2004-87. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2004-87 and should be submitted on or before June 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁸

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5-2441 Filed 5-16-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51670; File No. SR-CBOE-2005-27]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Relating to the Hybrid Opening System

May 9, 2005.

On March 25, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change that would require e-DPMs to submit opening quotes during the HOSS opening rotation for every series in each Hybrid class to which any e-DPM is allocated. The proposed rule change was published for comment in the **Federal Register** on April 7, 2005.³ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with

²⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 51459 (March 31, 2005), 70 FR 17731.

the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁴ and, in particular, the requirements of Section 6 of the Act⁵ and the rules and regulations thereunder. The Commission specifically finds that the proposed rule change is consistent with Section 6(b)(5) of the Act⁶ in that it should help to provide greater liquidity during opening rotations, thereby lessening the possibility that a Hybrid option class might be unable to open.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-CBOE-2005-27) be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5-2442 Filed 5-16-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51682; File No. SR-ISE-2004-27]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 1 and No. 2 Relating to Trading Options on Reduced Values of the NYSE U.S. 100 Index, the NYSE International 100 Index, the NYSE World Leaders Index, and the NYSE TMT Index, Including Long-Term Options

May 11, 2005.

I. Introduction

On July 23, 2004, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposal to trade options on three broad-based indexes and one narrow-based index, whose components currently trade on the New York Stock Exchange, Inc. ("NYSE"). The ISE submitted Amendments No. 1 and No.

⁴ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

2 to the proposal on January 5, 2005,³ and March 1, 2005,⁴ respectively. The proposed rule change and Amendments No. 1 and No. 2 were published for comment in the **Federal Register** on March 27, 2005.⁵ The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The ISE proposes to list and trade cash-settled, European-style, index options on the NYSE U.S. 100 Index, the NYSE International 100 Index, and the NYSE World Leaders Index (the "Broad Based NYSE Indexes") and the NYSE Technology, Media, and Telecommunication Index ("NYSE TMT Index") (collectively, the "NYSE Indexes").⁶ Specifically, the Exchange proposes to list options based upon (i) one-tenth of the value of the NYSE Indexes ("Mini Index Options") and (ii) one one-hundredth of the value of the NYSE Indexes ("Micro Index Options").

A brief description of the proposal appears below; the March Release⁷ provides a more detailed description of the proposal.

Index Design and Composition

The NYSE Indexes are designed to be a comprehensive representation of the investable United States equity market. Each NYSE Index is a float-adjusted capitalization-weighted index,⁸ whose components are all traded on the NYSE.

NYSE U.S. 100 Index

The NYSE U.S. 100 Index tracks the top 100 U.S. stocks trading on the NYSE. The companies represented have a market capitalization of \$5.95 trillion, which covers 47% of the entire market capitalization of U.S. companies and over 62% of U.S. companies listed on the NYSE. This index is designed to assist investors looking to track the U.S. market across 10 industry sectors, as

defined by Dow Jones & Company ("Dow Jones").⁹

The NYSE U.S. 100 Index is calculated using a rules-based methodology that is fully transparent. Its original selection pool includes all U.S. stocks listed on the NYSE. The entire index universe is ranked in descending order by unadjusted market capitalization. If a component has multiple share classes, the most liquid issue for that company is included. Companies that fail a liquidity test, *i.e.*, average trading volume of 100,000 shares for the preceding three months, are removed. The top 100 companies are then selected from the remaining universe, and the index is weighted by float-adjusted market capitalization.

The index is reviewed quarterly, with an 80–120 buffer applied to limit turnover. When the universe is ranked by market capitalization, all stocks in the top 80 are automatically included in the index, while all stocks ranked below 120 are automatically excluded. The remaining components are selected from stocks falling between 80 and 120, starting with the highest ranked component. In addition to the scheduled quarterly review, the index is reviewed on an ongoing basis to accommodate extraordinary events, such as delistings, bankruptcies, mergers or acquisitions involving index components.

NYSE International 100 Index

The NYSE International 100 Index is designed to assist investors seeking to track international markets. This index tracks the 100 largest non-U.S. stocks trading on the NYSE. It covers 27.1% of the international stock market and has a total market capitalization of \$3.8 trillion. Currently, the components of the NYSE International 100 Index represent 18 countries.¹⁰

⁹ As of March 18, 2004, these sectors and their respective weightings were: Basic Materials (1.9%); Consumer, Cyclical (13.4%); Consumer, Non-Cyclical (11.4%); Energy (7.5%); Financial (23.3%); Healthcare (18.7%); Industrial (10.7%); Technology (5.9%); Telecommunication (6.7%); and Utilities (0.5%).

¹⁰ According to the ISE, 98 of the 100 underlying components in the NYSE International 100 Index meet ISE's listing criteria for equity options as set forth in ISE Rule 502. This represents 97.3% of the index by market capitalization weight and 98% by number. Two American Depository Receipts ("ADRs") underlying the NYSE International 100 Index, Allianz AG ("AZ") and Telefonica Moviles SA ("TEM"), do not meet the requirements of ISE Rule 502, because the NYSE does not have in place an effective surveillance sharing agreement with the primary exchange in the home country where AZ and TEM are traded. However, the U.S. market for the underlying ADRs is at least 50% or more of the worldwide trading volume. Telephone conversation between Samir Patel, Assistant General Counsel, ISE, and A. Michael Pierson, Attorney, Division,

All of the components of this index are priced on the NYSE during U.S. trading hours.¹¹ The NYSE International 100 Index is also calculated using a rules-based methodology that is fully transparent. Its original selection pool includes all non-U.S. stocks listed on the NYSE. The entire index universe is ranked in descending order by unadjusted market capitalization. If a component has multiple share classes, the most liquid issue for that company is included. Companies that fail a liquidity test, *i.e.*, average trading volume of 100,000 shares for the preceding three months, are removed. The top 100 companies are then selected from the remaining universe, and the index is weighted by float-adjusted market capitalization.

The index is reviewed quarterly, with an 80–120 buffer applied to limit turnover. When the universe is ranked by market capitalization, all stocks in the top 80 are automatically included in the index, while all stocks ranked below 120 are automatically excluded. The remaining components are selected from stocks falling between 80 and 120, starting with the highest ranked component. In addition to the scheduled quarterly review, the index is reviewed on an ongoing basis to accommodate extraordinary events, such as delistings, bankruptcies, mergers or acquisitions involving index components.

NYSE World Leaders Index

The NYSE World Leaders is designed to serve as a benchmark to track, as a single asset class, the performance of 200 world leaders across 10 industry sectors and all regions of the world. This index is constructed by combining the NYSE U.S. 100 Index and NYSE International 100 Indexes. The components of the NYSE World Leaders Index have a total market capitalization of \$9.7 trillion and cover 36.7% of the market capitalization of the world markets. It is well diversified across 10 industry sectors, as defined by Dow Jones, and currently represents 19 countries, including the United States. All of the components of this index are

Commission (March 21, 2005). The listing of options on an ADR without the existence of a comprehensive surveillance agreement with the foreign market where the underlying component trades is appropriate, as long as the U.S. market for the underlying ADR is at least 50% or more of the worldwide trading volume. See ISE Rule 502(f)(2).

¹¹ The NYSE International 100 Index components are classified in ten market sectors. As of March 18, 2004, these sectors and their respective weightings were: Basic Materials (3.1%); Consumer, Cyclical (11.1%); Consumer, Non-Cyclical (5.25%); Energy (17.7%); Financial (27.7%); Healthcare (12.0%); Industrial (1.1%); Technology (8.3%); Telecommunication (10.6%); and Utilities (3.2%).

³ Amendment No. 1 set forth a list of the underlying components of the NYSE Indexes.

⁴ Amendment No. 2 replaced the original filing in its entirety, proposed a reduced number of contracts for position and exercise limits, addressed one of the events that the Exchange will monitor on an annual basis, and made other technical corrections to the filing.

⁵ See Securities Exchange Act Release No. 51410 (March 22, 2005), 70 FR 15962 ("March Release").

⁶ A description of each of the NYSE Indexes can be found on the NYSE's Web site at <http://www.nyseindexes.com>.

⁷ See *supra* note 5.

⁸ The calculation of a float-adjusted, market-weighted index involves taking the summation of the product of the price of each stock in the index and the number of shares available to the public for trading, rather than the total shares outstanding for each issue. In contrast, a price-weighted index involves taking the summation of the prices of the stocks in the index.

priced on the NYSE during U.S. trading hours.¹²

The NYSE World Leaders Index is also calculated using a rules-based methodology that is fully transparent. Its original selection pool includes all stocks listed on the NYSE. The index universes for the NYSE U.S. 100 and NYSE International 100 are each ranked in descending order by unadjusted market capitalization. If a component has multiple share classes, the most liquid issue for that company is included. Companies that fail a liquidity test, *i.e.*, average trading volume of 100,000 shares for the preceding three months, are removed. The top 100 companies are then selected from the remaining stocks in each universe, and the index is weighted by float-adjusted market capitalization.

The NYSE U.S. 100 and the NYSE International 100 Indexes are reviewed quarterly, with an 80–120 buffer applied to limit turnover. When the universes are ranked by market capitalization, all stocks in the top 80 are automatically included in the index, while all stocks ranked below 120 are automatically excluded. The remaining components are selected from stocks falling between 80 and 120, starting with the highest ranked component. In addition to the scheduled quarterly review, the index is reviewed on an ongoing basis to accommodate extraordinary events, such as delistings, bankruptcies, mergers or acquisitions involving index components.

NYSE TMT Index

The NYSE TMT Index is a narrow-based index. For narrow-based indexes that meet the standards of an exchange's rules, an SRO need only complete Form 19b–4(e) at least five business days after commencement of trading the new product. Since the listing of this product does not meet all of the requirements of ISE Rule 2002(b), Form 19b–4(e) is not available for the listing of this product.

The NYSE TMT Index is designed to track the top 100 technology, media and telecommunications stocks listed on the NYSE. The companies represented have a market capitalization of \$2.3 trillion, which covers 45.7% of the entire market capitalization of technology, media and telecommunication companies globally and is approximately the same size as the nearly 4,000 companies in the

¹² The NYSE World Leaders Index components are classified in ten market sectors. As of March 18, 2004, these sectors and their respective weightings were: Basic Materials (2.3%); Consumer, Cyclical (12.6%); consumer, Non-Cyclical (9.2%); Energy (11.2%); Financial (24.1%); Healthcare (16.3%); Industrial (7.2%); Technology (6.8%); Telecommunication (8.1%); and Utilities (1.5%).

Nasdaq Composite Index. All of the components of this index are priced on the NYSE during U.S. trading hours.¹³

The NYSE TMT Index is also calculated using a rules-based methodology that is fully transparent. Its original selection pool includes all technology, media and telecommunication stocks listed on the NYSE. The entire index universe is ranked in descending order by unadjusted market capitalization. If a component has multiple share classes, the most liquid issue for that company is included. Companies that fail a liquidity test, *i.e.*, average trading volume of 100,000 shares for the preceding three months, are removed. The top 100 companies are then selected from the remaining universe, and the index is weighted by float-adjusted market capitalization.

The index is reviewed quarterly, with an 80–120 buffer applied to limit turnover. When the universe is ranked by market capitalization, all stocks in the top 80 are automatically included in the index, while all stocks ranked below 120 are automatically excluded. The remaining components are selected from stocks falling between 80 and 120, starting with the highest ranked component. At the quarterly rebalancing, market sector weights for technology, media and telecommunications are capped at no more than 40% and the sub-group weights are capped at no more than 20%. This ensures that one sector or sub-group does not dominate the index. In addition to the scheduled quarterly review, the index is also reviewed on an ongoing basis to accommodate extraordinary events, such as delistings, bankruptcies, mergers or acquisitions involving index components.

Index Calculation and Index Maintenance

The Mini Index Options level and the Micro Index Options level will each be calculated continuously, using the last sale price for each component stock in the NYSE Indexes, and will be disseminated every 15 seconds

¹³ The NYSE TMT Index components are classified in 14 industry sub-groups within the technology, media and telecommunication sectors. As of March 18, 2004, the sub-groups and their respective weightings were: Advertising (1.9%); Broadcasting (18.9%); Communications Technology (11.8%); computers (13.0%); Diversified Technology Services (2.4%); Entertainment (0.3%); Fixed-line Communications (20.9%); Internet Services (0.0%); Office Equipment (1.2%); Publishing (6.1%); Semiconductors (10.8%); Technology, Software (2.8%); Wireless Communications (9.9%); and Other: Non-Technology, Media and Telecommunication (0.0%).

throughout the trading day.¹⁴ The settlement value for purposes of settling Mini Index Options (“Mini Settlement Value”) and Micro Index Options (“Micro Settlement Value”) will be calculated on the basis of opening market prices on the business day prior to the expiration date of such options (“Settlement Day”).¹⁵ The Settlement Day is normally the Friday preceding “Expiration Saturday.”¹⁶ In the event that a component security in the Index does not trade on Settlement Day, the closing price from the previous trading day is used to calculate the Settlement Value. Accordingly, trading in Mini Index Options and Micro Index Options will normally cease on the Thursday preceding an Expiration Saturday. Dow Jones shall calculate, and the Exchange shall disseminate, both the Mini Settlement Value and the Micro Settlement Value in the same manner as the Dow Jones shall calculate, and the Exchange shall disseminate, the Mini Index Options level and the Micro Index Options level.

Dow Jones will monitor and maintain each of the NYSE Indexes. Although the Exchange is not involved in the maintenance of the NYSE Indexes, the Exchange represents that it will monitor the NYSE Indexes on a quarterly basis,¹⁷ at which point the Exchange will notify the Commission's Division of Market Regulation (“Division”), and will cease trading options on the NYSE Indexes if and when: (i) The number of securities in each of the NYSE Indexes drops by 1/3 or more; (ii) 10% or more of the weight of each of the NYSE Indexes is represented by component securities having a market value of less than \$75 million; (iii) less than 80% of the weight of each of the NYSE Indexes is represented by component securities that are eligible for options trading pursuant to ISE Rule 502; (iv) 10% or more of the weight of each of the NYSE Indexes is represented by component securities trading less than 20,000

¹⁴ The Mini Index Options level and the Micro Index Options level shall each be calculated by Dow Jones on behalf of the NYSE and disseminated to the consolidated Quote System (“CQS”). The Exchange shall receive those values from CQS and disseminate them to its members. Each of the NYSE Indexes is published daily in real-time on the NYSE's public Web site and through, among other places, major quotation vendors such as Reuters and Thomson's ILX.

¹⁵ The aggregate exercise value of the option contract is calculated by multiplying the Index value by the Index multiplier, which is 100.

¹⁶ For any given expiration month, options on the NYSE Indexes will expire on the third Saturday of the month.

¹⁷ Telephone conversation between Samir Patel, Assistant General Counsel, ISE, and A. Michael Pierson, Attorney, Division, Commission (March 21, 2005).

shares per day; or (v) the largest component security accounts for more than 15% of the weight of each of the NYSE Indexes or the largest five components in the aggregate account for more than 40% of the weight of each of the NYSE Indexes.¹⁸

The Exchange will notify the Division immediately in the event Dow Jones determines to cease maintaining or calculating the NYSE Indexes. In the event any of the NYSE Indexes ceases to be maintained or calculated, the Exchange will determine not to list any additional series for trading or limit all transactions in such options to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors.¹⁹

Contract Specifications

The NYSE U.S. 100, the NYSE International 100 and the NYSE World Leaders Indexes are each broad-based, as defined in Exchange Rule 2001(j).²⁰ The NYSE TMT Index is a narrow-based index, as defined in Exchange Rule 2001(i).²¹ Options on the NYSE Indexes are European-style and A.M. cash-settled. The Exchange's standard trading hours for index options (9:30 a.m. to 4:15 p.m., New York time), as set forth in Rule 2008(a), will apply to the NYSE Indexes. Exchange rules that are applicable to the trading of options on broad-based indexes will apply to the trading of Mini Index Options and Micro Index Options on the Broad-Based Indexes. Exchange rules that are applicable to the trading of options on narrow-based indexes will apply to the trading of Mini Index Options and Micro Index Options on the TMT Index.²² Specifically, the trading of Mini Index Options and Micro Index Options on the NYSE Indexes will be subject to, among others, Exchange rules governing sales practice rules, margin requirements, trading rules, and position and exercise limits.

For each of the Broad-Based NYSE Indexes, the Exchange proposes to establish aggregate position and exercise

limits for Mini Index Options at 50,000 contracts on the same side of the market, provided no more than 30,000 of such contracts are in the nearest expiration month series. The Mini Index Options contracts shall be aggregated with Micro Index Options contracts, where ten (10) Micro Index Options contracts equal one (1) Mini Index Options contract. For the narrow-based NYSE TMT Index, the aggregate position and exercise limits shall be as set forth in ISE Rule 2005(a)(3).

Currently, that rule would set position exercise limits for the Mini Index Options on the NYSE TMT Index at 31,500 contracts on the same side of the market. Similar to the aggregation of the position and exercise limits on the Broad-Based NYSE Indexes, the Mini Index Options contracts on the NYSE TMT Index shall be aggregated with Micro Index Options contracts on the NYSE TMT Index, where ten (10) Micro Index Options contracts equal one (1) Mini Index Options contract.

The Exchange proposes to set strike price intervals at 2½ points for certain near-the-money series in near-term expiration months when each of the NYSE Indexes is at a level below 200, and 5 point strike price intervals for other options series with expirations up to one year, and 25 to 50 point strike price intervals for longer-term options. Accordingly, since the current Mini Index Options level for each of the NYSE Indexes is 576.38, 450.57, 527.34 and 506.09, the Exchange shall set strike price intervals at 5 points for the Mini Index Options. Since the current Micro Index Options level for each of the NYSE Indexes is 57.64, 45.06, 52.73 and 50.61, the Exchange shall set strike price intervals at 2½ points for the Micro Index Options. The minimum tick size for series trading below \$3 shall be 0.05, and for series trading at or above \$3 shall be 0.10.

The Exchange proposes to list Mini Index Options and Micro Index Options in the three consecutive near-term expiration months plus up to three successive expiration months in the March cycle. For example, consecutive expirations of January, February, March, plus June, September, and December expirations would be listed.²³ In addition, long-term option series ("LEAPS") having up to 36 months to expiration may be traded.²⁴ The interval between expiration months on the Mini

Index Options or Micro Index Options shall not be less than six months. The trading of any LEAPS on Micro Index Options and Mini Index Options shall be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements, trading rules, and position and exercise limits.

Surveillance and Capacity

The ISE represents that it has an adequate surveillance program for options traded on the NYSE Indexes, and intends to apply to the trading of Mini Index or Micro Index Options the same program procedures that it applies to the Exchange's other index options. Additionally, the Exchange is a member of the Intermarket Surveillance Group ("ISG") under the ISG Agreement, dated June 20, 1994. The members of the ISG include all of the U.S. registered stock and options markets: the American Stock Exchange, the Boston Stock Exchange, the Chicago Board Options Exchange, the Chicago Stock Exchange, the National Stock Exchange, the National Association of Securities Dealers, the New York Stock Exchange, the Pacific Stock Exchange and the Philadelphia Stock Exchange. The ISG members work together to coordinate surveillance and investigative information sharing in the stock and options markets. In addition, the major futures exchanges and non-U.S. Exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses. The ISE notes that members of the ISG work together to coordinate surveillance and investigative information sharing in the stock and options markets.

In a confidential submission to the Commission, the Exchange provided an analysis supporting its representation that it has the system capacity to adequately handle all options series that could be listed pursuant to this proposal, including long-term Reduced Value Index Options and long-term Micro Index Options.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act.²⁵ The Commission

¹⁸ Telephone conversation between Samir Patel, Assistant General Counsel, ISE, and A. Michael Pierson, Attorney, Division, Commission (May 10, 2005). The Exchange understands that it may file a proposal pursuant to Section 19(b) of the Act and Rule 19b-4 if it wishes to trade options on the NYSE Indexes that would not otherwise meet the eligibility requirements listed above.

¹⁹ *Id.*

²⁰ ISE Rule 2001(j) defines a "market index" or a "broad-based index" to mean an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.

²¹ ISE Rule 2001(i) defines an "industry index" or a "narrow-based index" to mean an index designed to be representative of a particular industry or a group of related industries.

²² See ISE Rules 2000 through 2012.

²³ See ISE Rule 2009(a)(3).

²⁴ See ISE Rule 2009(b)(1). The Exchange is not listing reduced value LEAPS on either of the Mini Index or Micro Index Options. Telephone conversation between Samir Patel, Assistant General Counsel, ISE, and A. Michael Pierson, Attorney, Division, Commission (March 8, 2005).

²⁵ 15 U.S.C. 78f(b)(5). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

finds that the trading of options on reduced values of the NYSE Indexes will permit investors to participate in the price movements of the securities that comprise the NYSE Indexes. The Commission also believes that the trading of options on the NYSE Indexes will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with their portfolios. Accordingly, the Commission believes that options on the NYSE Indexes will provide investors with an important trading and hedging mechanism. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of options on the NYSE Indexes will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets.²⁶

The trading of options on the NYSE Indexes, however, raises several issues, including issues related to index design, customer protection, surveillance, and market impact. For the reasons discussed below, the Commission believes that the ISE has adequately addressed these issues.

A. Index Design and Structure

The Commission finds that it is appropriate and consistent with the Act to classify the NYSE U.S. 100 Index, the NYSE International 100 Index, and the NYSE World Leaders Index as broad-based and the NYSE TMT Index as narrow-based for purposes of index options trading, and therefore appropriate to permit ISE rules applicable to the trading of broad-based and narrow-based index options to apply to the NYSE Index options, as applicable. Specifically, the Commission believes that the Broad Based NYSE Indexes are broad-based, because they reflect a substantial segment of the U.S. equity markets. The NYSE U.S. 100 Index is comprised of 100 component stocks, and is designed to track the U.S. market by including the top 100 stocks trading on the NYSE; the NYSE International 100 Index is

comprised of 100 component stocks, and is designed to track the international markets by including the 100 largest non-U.S. stocks trading on the NYSE; and the NYSE World Leaders Index is comprised of 200 component stocks by combining the NYSE U.S. 100 Index and the NYSE International 100 Index. The ISE believes it is intended to track the performance of 200 "world leader" stocks trading on the NYSE. The NYSE World Leaders Index includes stocks across 10 industry sectors and all regions of the world. The TMT Index is narrow-based, because it is representative of a particular industry or a group of related industries. The NYSE TMT Index is designed to track the top 100 technology, media, and telecommunications stocks listed on the NYSE.

NYSE U.S. 100 Index

According to the ISE, as of March 18, 2004, 100% of the components were options eligible.²⁷ Second, as of March 18, 2004, the NYSE U.S. 100 Index's components were classified in ten industry sectors, which were weighted in the Index as follows: Basic Materials (1.9%); Consumer, Cyclical (13.4%); Consumer, Non-Cyclical (11.4%); Energy (7.5%); Financial (23.3%); Healthcare (18.7%); Industrial (10.7%); Technology (5.9%); Telecommunication (6.7%); and Utilities (0.5%). Third, as of March 18, 2004, the total capitalization of the Index was approximately \$6.166 trillion, the capitalization of the Index's components ranged from approximately \$17.13 billion to approximately \$310.02 billion, and the mean capitalization of the Index's components was approximately \$61.665 billion. As of March 18, 2004, the largest Index component accounted for 5.03% of the weight of the Index, and the five highest weighted securities accounted for 22.2% of the weight of the Index.

The Commission also believes that the general broad diversification, capitalizations, liquidity, and relative weighting of the Index's component securities minimize the potential for manipulation of the Index. First, the Index is comprised of 100 components listed and actively traded on the NYSE, and no single security dominates the Index. Second, the capitalizations of the stocks in the Index are very large. As of March 18, 2004, the total Index capitalization was approximately \$6.166 trillion, the median and mean capitalizations of the Index's components were approximately \$40.673 billion and \$61.665 billion, respectively and the capitalizations of

the Index's components ranged from a high of approximately \$310.02 billion for the highest-weighted component (which represented 5.03% of the weight of the Index) to a low of approximately \$18.59 billion for the lowest-weighted Index component (which represented .30% of the weight of the Index). As of March 18, 2004, the capitalizations of the Index's five most heavily weighted components, which represented 22.2% of the weight of the Index, ranged from approximately \$255 billion to approximately \$310.02 billion. Third, as of March 18, 2004, mean and median six-month average daily trading volume of the Index's components was 5.376 million shares and 4.082 million shares, respectively, and 100% of the Index's components had six-month average daily trading volume of at least 50,000 shares. Fourth, as of March 18, 2004, components representing over 100% of the weight of the Index were options eligible. Fifth, the ISE has represented that it will monitor the Index on a quarterly basis at which point the Exchange will notify the Division, and will cease trading options on the Index if and when: (1) The number of securities in the Index drops by 1/3 or more; (2) 10% or more of the weight of the Index is represented by component securities having a market value of less than \$75 million; (3) less than 80% of the weight of the Index is represented by component securities that are eligible for options trading pursuant to ISE Rule 502; (4) 10% or more of the weight of the Index is represented by component securities trading less than 20,000 shares per day; or (5) the largest component security accounts for more than 15% of the weight of the Index or the largest five components in the aggregate account for more than 40% of the weight of the Index.²⁸

The Commission believes that these factors minimize the potential for manipulation because it is unlikely that attempted manipulations of the prices of the Index's components would affect significantly the Index's value. Moreover, the surveillance procedures discussed below should detect as well as deter potential manipulations and other trading abuses.

Finally, the Commission believes that the position and exercise limits for the Mini Index Options and Micro Index Options are designed to minimize the potential for manipulation and other market impact concerns. The position and exercise limits for the Mini Index Options and Micro Index Options are comparable to the position and exercise

²⁶ Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option or warrant proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the Commission believes that options on the NYSE Indexes will provide investors with a hedging and investment vehicle that should reflect the overall movement of a substantial segment of the capital markets.

²⁷ See ISE Rule 502.

²⁸ See *supra* note 18.

limits approved for other index options.²⁹

NYSE International 100 Index

According to the ISE, as of March 18, 2004, 88.15% of the components were options eligible, as measured by weighting, and 79% of the components were options eligible, as measured by number.³⁰ Second, as of March 18, 2004, the NYSE International 100 Index's components were classified in ten market sectors, which were weighted in the Index as follows: Basic Materials (3.1%); Consumer, Cyclical (11.1%); Consumer, Non-Cyclical (5.2%); Energy (17.7%); Financial (27.7%); Healthcare (12.0%); Industrial (1.1%); Technology (8.3%); Telecommunication (10.6%); and Utilities (3.2%). Third, as of March 18, 2004, the total capitalization of the Index was approximately \$4.308 trillion, the capitalization of the Index's components ranged from approximately \$4.99 billion to approximately \$182.444 billion, and the mean capitalization of the Index's components was approximately \$43.086 billion. As of March 18, 2004, the largest Index component accounted for 4.23% of the weight of the Index, and the five highest weighted securities accounted for 16.96% of the weight of the Index.

The Commission also believes that the general broad diversification, capitalizations, liquidity, and relative weighting of the Index's component securities minimize the potential for manipulation of the Index. First, the Index is comprised of 100 components listed and actively traded on the NYSE, and no single security dominates the Index. Second, the capitalizations of the stocks in the Index are very large. As of March 18, 2004, the total Index capitalization was approximately \$4.308 trillion, the median and mean capitalizations of the Index's components were approximately \$30.612 billion and \$43.086 billion, respectively, and the capitalizations of the Index's components ranged from a

high of approximately \$182.444 billion for the highest-weighted component (which represented 4.23% of the weight of the Index) to a low of approximately \$5.02 billion for the lowest-weighted Index component (which represented .05% of the weight of the Index). As of March 18, 2004, the capitalizations of the Index's five most heavily weighted components, which represented 16.96% of the weight of the Index, ranged from approximately \$117.7 billion to approximately \$182.444 billion. Third, as of March 18, 2004, mean and median six-month average daily trading volume of the Index's components was 1.054 million shares and 197,450 shares, respectively, and 79% of the Index's components had six-month average daily trading volume of at least 50,000 shares. Fourth, as of March 18, 2004, 88.15% of the components were options eligible, as measured by weighting, and 79% of the components were options eligible, as measured by number. Fifth, the ISE has represented that it will monitor the Index on a quarterly basis at which point the Exchange will notify the Division, and will cease trading options on the Index if and when: (1) The number of securities in the Index drops by $\frac{1}{3}$ or more; (2) 10% or more of the weight of the Index is represented by component securities having a market value of less than \$75 million; (3) less than 80% of the weight of the Index is represented by component securities that are eligible for options trading pursuant to ISE Rule 502; (4) 10% or more of the weight of the Index is represented by component securities trading less than 20,000 shares per day; or (5) the largest component security accounts for more than 15% of the weight of the Index or the largest five components in the aggregate account for more than 40% of the weight of the Index.³¹

The Commission believes that these factors minimize the potential for manipulation because it is unlikely that attempted manipulations of the prices of the Index's components would affect significantly the Index's value. Moreover, the surveillance procedures discussed below should detect as well as deter potential manipulations and other trading abuses.

Finally, the Commission believes that the position and exercise limits for the Mini Index Options and Micro Index Options are designed to minimize the potential for manipulation and other market impact concerns. The position and exercise limits for the Mini Index Options and Micro Index Options are comparable to the position and exercise

limits approved for other index options.³²

NYSE World Leaders Index

According to the ISE, as of March 18, 2004, 95.1% of the components were options eligible, as measured by weighting, and 89.5% of the components were options eligible, as measured by number.³³ Second, the capitalizations of the stocks in the Index are very large. As of March 18, 2004, the NYSE World Leaders Index's components were classified in ten industry sectors, which were weighted in the Index as follows: Basic Materials (2.3%); Consumer, Cyclical (12.6%); Consumer, Non-Cyclical (9.2%); Energy (11.2%); Financial (24.1%); Healthcare (16.3%); Industrial (7.2%); Technology (6.8%); Telecommunication (8.1%); and Utilities (1.5%). Third, as of March 18, 2004, the total capitalization of the Index was approximately \$9.7 trillion, the capitalization of the Index's components ranged from approximately \$4.99 billion to approximately \$310.02 billion, and the mean capitalization of the Index's components was approximately \$52.668 billion. As of March 18, 2004, the largest Index component accounted for 2.94% of the weight of the Index, and the five highest weighted securities accounted for 12.99% of the weight of the Index. Fourth, because the Index is a combination of two broad-based indexes, the NYSE U.S. 100 Index and the NYSE International 100 Index, and the selection and maintenance criteria for the NYSE U.S. 100 Index and the NYSE International 100 Index determine the components of the NYSE World Leaders Index, the selection and maintenance criteria for the NYSE U.S. 100 Index and the NYSE International 100 Index should serve to ensure that the Index maintains its broad representative sample of stocks.

The Commission also believes that the general broad diversification, capitalizations, liquidity, and relative weighting of the Index's component securities minimize the potential for manipulation of the Index. First, the Index is comprised of 200 components listed and actively traded on the NYSE, and no single security dominates the Index. Second, the capitalizations of the stocks in the Index are very large. As of March 18, 2004, the total Index capitalization was approximately \$10.533 trillion, the median and mean capitalizations of the Index's components were approximately \$37.291 billion and \$52.668 billion,

²⁹ See, e.g., Securities Exchange Act Release Nos. 48884 (December 5, 2003), 68 FR 69753 (December 15, 2003) (File No. SR-PHLX-2003-66) (order approving the listing and trading of Nasdaq 1000 Index options, with position limits of 50,000 contracts on either side of the market and no more than 30,000 contracts in series in the nearest expiration month); 31382 (October 30, 1992), 57 FR 52802 (November 5, 1992) (File No. SR-CBOE-92-02) (order approving the listing and trading of options on the Russell 2000 Index, with position limits of 50,000 contracts on either side of the market and no more than 30,000 contracts in series in the nearest expiration month); and 50937 (December 27, 2004), 70 FR 416 (January 4, 2005) (File No. SR-ISE-2004-09) (order approving the listing and trading of options on the S&P 1000 Index).

³⁰ See *supra* note 27.

³¹ See *supra* note 18.

³² See *supra* note 29.

³³ See *supra* note 27.

respectively, and the capitalizations of the Index's components ranged from a high of approximately \$310.02 billion for the highest-weighted component (which represented 2.94% of the weight of the Index) to a low of approximately \$4.99 billion for the lowest-weighted Index component (which represented .05% of the weight of the Index). As of March 18, 2004, the capitalizations of the Index's five most heavily weighted components, which represented 12.99% of the weight of the Index, ranged from approximately \$255.08 billion to approximately \$310.02 billion. Third, as of March 18, 2004, mean and median six-month average daily trading volume of the Index's components was 3.218 million shares and 1.73 million shares, respectively, and 89.5% of the Index's components had six-month average daily trading volume of at least 50,000 shares. Fourth, as of March 18, 2004, 95.1% of the components were options eligible, as measured by weighting, and 89.5% of the components were options eligible, as measured by number. Fifth, the ISE has represented that it will monitor the Index on a quarterly basis at which point the Exchange will notify the Division, and will cease trading options on the Index if and when: (1) The number of securities in the Index drops by $\frac{1}{3}$ or more; (2) 10% or more of the weight of the Index is represented by component securities having a market value of less than \$75 million; (3) less than 80% of the weight of the Index is represented by component securities that are eligible for options trading pursuant to ISE Rule 502; (4) 10% or more of the weight of the Index is represented by component securities trading less than 20,000 shares per day; or (5) the largest component security accounts for more than 15% of the weight of the Index or the largest five components in the aggregate account for more than 40% of the weight of the Index.³⁴

The Commission believes that these factors minimize the potential for manipulation because it is unlikely that attempted manipulations of the prices of the Index's components would affect significantly the Index's value. Moreover, the surveillance procedures discussed below should detect as well as deter potential manipulations and other trading abuses.

Finally, the Commission believes that the position and exercise limits for the Mini Index Options and Micro Index Options are designed to minimize the potential for manipulation and other market impact concerns. The position and exercise limits for the Mini Index

Options and Micro Index Options are comparable to the position and exercise limits approved for other index options.³⁵

NYSE TMT Index

According to the ISE, as of March 18, 2004, 100% of the components were options eligible.³⁶ Second, as of March 18, 2004, the NYSE TMT Index's components were classified in 14 industry sub-groups, which were weighted in the Index as follows: Advertising (1.9%); Broadcasting (18.9%); Communications Technology (11.8%); Computers (13.0%); Diversified Technology Services (2.4%); Entertainment (0.3%); Fixed-line Communications (20.9%); Internet Services (0.0%); Office Equipment (1.2%); Publishing (6.1%); Semiconductors (10.8%); Technology, Software (2.8%); Wireless Communications (9.9%); and Other: Non-Technology, Media and Telecommunication (0.0%). Third, as of March 18, 2004, the total capitalization of the Index was approximately \$2.701 trillion, the capitalization of the Index's components ranged from approximately \$2.89 billion to approximately \$165.12 billion, and the mean capitalization of the Index's components was approximately \$27.01 billion. As of March 18, 2004, the largest Index component accounted for 6.11% of the weight of the Index, and the five highest weighted securities accounted for 23.62% of the weight of the Index.

The Commission also believes that the large capitalizations, liquidity, and relative weighting of the Index's component securities minimize the potential for manipulation of the Index. First, the Index is comprised of 100 components listed and actively traded on the NYSE, and no single security dominates the Index. Second, the capitalizations of the stocks in the Index are very large. As of March 18, 2004, the total Index capitalization was approximately \$2.701 trillion, the median and mean capitalizations of the Index's components were approximately \$15.38 billion and \$27.01 billion, respectively, and the capitalizations of the Index's components ranged from a high of approximately \$165.12 billion for the highest-weighted component (which represented 6.11% of the weight of the Index) to a low of approximately \$2.89 billion for the lowest-weighted Index component (which represented .11% of the weight of the Index). As of March 18, 2004, the capitalizations of the Index's five most heavily weighted

components, which represented 23.62% of the weight of the Index, ranged from approximately \$99.62 billion to approximately \$165.12 billion. Third, as of March 18, 2004, mean and median six-month average daily trading volume of the Index's components was 4.138 million shares and 1.302 million shares, respectively, and 86% of the Index's components had six-month average daily trading volume of at least 50,000 shares. Fourth, as of March 18, 2004, components representing over 100% of the weight of the Index were options eligible. Fifth, the ISE has represented that it will monitor the Index on a quarterly basis at which point the Exchange will notify the Division, and will cease trading options on the Index if and when: (1) The number of securities in the Index drops by $\frac{1}{3}$ or more; (2) 10% or more of the weight of the Index is represented by component securities having a market value of less than \$75 million; (3) less than 80% of the weight of the Index is represented by component securities that are eligible for options trading pursuant to ISE Rule 502; (4) 10% or more of the weight of the Index is represented by component securities trading less than 20,000 shares per day; or (5) the largest component security accounts for more than 15% of the weight of the Index or the largest five components in the aggregate account for more than 40% of the weight of the Index.³⁷

The Commission believes that these factors minimize the potential for manipulation because it is unlikely that attempted manipulations of the prices of the Index's components would affect significantly the Index's value. Moreover, the surveillance procedures discussed below should detect as well as deter potential manipulations and other trading abuses.

Finally, the Commission believes that the position and exercise limits for the Mini Index Options and Micro Index Options are designed to minimize the potential for manipulation and other market impact concerns. The position and exercise limits for the Mini Index Options and Micro Index Options are comparable to the position and exercise limits approved for other index options.³⁸

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as options on the NYSE Indexes, can commence on

³⁴ See *supra* note 18.

³⁵ See *supra* note 29.

³⁶ See *supra* note 27.

³⁷ See *supra* note 18.

³⁸ See *supra* note 29.

a national securities exchange. The Commission notes that the trading of standardized, exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because options on the NYSE Indexes will be subject to the same regulatory regime as the other standardized options traded currently on the ISE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Index Options.

C. Surveillance

The Commission generally believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the market(s) trading the stocks underlying the derivative product is an important measure for the surveillance of the derivative product and the underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation. In this regard, the ISE and the NYSE, the NASD, and the Amex are members of the ISG and the ISG Agreement will apply to the trading of Index Options.³⁹ In addition, the ISE will apply to the options on the NYSE Indexes the same surveillance procedures it uses currently for existing index options trading on the ISE.

The NYSE International 100 Index and the NYSE World Leaders Index both contain foreign component ADRs that all trade on the NYSE. As mentioned above, 98 out of the 100 underlying components are subject to effective surveillance sharing agreements as set forth in ISE Rule 502. The remaining two components, representing only 0.86% of the Index, also meet surveillance requirements in ISE Rule 502(f)(2), because 50% of the volume for the underlying ADRs occurs on the NYSE. Accordingly, the Commission expects that there will be adequate surveillance mechanisms to detect and deter potential manipulation when

³⁹ The ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. All of the registered national securities exchanges and the NASD are members of the ISG. In addition, futures exchanges and non-U.S. exchanges and associations are affiliate members of ISG.

trading Index options on the NYSE Indexes, which contain the foreign components.⁴⁰

D. Market Impact

The Commission believes that the listing and trading of options on the NYSE Indexes will not adversely impact the underlying securities markets.⁴¹ First, as described above, the NYSE Indexes are highly capitalized and their underlying components are actively traded. Second, the position and exercise limits applicable to the options on the NYSE Indexes should serve to minimize potential manipulation and market impact concerns. Third, the risk to investors of contra-party non-performance will be minimized because the options on the NYSE Indexes, like other standardized options traded in the U.S., will be issued and guaranteed by the Options Clearing Corporation. Fourth, existing ISE index options rules and surveillance procedures will apply to the options on the NYSE Indexes.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁴² that the proposed rule change (SR-ISE-2004-27), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴³

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5-2463 Filed 5-16-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51683; File No. SR-NASD-2005-039]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change To Incorporate the Brut System Book Feed into the TotalView Entitlement

May 11, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

⁴⁰ Under the maintenance standards, 80% of the Indexes would have to meet the standards of ISE Rule 502, which would ensure that the Indexes with foreign components are adequately covered by effective surveillance mechanisms. See also *supra* note 18, and accompanying text.

⁴¹ As noted above, the ISE represented in a confidential submission to the Commission that it has the necessary systems capacity to support the introduction of options on the NYSE Indexes.

⁴² 15 U.S.C. 78s(b)(2).

⁴³ 17 CFR 200.30-3(a)(12).

(“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 30, 2005, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), 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 Nasdaq. 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

Nasdaq proposes to modify NASD Rule 7010(q)(1) to incorporate Brut’s System Book Feed, as described in NASD Rule 4901(j), within the TotalView entitlement. If approved, Nasdaq states that it will make this proposal effective on July 1, 2005. Below is the text of the proposed rule change. Proposed new language is *italicized*.

* * * * *

7010. System Services

- (a)–(p) No change.
- (q) Nasdaq TotalView
- (1) TotalView Entitlement

The TotalView entitlement allows a subscriber to see all individual Nasdaq Market Center participant orders and quotes displayed in the system as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center, including the NQDS feed and the Brut System Book Feed.

- (A)–(C) No change.
- (2)–(3) No change.
- (r)–(v) 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, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 7, 2004, Nasdaq acquired Brut, LLC, a registered broker-dealer and member of the NASD, and operator of the Brut ECN System ("Brut" or "Brut System"). Once purchased by Nasdaq, Brut became a facility of a national securities association. On November 3, 2004, Nasdaq submitted a proposed rule change to establish rules governing the operation of this facility.³ This proposed rule change was approved in amended form by the Commission on March 7, 2005.⁴

In its proposed rules governing the operation of the Brut facility, Nasdaq stated its intention of ultimately integrating the Brut facility with Nasdaq into a single technology platform that would further enhance execution quality for system users.⁵ As part of that process, Nasdaq stated its intention to, as a first step in this process, have Brut provide the full depth of its order book to the Nasdaq Market Center.⁶ Nasdaq states that this step was commenced upon Commission approval of the rules for the Brut facility as discussed above, and was completed on March 31, 2005.⁷

According to Nasdaq, a consequence of this integration is that market participants can now receive real-time information regarding the orders in Brut's order book via two distinct sources. Nasdaq's TotalView data feed provides information regarding all quotes and orders in the Nasdaq Market Center (including, but not limited to, Brut orders). In addition, Nasdaq continues to distribute the Brut System Book Feed, which contains the same information with respect to orders in Brut.⁸ Nasdaq currently intends to distribute Brut order information via both TotalView and the System Book Feed as long as Brut remains a separate Nasdaq facility, to ease the transition of market participants to a single platform.⁹

³ See Exchange Act Release No. 51078 (January 25, 2005), 70 FR 4902 (January 31, 2005) (SR-NASD-2004-173).

⁴ See Exchange Act Release No. 51326 (March 7, 2005), 70 FR 12521 (March 14, 2005) (SR-NASD-2004-173).

⁵ See note 3 *supra*, at 4910.

⁶ *Id.*

⁷ Telephone conversation between Jeffrey Davis, Associate General Counsel, Nasdaq, and David Liu, Attorney, Division of Market Regulation ("Division"), Commission, on May 9, 2005.

⁸ See NASD Rule 4904(b)(1).

⁹ Nasdaq states that TotalView subscribers may obtain the Brut System Book Feed upon request of Nasdaq. Telephone conversation between William

Nasdaq believes that the ability for market participants to receive Brut order book information via TotalView now warrants the incorporation of the Brut System Book Feed within the TotalView entitlement for fee purposes. Nasdaq states that the TotalView entitlement is intended to assess fees for the receipt of real-time information regarding depth of order book and related information, regardless of source. While Nasdaq believes that it is important to offer market participants the choice to receive Brut order book information via either the TotalView or the Brut System Book Feed, it further believes there is no justification to warrant differential fees based on the method of receipt.

Accordingly, Nasdaq proposes to incorporate the Brut System Book Feed into the TotalView entitlement effective July 1, 2005. As of that time, any recipient of the Brut System Book Feed would need to complete relevant market data agreements, begin submission of monthly usage reporting, and pay associated distributor and user fees. Nasdaq states that it intends to assess incremental fees only where a vendor market participant uses the Brut System Book Feed to provide order information in an application or context that does not already use TotalView to provide Nasdaq Market Center order book information. Nasdaq notes that, of the approximately sixty-five firms currently receiving the Brut System Book Feed, many are already TotalView recipients, and thus, for those firms, this rule change would not impose incremental expense unless their usage is expanded.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A of the Act,¹⁰ in general, and furthers the objectives of Section 15A(b)(5),¹¹ in particular, in that the incorporation of the Brut System Book Feed into the TotalView entitlement provides for the equitable allocation of reasonable charges among the persons distributing and purchasing Nasdaq depth of order book information. Nasdaq believes that the proposed pricing structure would enable Nasdaq to equitably charge for Brut depth of book information regardless of the source from which it is received, continue to provide market participants

O'Brien, Senior Vice President, Market Data Distribution, Nasdaq, Jeffrey Davis, Associate General Counsel, Nasdaq, John Roeser, Assistant Director, Division, Commission, Marc McKayle, Special Counsel, Division, Commission, and David Liu, Attorney, Division of Market Regulation, Commission, on April 15, 2005.

¹⁰ 15 U.S.C. 78o-3.

¹¹ 15 U.S.C. 78o-3(b)(5).

with choice regarding receipt of this information while Brut operates as a separate facility, and ease the transition to a single technology platform. Nasdaq further believes that this proposed rule change would encourage the broader redistribution of the Nasdaq Market Center depth of book order information, thus improving transparency and thereby benefiting the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Nasdaq consents, the Commission will:

- (A) By order approve such proposed rule change; or
- (B) Instruct proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2005-039 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2005-039. This file

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. 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-NASD-2005-039 and should be submitted on or before June 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5-2462 Filed 5-16-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51672; File No. SR-PCX-2005-62]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Exchange Fees and Charges

May 9, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 27, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared

by PCX. The Exchange filed this proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX proposes to amend the Trade-Related Charges portion of its Schedule of Fees and Charges ("Schedule"). The text of the proposed rule change is available on PCX's Web site (<http://www.pacificex.com>), at PCX's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Trade-Related Charges portion of the Schedule in order to eliminate an incentive program for Market Makers with respect to transaction charges. In December 2003, the Exchange implemented an incentive program for Market Makers with respect to transaction charges.⁵ The purpose of the incentive program was to secure existing volumes and attract higher levels of liquidity. The incentive program has been in place for approximately sixteen months. The Exchange has reviewed the incentive program and determined that it has not had its desired effects. As such, the Exchange is proposing to eliminate the incentive program and reinstate the \$0.21 per contract transaction fee for

Market Makers. The \$0.21 per contract transaction fee for Market Makers is the same fee that was in place prior to the adoption of the incentive program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁷ in particular, in that it provides for the equitable allocation of dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder,⁹ because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See Securities Exchange Act Release No. 48976 (December 23, 2003), 68 FR 75701 (December 31, 2003).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Number SR-PCX-2005-62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2005-62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX-2005-62 and should be submitted on or before June 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5-2443 Filed 5-16-05; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Public Notice 5082]

Culturally Significant Objects Imported for Exhibition Determinations: "The Mysterious Bog People"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to

the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition, "The Mysterious Bog People," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Carnegie Museum of Natural History, Pittsburgh, Pennsylvania, from on or about July 9, 2005, to on or about January 22, 2006, the Natural History Museum of Los Angeles County, Los Angeles, California, from on or about March 16, 2006, to on or about September 10, 2006, the Milwaukee Public Museum, Milwaukee, Wisconsin, from on or about October 22, 2006, to on or about January 21, 2007, and at possible additional venues yet to be determined, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, (202) 453-8052, and the address is United States Department of State, SA-44, Room 700, 301 4th Street, SW., Washington, DC 20547-0001.

Dated: May 9, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05-9791 Filed 5-16-05; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF STATE

[Public Notice 5064]

U.S. Advisory Commission on Public Diplomacy; Closed Meeting

The U.S. Advisory Commission on Public Diplomacy will hold a meeting on Wednesday, May 25, 2005 at 9 a.m. in Room 840 of the U.S. Department of State at 301 4th Street, SW., Washington, DC. Pursuant to 5 U.S.C. 552b [c], the meeting will be closed to the public. During its discussion, the

Advisory Commission will discuss information that, upon premature disclosure, would likely frustrate implementation of proposed Department of State action and that relates solely to internal personnel rules and practices of the Department of State. The Commissioners will review efforts that expand interagency coordination of public diplomacy programs to increase their effectiveness in communicating with foreign audiences.

The Commission was reauthorized pursuant to Public Law 106-113 (H.R. 3194, Consolidated Appropriations Act, 2000). Its Charter was renewed February 18, 2005. The U.S. Advisory Commission on Public Diplomacy is a bipartisan Presidentially appointed panel created by Congress in 1948 to provide oversight of U.S. Government activities intended to understand, inform and influence foreign publics. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current Commission members include Chairman, Barbara M. Barrett of Arizona; Harold Pachios of Maine; Jay T. Snyder of New York; Maria Sophia Aguirre of Washington, DC; Charles "Tre" Evers III of Florida; Ambassador Elizabeth Bagley of Washington, DC and Ambassador Penne Korth Peacock of Washington, DC.

For more information, please contact Barbara Barrett at 202-203-7880.

Dated: May 11, 2005.

Katherine Yemelyanov,

Deputy Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 05-9789 Filed 5-16-05; 8:45 am]

BILLING CODE 4710-11-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2005-20560]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice publishes the FMCSA's receipt of applications from 30 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions will enable

¹⁰ 17 CFR 200.30-3(a)(12).

these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before June 16, 2005.

ADDRESSES: You may submit comments identified by any of the following methods. Please identify your comments by the DOT DMS Docket Number FMCSA-2005-20560.

- Web site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Maggi Gunnels, Office of Bus and Truck Standards and Operations, (202) 366-4001, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help

guidelines under the "help" section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

Background

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. The 30 individuals listed in this notice have recently requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statute.

Qualifications of Applicants

1. Edmund J. Barron

Mr. Barron, age 36, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/100 and in the left, 20/20. Following an examination in 2004, his optometrist certified, "Based on this examination, it is my medical opinion that Mr. Barron has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Barron submitted that he has driven straight trucks for 1 year, accumulating 40,000 miles, and tractor-trailer combinations for 16 years, accumulating 1.2 million miles. He holds a Class A commercial driver's license (CDL) from Pennsylvania. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

2. Eddie M. Brown

Mr. Brown, 47, has amblyopia in his left eye. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/200. His optometrist examined him in 2004 and stated, "I would like to certify that in my medical opinion, Mr. Eddie Brown has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Brown submitted that he has driven straight trucks for 20 years, accumulating 1.0 million miles, and tractor-trailer combinations for 19 years, accumulating 345,000 miles. He holds a Class AM CDL from South Carolina. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

3. Tony Cook

Mr. Cook, 38 has central field loss in his right eye due to an injury in 1987. His best-corrected visual acuity in the right eye is light perception and in the left, 20/15. Following an examination in 2004, his optometrist certified, "Based upon my findings and medical expertise, I hereby certify Tony Cook to be visually able to safely operate a commercial motor vehicle." Mr. Cook submitted that he has driven straight trucks for 8 years, accumulating 624,000 miles. He holds a Class D driver's license from Kentucky. His driving record for the last 3 years shows two crashes and one conviction for a moving violation in a CMV. According to police report for the first crash, another driver crossed the center line and struck Mr. Cook's vehicle. The report indicated that inattention by the other driver was a contributing factor in the crash. Neither driver was cited. According to the police report for the second crash, Mr. Cook was attempting to back a tractor-trailer onto private property from a roadway when another driver collided with his vehicle. The other driver was cited; Mr. Cook was not cited. The moving violation, which occurred on a separate occasion, was exceeding the speed limit by 15 mph.

4. Jeffery W. Cotner

Mr. Cotner, 42, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/60. Following an examination in 2004, his optometrist certified, "It is my medical opinion that Mr. Cotner does not have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Cotner reported that he has driven tractor-trailer combinations for 13 years, accumulating 230,000 miles. He holds a Class A CDL from Oregon. His driving

record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

5. *John K. Fank*

Mr. Fank, 43, had a retinal detachment in his right eye 15 years ago. The best-corrected visual acuity in his right eye is 20/150 and in the left, 20/20. His optometrist examined him in 2004 and stated, "This patient appears to have sufficient sight and peripheral vision to continue driving his commercial vehicle as safely as demonstrated over previous years." Mr. Fank reported that he has driven straight trucks for 11 years, accumulating 247,000 miles, and tractor-trailer combinations for 10 years, accumulating 195,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes or convictions for moving violations in CMV.

6. *Bobby G. Fletcher*

Mr. Fletcher, 38, has amblyopia in his left eye. The best-corrected visual acuity in his right eye is 20/20 and in his left 20/200. His optometrist examined him in 2004 and noted, "In my professional opinion this patient should have sufficient vision with corrective lenses to operate a commercial vehicle." Mr. Fletcher reported that he has driven tractor-trailer combinations for 10 years, accumulating 600,000 miles. He holds a Class A. CDL from Texas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

7. *Lonny L. Ford*

Mr. Ford, 58, has had a macular scar in his right eye since age 8. His best-corrected visual acuity in the right eye is 20/200 and in the left, 20/20. Following an examination in 2005, his ophthalmologist noted, "It is my medical opinion this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Ford reported that he has driven straight trucks for 34 years, accumulating 2.8 million miles. He holds a Class D driver's license from Tennessee. His driving record the the last 3 years shows no crashes or convictions for moving violations in CMV.

8. *Larry G. Garcia*

Mr. Garcia, 52, had a retinal detachment in his right eye in 1995. The visual acuity in his right eye is light perception and in the left, 20/20. Following an examination in 2004 his optometrist stated, "It is my opinion, Larry Garcia has sufficient vision and

visual field to perform driving tasks required for operating a commercial vehicle." Mr. Garcia reported that he has driven straight trucks for 25 years, accumulating 1.2 million miles, and tractor-trailer combinations for 10 years, accumulating 780,000 miles. He holds a Class C driver's license from Oregon. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 17 mph.

9. *Robert E. Hendrick*

Mr. Hendrick, 63, has corneal damage in his right eye due to an injury in 1964. His best-corrected visual acuity in the right eye is 20/400 and in the left, 20/20. Following an examination in 2004, his optometrist noted, "I certify that Mr. Hendrick has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Hendrick submitted that he has driven straight trucks for 45 years, and tractor-trailer combinations for 30 years, accumulating 900,000 miles in each. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

10. *Jonah G. Higdon*

Mr. Higdon, 34, has amblyopia in his left eye. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/50. Following an examination in 2004, his optometrist certified, "It is my professional opinion that Mr. Higdon has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Higdon reported that he has driven straight trucks for 14 years, accumulating 250,000 miles. He holds a driver's license from Mississippi. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

11. *Daniel J. Hillman*

Mr. Hillman, 61, experienced a retinal detachment in his right eye in November 2001. His best-corrected visual acuity in the right eye is 20/200 and in the left, 20/20. Following an examination in 2004, his optometrist certified, "In my opinion Mr. Hillman retains sufficient vision to perform as a commercial driver." Mr. Hillman reported that he has driven straight trucks for 7 years, accumulating 602,000 miles, and tractor-trailer combinations for 26 years, accumulating 2.3 million miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows one crash and no convictions for moving violations in a

CMV. According to the police report, Mr. Hillman's vehicle collided with an oncoming vehicle, and the investigating officer was unable to determine which vehicle was over the double center line. Neither driver was cited.

12. *Ronald A. Johnson*

Mr. Johnson, 55, had cataract surgery followed by infection and loss of his left eye in the year 2000. His best-corrected visual acuity in the right eye is 20/20. Following an examination in 2004, his optometrist noted, "In my opinion he has adequate vision to drive and is safe to drive a commercial vehicle with proper side mirrors." Mr. Johnson reported that he has driven tractor-trailer combinations for 25 years, accumulating 2.7 million miles. He holds a Class DA CDL from Kentucky. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

13. *Clyde H. Kitzan*

Mr. Kitzan, 47, has amblyopia in his right eye. The best-corrected visual acuity in his right eye is 20/200 and in the left, 20/15. His optometrist examined him in 2004 and certified, "Because of his past history of successfully operating trucks and equipment, and because his vision has been stable for approximately 35 years, it is my opinion Mr. Kitzan is visually capable of operating a commercial vehicle." Mr. Kitzan reported that he has driven straight trucks and tractor-trailer combinations for 15 years, accumulating 750,000 miles in each. He holds a Class AM CDL from North Dakota. His driving record for the last 3 years shows no crashes and one conviction for moving violation—speeding—in a CMV. He exceeded the speed limit by 12 mph.

14. *Joe S. Lassiter, III*

Mr. Lassiter, 62, lost his right eye due to an injury 37 years ago. The best-corrected visual acuity in his left eye is 20/20. Following an examination in 2004, his optometrist noted, "I certify in my opinion, Mr. Lassiter has sufficient vision in his left eye to operate a commercial vehicle." Mr. Lassiter submitted that he has driven straight trucks for 39 years, accumulating 1.1 million miles, and tractor-trailer combinations for 12 years, accumulating 600,000 miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

15. Gene A. Leshner, Jr.

Mr. Leshner, 39, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/50. Following an examination in 2004, his optometrist certified, "Based on his display of 20/20 binocular vision, his good depth perception, the presence of a full visual field, and his previous driving history with the longstanding nature of his visual condition, it is my opinion that Mr. Leshner has sufficient vision to perform the driving tasks associated with operating a commercial vehicle." Mr. Leshner reported that he has driven tractor-trailer combinations for 8 years, accumulating 936,000 miles. He holds a Class A CDL from West Virginia. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 13 mph.

16. Eugene A. Maggio

Mr. Maggio, 62, lost his right eye due to any injury in 2001. The best-corrected visual acuity in his left eye is 20/20. His optometrist examined him in 2004 and noted, "In my medical opinion, Mr. Maggio has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Maggio reported that he has driven straight trucks for 2 years, accumulating 2,000 miles, and tractor trailer-combinations for 38 years, accumulating 4.1 million miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes or convictions or moving violations in a CMV.

17. Anthony R. Miles

Mr. Miles, 40, lost his left eye due to trauma 15 years ago. His visual acuity in the right eye is 20/20. Following an examination in 2004, his optometrist certified, "In my opinion, Mr. Miles has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Miles submitted that he has driven straight trucks for 18 years, accumulating 250,000 miles, and tractor-trailer combinations for 9 years, accumulating 630,000 miles. He holds a Class AM CDL from Nevada. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

18. Raymond E. Morelock

Mr. Morelock, 54, has no vision in the right eye due to trauma from childhood. His visual acuity in the left eye is 20/20. Following an examination in 2005, his optometrist certified, "It is my professional opinion that the defect in Mr. Morelock's right eye will not affect the safe operation of a motor vehicle,

whether private or commercial." Mr. Morelock submitted that he has driven straight trucks for 14 years, accumulating 100,000 miles. He holds a Class D driver's license from Wisconsin. His driving records for the last 3 years shows no crashes or convictions for moving violations in a CMV.

19. Kenneth L. Nau

Mr. Nau, 47, has had a macular scar in his left eye since birth. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/400. Following an examination in 2004, his ophthalmologist noted, "Mr. Nau has maintained a safe driving record for many years and has always driven with mild visual disability of the left eye. Since it has always been present, he has functioned well, and his peripheral visual acuity is excellent, there is no reason to believe that he cannot continue to operate commercial vehicles." Mr. Nau submitted that he has driven straight trucks for 25 years, accumulating 2.0 million miles. He holds a Class AM CDL from Maryland. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

20. David L. Peebles

Mr. Peebles, 52, has amblyopia in his left eye. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/200. His optometrist examined him in 2005 and certified, "To the best of my opinion, I would think that visually he can continue to drive commercial vehicles with little or no problems." Mr. Peebles submitted that he has driven straight trucks for 3 years, accumulating 180,000 miles, and tractor-trailer combinations for 21 years, accumulating 2.6 million miles. He holds a Class A CDL from Indiana. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

21. David W. Peterson

Mr. Peterson, 26, has amblyopia in his right eye. The visual acuity in his right eye is 20/200 and in the left, 20/20. His optometrist examined him in 2004 and certified, "His vision is more than adequate to perform the tasks required of him while driving and should remain stable over the next several years." Mr. Peterson submitted that he has driven tractor-trailer combinations for 6 years, accumulating 600,000 miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 9 mph.

22. Frederick G. Robbins

Mr. Robbins, 50, has had a retinal scar in his right eye since 1998. The best-corrected visual acuity in his right eye is 20/70 and in the left, 20/20. His ophthalmologist examined him in 2004 and noted, "His vision is sufficient to drive a commercial vehicle." Mr. Robbins reported that he has driven tractor-trailer combinations for 27 years, accumulating 1.3 million miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows one crash and one conviction for a moving violation in a CMV. According to the police report, Mr. Robbins' vehicle collided with another vehicle traveling in the same direction, but the investigating officer did not determine how the crash happened. The other driver was cited; Mr. Robbins was not cited.

23. Jose C. Sanchez-Sanchez

Mr. Sanchez-Sanchez, 37, lost his left eye due to an injury 25 years ago. The visual acuity in his right eye is 20/25. His optometrist examined him in 2004 and certified, "I believe he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Sanchez-Sanchez submitted that he has driven straight trucks for 16 years, accumulating 160,000 miles, and tractor-trailer combinations for 10 years, accumulating 130,000 miles. He holds a Class A CDL from Idaho. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

24. Boyd D. Stamey

Mr. Stamey, 43, has a macular scar in the left eye due to injury in 2001. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/50. Following an examination in 2004, his ophthalmologist certified, "It is my opinion that you have very stable vision in the eye and indeed the left eye continues to improve. I see no reservation with your having a commercial driver's license. You should be able to perform with the restrictions you have with this left eye, in keeping with the slightly reduced vision." Mr. Stamey reported that he has driven tractor-trailer combinations for 10 years, accumulating 960,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV. According to the police report, Mr. Stamey was stopped in traffic when his vehicle was struck on the side by another driver who was trying to avoid rear-ending a

vehicle in front of him. Neither Mr. Stamey nor the driver of the vehicle which struck his was cited.

25. *Scott C. Teich*

Mr. Teich, 40, has had astigmatism in his left eye since childhood. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/60. Following an examination in 2004, his optometrist certified, "In my opinion, Mr. Teich possesses sufficient vision to safely operate a commercial vehicle and perform the driving tasks that are required." Mr. Teich reported that he has driven tractor-trailer combinations for 10 years, accumulating 900,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 5 mph.

26. *Emerson J. Turner*

Mr. Turner, 60, has a central vision deficit in his right eye due to trauma 15 years ago. His best-corrected visual acuity in the right eye is finger counting and in the left, 20/20. Following an examination in 2004, his optometrist certified, "In my medical opinion, Mr. Turner appears to have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Turner reported that he has driven tractor-trailer combinations for 3 years, accumulating 348,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and two convictions for moving violations in a CMV. The moving violations were "failure to obey traffic control device" and exceeding the speed limit by 15 mph.

27. *Daniel E. Watkins*

Mr. Watkins, 41, underwent a congenital cataract operation in his left eye in 1964. The visual acuity in his right eye is 20/20 and in the left, finger counting. His ophthalmologist examined him in 2004 and stated, "It is my medical opinion that Mr. Watkins has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Watkins reported that he has driven straight trucks and tractor-trailer combinations for 5 years, accumulating 625,000 miles in each. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 11 mph.

28. *Dean E. Wheeler*

Mr. Wheeler, 51, had a corneal transplant in his right eye prior to 1996. The best-corrected visual acuity in his right eye is 20/50 and in the left, 20/20. Following an examination in 2004, his optometrist certified, "I feel in my medical opinion that Mr. Dean Wheeler has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Wheeler reported that he has driven straight trucks for 5 years, accumulating 60,000 miles. He holds a Class ABCD CDL from Wisconsin. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

29. *Michael C. Williams, Sr.*

Mr. Williams, 36, lost the vision in his left eye due to an injury in 1992. His visual acuity in the right eye is 20/20. Following an examination in 2004, his optometrist noted, "In summary, the eye health is normal and vision is clear and normal. There appears to be no concern or limit to his visual ability to drive in general or to drive commercially." Mr. Williams reported that he has driven straight trucks for 7 years, accumulating 350,000 miles, and tractor-trailer combinations for 9 years, accumulating 720,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

30. *Louise E. Workman*

Mr. Workman, 55, has amblyopia in his right eye. His best-corrected visual acuity in his right eye is 20/70 and in the left, 20/30. His ophthalmologist examined him in 2004 and noted, "In my opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Workman submitted that he has driven straight trucks for 30 years, accumulating 1.5 million miles, and tractor-trailer combinations for 15 years, accumulating 75,000 miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued: May 11, 2005.

Pamela M. Pelcovits,

Office Director, Policy, Plan, and Regulation.
[FR Doc. 05–9795 Filed 5–16–05; 8:45 am]

BILLING CODE 4910–EX–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–21192; Notice 1]

ArvinMeritor, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

ArvinMeritor Inc. (ArvinMeritor) has determined that certain automatic slack adjusters assembled by the petitioner in 2004 do not comply with S5.1.8(a) and S5.2.2(a) of 49 CFR 571.121, Federal Motor Vehicle Safety Standard (FMVSS) No. 121, "Air brake systems." ArvinMeritor has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Pursuant to 49 U.S.C. 30118(d) and 30120(h), ArvinMeritor has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of ArvinMeritor's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 187 automatic slack adjusters assembled between October 13, 2004 and December 20, 2004. S5.1.8(a) is applicable to trucks and buses, and S5.2.2(a) is applicable to trailers. Both sections are titled "Brake adjuster," and both require that:

Wear of the service brakes shall be compensated for by means of a system of automatic adjustment. When inspected pursuant to S5.9, the adjustment of the service brakes shall be within the limits recommended by the vehicle manufacturer.

ArvinMeritor states that the noncompliant automatic slack adjusters were assembled with housings supplied by TaeJoo Ind. Co., Ltd., and these housings were below the dimensional specifications. The petitioner states that as a result, there is interference between the automatic slack adjuster pawl and the housing cavity in which the pawl is positioned, preventing the pawl from properly engaging the actuator, which can result in a reduction or elimination of the automatic adjustment function as required by S5.1.8(a) and S5.2.2(a).

ArvinMeritor believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. ArvinMeritor states that it has conducted dynamic testing of vehicles simulating the affected automatic slack adjusters and based on the results of this testing, ArvinMeritor is satisfied that the braking systems will still halt a vehicle within the stopping distances required by FMVSS No. 121. (The technical summary of brake performance evaluation tests can be found in the NHTSA Docket as an attachment to ArvinMeritor's petition.)

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at <http://dms.dot.gov>. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1-202-493-2251, or may be submitted to the Federal eRulemaking Portal: go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 16, 2005.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: May 11, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05-9741 Filed 5-16-05; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. RSPA-03-14455]

Pipeline Safety: Public Meeting on Use of Excess Flow Valves in Gas Distribution Service Lines

AGENCY: Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: Notice; public meeting.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration's (PHMSA) Office of Pipeline Safety (OPS) is sponsoring a public meeting on the use of Excess Flow Valves in gas distribution safety lines as a technique for mitigating the consequences of service line incidents. The meeting will be held on June 17, 2005, in Washington, DC.

DATES: The public meeting will be held Friday, June 17, 2005, from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Ritz Carlton hotel, Pentagon City, 1250 South Hays Street, Arlington, VA 22202. The phone number for hotel reservations is (703) 415-5000 or 1-(800)-241-3333. Attendees staying at the hotel must make reservations by May 30.

FOR FURTHER INFORMATION CONTACT: Mike Israni (PHMSA/OPS) at 202-366-4571; mike.israni@dot.gov, regarding the subject matter of this notice. For information regarding meeting logistics, please contact Cheryl Whetsel at 202-366-4431; cheryl.whetsel@dot.gov.

SUPPLEMENTARY INFORMATION: PHMSA/OPS invites public participation in a meeting to be held on June 17, 2005, to discuss use of excess flow valves (EFV) in gas distribution service lines to mitigate the consequences of potential service line incidents. The preliminary agenda for this meeting includes briefings on the following topics:

- Operator Case Studies and Experience
- Analysis of Recent Incident Data
- NTSB Position and Recommendation
- Views of State Regulatory Commissioners
- Views of State Fire Marshals
- Views of EFV Manufacturers
- Views of Industry Trade Associations
- A study for the National Association of Regulatory Utility Commissioners (NARUC) conducted by the National Regulatory Research Institute (NRII)
- Distribution Integrity Management Program role in EFVs

Background

EFVs are devices designed to be installed in gas service lines, the pipelines that carry gas from a distribution main to each individual customer. They automatically shut off the flow of natural gas in a service line when the line is ruptured. Proper operation of an EFV would minimize or eliminate safety consequences from fires caused by escaped gas.

EFVs will not shut off flow in response to a leak in a building or in response to a slow leak, such as a leak caused by corrosion or a small crack in the service line. If an EFV activates improperly when there is no line break, *i.e.*, spurious actuation, it would cut off gas flow to the customer.

Proposals to Require EFV Installation

In 2001, the National Transportation Safety Board (NTSB) recommended that DOT mandate installation of EFVs as a means of reducing or preventing injury or death from incidents resulting from service line breaks or ruptures in all new and renewed service lines where operating conditions are compatible with available valves.

The public safety community has also weighed-in on this issue. The International Association of Fire Chiefs (IAFC) and the International Association of Fire Fighters (IAFF) believe the use of EFVs should be required. The National Fire Protection Association (NFPA) and the National Association of State Fire Marshals (NASFM) have expressed interest in exploring options to improve gas distribution pipeline integrity management.

State Regulatory Considerations

Nearly all gas service lines are under the regulatory authority of state regulatory commissions. PHMSA/OPS has been discussing the need to mandate the installation of EFVs with state regulators. A requirement could be promulgated in a stand-alone federal regulation. Alternatively, operators could be required to consider the use of the valves among a range of prevention and mitigation options within the broader context of a Gas Distribution Integrity Management rule.

To date, no state has taken a position in support of a stand-alone federal mandate. Several states strongly oppose a stand-alone federal mandate. The leadership of the National Association of Regulatory Utility Commissioners (NARUC) has expressed the view that the use of the valves should be considered within the broader context of a Gas Distribution Integrity Management regulation. NARUC has

begun its own independent study of this matter to assist in understanding the position of each of the states.

Benefit-Cost Study

In 2002, OPS tasked the Volpe Center to update a previous benefit-cost study for the mandatory installation of EFVs in new and renewed residential gas service lines. In December 2002, Volpe completed a draft benefit-cost analysis. PHMSA/OPS then published the study in the **Federal Register** to obtain public comments on the analysis and the underlying data and assumptions. Thirty-nine comments were received from the gas pipeline industry, one state, the fire prevention community, and the public. Many of these comments addressed data errors.

In September 2003, Volpe published a final benefit-cost study that corrected errors in the calculations, including an assumed EFV activation rate that was overstated by a factor of 10. The final estimated benefit-cost ratio for mandatory installation of EFVs remained low, between 0.29 and 0.88, depending on assumptions. This means that implementation of the NTSB recommendation for residential gas service lines would be expensive relative to the expected benefits.

Distribution Integrity Management

At present, PHMSA/OPS is considering whether requirements should be imposed to help better assure the integrity of gas distribution pipeline systems and, if so, how those requirements should be structured. PHMSA/OPS is working with a work/study group consisting of representatives of state pipeline safety regulators, the gas distribution industry, the Gas Pipeline Technology Committee, the Fire Marshal's Association, and the public. Members of this group are expected to meet periodically, throughout 2005, to evaluate various topics about the decision regarding the need for and nature of potential distribution integrity management requirements. This work/study group is considering the use of EFVs, in the context of an overall integrity management program, as one of a range of actions that could help to mitigate the consequences of distribution pipeline system incidents.

The work/study group notes that there is limited data available on actual experience with EFVs either regarding whether they have been effective in mitigating accidents, or whether they have experienced high rates of spurious actuation that interrupts gas flow to customers. The group is conducting surveys and reviewing available data to

try to better understand the issues related to potential EF requirements.

Current Actions

PHMSA/OPS also is conducting evaluations of EFV use. The following actions have been completed or are currently underway.

(1) PHMSA/OPS completed a study of five years of incident data and concluded that at most, 100 of 634 reportable incidents met criteria for activation of an EFV. This study will be discussed during the public meeting.

(2) PHMSA/OPS commissioned a new study with Oak Ridge National Laboratory to validate EFV performance since the 1998 rulemaking. This study team of research and academic professionals will review measurable data that PHMSA/OPS will collect from individual operators on the operational history of EFVs. PHMSA/OPS has not collected this type of information since the performance standards were set by the American Society of Testing and Materials (ASTM).

(3) PHMSA/OPS is commissioning further statistical analysis to evaluate operational success rate, false positives, trigger rate, and reduction in damages.

(4) PHMSA/OPS collected additional data from state pipeline regulators on EFV installations and activations, including incidents that didn't reach the reporting threshold. This data revealed that a larger than expected number of operators are voluntarily installing EFVs.

(5) PHMSA/OPS is cooperating with NARUC on its study of the use of EFVs.

(6) PHMSA/OPS is working with NASFM to review incident data collected by the fire service and to discuss opportunities to enhance overall distribution pipeline safety, including the use of the EFVs.

(7) PHMSA/OPS established a State/Federal Distribution Integrity Management work group to consider development of EFV requirements as a mitigation measure under a Distribution Integrity Management Program.

Need for Public Input

As described above, much work is ongoing and stakeholders have taken various positions regarding the need to require use of EFVs. The benefit-cost analysis does not appear to support a requirement mandating installation of EFVs.

This meeting will update the public on the continuing EFV activities and provide interested stakeholders an opportunity to present their positions for and against a requirement to use EFVs. Therefore, PHMSA/OPS encourages interested members of the

public to attend the meeting and to share their views on EFVs. These views will be considered in making decisions regarding the mandatory use of EFVs.

Issued in Washington, DC, on May 12, 2005.

Florence L. Hamm,

Director, Office of Regulations, Office of Pipeline Safety.

[FR Doc. 05-9914 Filed 5-16-05; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Proposed Agency Information Collection Activities: Comment Request

AGENCY: Surface Transportation Board, Transportation.

ACTION: 60-day notice and request for comments.

SUMMARY: The Surface Transportation Board (Board), as part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA), gives notice that the Board proposes to request reinstatement without change of a previously approved information collection that has expired. Comments are requested concerning (1) Whether the particular collection of information described below is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Submitted comments will be summarized and included in the Board's request for Office of Management and Budget (OMB) approval. In this notice the Board is requesting comments on the following information collection:

Title: Application to Open an Account for Billing Purposes.

OMB Control Number: 2104-0006.

Form Number: STB Form 1032.

Number of Respondents: 20.

Affected Public: Mail carriers, shippers, and others doing business before the agency.

Estimated Time Per Response: Less than .08 hours. This estimate is based on actual past survey information.

Frequency of Response: The form will only have to be completed once by each account holder.

Total Annual Burden Hours: Less than 1.6 hours.

Total Annual "Non-Hour Burden" Cost: No "non-hour cost" burdens associated with this collection have been identified.

Needs and Uses: The Board is, by statute, responsible for the economic regulation of surface transportation carriers operating in interstate commerce. This form is for use by applicants who wish to open an account with the Board to charge fees for records search, review, copying, certification of records, filing fees, and related services rendered. The account holder would be billed on a monthly basis for payment of accumulated fees. Data provided will also be used for debt collection activities. The form requests information as required by OMB and U.S. Department of Treasury regulations for the collection of fees. This information is not duplicated by any other agency. In accordance with the Privacy Act, 5 U.S.C. 552a, all taxpayer identification and social security numbers will be secured and used only for credit management and debt collection activities.

DATES: Written comments are due on July 18, 2005.

ADDRESSES: Written comments should be identified as "Paperwork Reduction Act Comments, Application to Open an Account for Billing Purposes, OMB Number 2140-0006" and be directed to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. Comments may also be filed on the Board's Web site at <http://www.stb.dot.gov> by clicking on E-FILING, and then "Other Submissions."

FOR FURTHER INFORMATION CONTACT: For further information regarding the information collection, or for copies of the information collection form, contact Anthony Jacobik, Jr., (202) 565-1713. [Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877-8339.]

SUPPLEMENTARY INFORMATION: Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid Office of Management and Budget (OMB) control number. Collection of information is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under section 3506(c)(2)(A) of the PRA, Federal agencies are required to provide a 60-

day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval.

Dated: May 11, 2005.

Vernon A. Williams,
Secretary.

[FR Doc. 05-9787 Filed 5-16-05; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34696]

Union Pacific Railroad Company— Temporary Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF), pursuant to a written trackage rights agreement entered into between BNSF and Union Pacific Railroad Company (UP), has agreed to grant temporary overhead trackage rights to UP over BNSF's line of railroad between BNSF milepost 141.7, near Rockview, MO, and BNSF milepost 479.4, near Hulbert, AR (via Marion, AR), a distance of approximately 158.4 miles.¹

The transaction was scheduled to be consummated on May 8, 2005, and the temporary trackage rights will expire on or about July 23, 2005. The purpose of the temporary trackage rights is to facilitate maintenance work on UP lines.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance

¹The trackage rights involve BNSF segments with non-contiguous mileposts. Therefore, total mileage does not correspond to the milepost designations of the endpoints.

Docket No. 34696, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Robert T. Opal, General Commerce Counsel, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at "<http://www.stb.dot.gov>."

Decided: May 9, 2005.

By the Board, David M. Konschnick,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 05-9682 Filed 5-16-05; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34697]

Union Pacific Railroad Company— Temporary Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF) has agreed to grant temporary overhead trackage rights to the Union Pacific Railroad Company (UP) over BNSF's rail line between BNSF milepost 2.1, near St. Louis, MO (Grand Ave.), and BNSF milepost 34.1, near Pacific, MO, a distance of approximately 32.0 miles.

The transaction was scheduled to be consummated on May 8, 2005, and the temporary trackage rights will expire on or about July 14, 2005. The purpose of the temporary trackage rights is to facilitate maintenance work on UP lines.

As a condition to this exemption, any employee affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34697, must be filed with

the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Robert T. Opal, General Commerce Counsel, 1400

Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: May 9, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 05-9683 Filed 5-13-05; 8:45 am]

BILLING CODE 4915-01-P

Corrections

Federal Register

Vol. 70, No. 94

Tuesday, May 17, 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 DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Draft Supplemental Environmental Impact Statement for Boston Harbor Inner Harbor Maintenance Dredging Project

Correction

In notice document 05-9316 appearing on page 24556 in the issue of

Tuesday, May 10, 2005, make the following corrections:

1. On page 24556, in the second column, under the heading **SUMMARY**, in the 6th line, "grounding" should read "groundings".

2. On the same page, in the same column, under the same heading, in the 14th line, "depending" should read "deepening".

[FR Doc. C5-9316 Filed 5-16-05; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

**Tuesday,
May 17, 2005**

Part II

Environmental Protection Agency

40 CFR Part 63

**National Emission Standards for
Hazardous Air Pollutants: Asphalt
Processing and Asphalt Roofing
Manufacturing; Direct Final Rule and
Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[OAR-2002-0035; FRL-7911-6]

RIN 2060-AM10

National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule; amendments.

SUMMARY: The EPA is taking direct final action on amendments to the national emission standards for hazardous air pollutants (NESHAP) for asphalt processing and asphalt roofing manufacturing, which were issued on April 29, 2003 under section 112 of the Clean Air Act (CAA). These amendments correct minor errors and add a clarifying exemption inadvertently omitted in the final rule. We are issuing these amendments as a direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no significant adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to amend the national emission standards for asphalt processing and asphalt roofing manufacturing, if significant adverse comments are filed.

If we receive any adverse comments on a specific element of the direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public which amendments will become effective and which amendments are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule based on the proposed rule. Any of the distinct amendments in the direct final rule for which we do not receive adverse comment will become effective on the date set out below. We will not institute a second comment period on the direct final rule. Any parties interested in commenting must do so at this time.

DATES: The direct final rule will be effective on August 15, 2005 without further notice, unless EPA receives significant adverse written comments by

June 16, 2005, or by July 1, 2005, if a public hearing is requested. If EPA receives such comments, it will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR-2002-0035, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: a-and-r-docket@epa.gov.
- Fax: (202) 566-1741.
- Mail: EPA Docket Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a duplicate copy, if possible.

- Hand Delivery: Air and Radiation Docket, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B-108, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

We request that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. OAR-2002-0035. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA EDOCKET and the federal [regulations.gov](http://www.regulations.gov) websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you

provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Colyer, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504-05), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541-5262; facsimile number (919) 541-5600; electronic mail address colyer.rick@epa.gov.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

Category	NAICS ^a		SIC ^b	
	Code	Description	Code	Description
Manufacturing	324122	Asphalt shingle and coating materials manufacturing.	2952	Asphalt felts and coatings.
Manufacturing	32411	Petroleum refineries	2911	Petroleum refining.
Federal Government		Not affected		Not affected
State/Local/Tribal Government		Not affected		Not affected

^a North American Information Classification System.
^b Standard Industrial Classification Code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in §§ 63.8681 and 63.8682 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, electronic copies of today’s action will be posted on the Technology Transfer Network’s (TTN) policy and guidance information page <http://www.epa.gov/ttn/caaa>. The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by July 18, 2005. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements that are subject to today’s action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

- I. Background
 - A. Technical Corrections
 - B. Nonapplicability Clarification
- II. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer Advancement Act
- J. Congressional Review Act

I. Background

The EPA promulgated national emission standards for hazardous air pollutants for asphalt processing and asphalt roofing manufacturing on April 29, 2003 (68 FR 22975) (reprinted on May 7, 2003 at 68 FR 24562). Today’s action includes amendments to correct errors in definitions and equations and adds language to one other provision (relating to applicability) so that the rule language conforms to the preamble discussion to the final rule. We are also adding an exemption to applicability to another rule inadvertently omitted from the final rule.

A. Technical Corrections

The promulgated rule contains definitions for Group 1 and Group 2 asphalt loading racks and asphalt storage tanks. A Group 1 loading rack currently is defined as one that loads asphalt with a maximum temperature of 260 °C (500 °F) or greater or with a maximum true vapor pressure of 10.4 kilopascals (kPa)(1.5 pounds per square inch absolute (psia)) or greater. Similarly, a Group 1 asphalt storage tank currently is defined as one that stores asphalt with a maximum temperature of 260 °C (500 °F) or greater or with a maximum true vapor pressure of 10.4 kPa (1.5 pounds psia) or greater. Furthermore, in the final rule, we define a Group 2 asphalt loading rack as one that loads asphalt with a maximum temperature less than 260 °C (500 °F) or with a maximum true vapor pressure less than 10.4 kPa (1.5 psia). However, because the Group 2 definition also contains an “or,” it creates the situation where a loading rack could fit both definitions. A Group 2 asphalt storage tank is defined in the promulgated rule as any tank that is not a Group 1 tank. The Group 2 asphalt loading rack should have had parallel language; that

is, a Group 2 asphalt loading rack should have been defined simply as any asphalt loading rack that was not a Group 1 loading rack in order to make Group 1 and Group 2 mutually exclusive.

However, an additional wording problem exists with the definitions of Group 1 asphalt loading rack and storage tank. Both definitions in the promulgated rule specify that loading racks or storage tanks that load or store asphalt at or greater than a certain temperature or pressure are considered to be Group 1. This creates the unintended problem of having to determine both temperature and pressure of the asphalt being loaded or stored to determine whether the tank or loading rack is Group 1 or Group 2. As stated in the preamble to the final rule (68 FR 23471, May 7, 2003), because of the testing problems associated with determining vapor pressure, we specify in the final rule that owners or operators could monitor temperature “* * * instead of requiring facilities to physically measure asphalt vapor pressure.” To achieve the intended consequence of measuring temperature instead of vapor pressure of the asphalt, the wording in the Group 1 definitions should have been that both the temperature and vapor pressure criteria must be met before the loading rack or storage tank can be designated as a Group 1 emission point, so that if either the temperature or vapor pressure did not exceed the maximum value, the emission point would not be a Group 1 point. Thus, the owner or operator could use temperature alone to determine if an emission point was not considered Group 1, as stated in the preamble. Accordingly, we are revising the definitions for the Group 1 asphalt storage tanks and loading racks as those that load/store asphalt with a maximum temperature of 260 °C (500 °F) or greater and with a maximum true vapor pressure of 10.4 kPa (1.5 pounds psia) or greater.

Table 2 provides a decision matrix for determining Group 1 and Group 2 storage tanks and loading racks.

TABLE 2.—DECISION MATRIX FOR DETERMINING STORAGE TANK AND LOADING RACK GROUP

	VP < 10.4 kPa	VP ≥ 10.4 kPa
Temp < 260 °C	Group 2	Group 2.
Temp ≥ 260 °C	Group 2	Group 1.

We are also revising the wording of the definition of Group 2 asphalt loading racks to parallel that of Group 2 asphalt storage tanks. These changes should have no effect other than to ease the measurement burden for owners and operators.

We are also making a correction to the unit conversion constant, K, in Equation 4. The promulgated rule establishes K as 3.00E-05 (parts per million volume (ppmv))⁻¹ (gram-mole/standard cubic meter) (kilogram/gram) (minutes/hour). We have since determined that this is incorrect, both in value and in units. The correct value and units for K should be 1.10E-04 (ppmv)⁻¹ (kilogram/standard cubic meter) (minutes/hour).

We are correcting a cite in footnote “a” to table 5 to subpart LLLLL. The last sentence of footnote “a” references the data reduction requirements in “§ 63.9(g).” The reference should be “§ 63.8(g), Reduction of monitoring data.”

Finally, we removed English units from several equations that were based on metric units.

B. Nonapplicability Clarification

Several commenters on the proposed rule (66 FR 58610, November 21, 2001) wanted to ensure that emissions from the blowing still combusted in a thermal oxidizer would not be considered a fuel gas and become potentially subject to the sulfur requirements of 40 CFR part 60, subpart J, Standards of Performance for Petroleum Refineries. Asphalt can contain some amounts of sulfur. Subpart J contains provisions that limit sulfur oxide emissions from the combustion of fuel gases at a refinery. We agree with the commenters that the addition of a combustion device to control blowing still emissions as required by the asphalt rule should not trigger the requirements of another rule. We also note that while asphalt blowing can occur at a refinery, it is not considered a refinery process subject to subpart J. In our background information document responding to comments on the proposed rule (National Emission Standards for Hazardous Air Pollutants:

Asphalt Processing and Asphalt Roofing Manufacturing-Background Information Document for Promulgated Standards, EPA-453/R-03-005, section 2.11.1), we stated that we were going to clarify explicitly that blowing still emissions are not subject to the fuel gas requirements of subpart J. However, we failed to add that provision to the final rule. Today’s amendments correct that inadvertent omission.

II. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is “significant” and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a “significant regulatory action” as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the direct final amendments do not constitute a “significant regulatory action” because they do not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

The information collection requirements in the final rule (68 FR 22975, April 29, 2003) were submitted to and approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control number 2060-0520. An Information Collection Request (ICR) document was prepared by EPA (ICR No. 2029.02) and a copy may be obtained from Susan Auby by mail at Office of Environmental Information Collection Strategies Division (MD-2822T), 1200

Pennsylvania Avenue, NW., Washington DC 20460, by email at auby.susan@epa.gov, or by calling (202) 566-1672. A copy may also be downloaded from the Internet at <http://www.epa.gov/icr>.

Today’s action makes clarifying changes to the final rule and imposes no new information collection requirements on the industry. Because there is no additional burden on the industry as a result of the direct final rule amendments, the ICR has not been revised.

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 purpose 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 respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 number for EPA’s regulations in 40 CFR part 63 are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today’s direct final rule amendments on small entities, a small entity is defined as: (1) A small business that is primarily engaged in the processing of asphalt or the manufacture of asphalt roofing materials according to Small Business Administration (SBA) size standards by NAICS code (in this case, less than 750 employees for affected businesses classified in NAICS code 324122, Asphalt Shingles and Coating Materials Manufacturing and less than

1,500 employees for businesses in NAICS code 32411, Petroleum Refineries); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." (5 U.S.C. Sections 603 and 604.) Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The amendments in today's direct final rule improve the emission standards by correcting errors and omissions. These changes should have no effect other than to ease the measurement burden for owners and operators. In addition, we are making a correction to the unit conversion constant, a cite in footnote "a" to table 5, and removed English units from several equations that were based on metric units. After considering the economic impacts of today's direct final rule amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-

effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the direct final rule amendments contain no Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector in any 1 year. Thus, today's direct final rule amendments are not subject to sections 202 and 205 of the UMRA. The EPA has also determined that the direct final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's direct final rule amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The direct final rule amendments do not have federalism implications and will not have substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input in the development of regulatory policies on matters that have tribal implications."

The direct final rule amendments do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, 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. No tribal governments own or operate facilities subject to the NESHAP. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. The direct final rule amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

The direct final rule amendments are not subject to Executive Order 13211,

“Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104-113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The direct final rule amendments do not involve technical standards and, therefore, are not subject to the NTTAA.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the

publication of the direct final rule amendments in today’s Federal Register. The direct final rule amendments are not a “major rule” as defined by 5 U.S.C. 804(2). The final rule amendments will be effective August 15, 2005.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 6, 2005.

Stephen L. Johnson, Acting Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart LLLLL—[AMENDED]

■ 2. Section 63.8681 is amended by redesignating paragraph (e) as (f) and adding a new paragraph (e) to read as follows:

§ 63.8681 Am I subject to this subpart?

* * * * *

(e) The provisions of subpart J of 40 CFR part 60 do not apply to emissions from asphalt processing facilities subject to this subpart.

* * * * *

■ 3. Section 63.8687 is amended by revising paragraphs (e)(1) and (e)(2) to read as follows:

RE = [(M_THCi - M_THCo) / (M_THCi)] * (100) (Eq. 3)

Where:

RE = Emission reduction efficiency, percent.

M_THCi = Mass flow rate of total hydrocarbons entering the control device, kilograms per hour, determined using Equation 4.

M_THCo = Mass flow rate of total hydrocarbons exiting the control device, kilograms per hour, determined using Equation 4.

M_THC = C * Q * K (Eq. 4)

Where:

M_THC = Total hydrocarbon mass flow rate, kilograms per hour.

C = Concentration of total hydrocarbons on a dry basis, parts per million by volume (ppmv), as measured by the test method specified in Table 3 to this subpart.

Q = Vent gas stream flow rate (dscm/minute) at a temperature of 20 °C as measured by the test method specified in Table 3 to this subpart.

K = Unit conversion constant (1.10E-04 (ppmv)⁻¹ (kilogram/dscm)(minute/hour)).

* * * * *

§ 63.8687 What performance tests, design evaluations, and other procedures must I use?

* * * * *

(e) * * *

(1) To determine compliance with the particulate matter mass emission rate, you must use Equations 1 and 2 of this section as follows:

E = M_PM / P (Eq. 1)

Where:

E = Particulate matter emission rate, kilograms of particulate matter per megagram of roofing product manufactured.

M_PM = Particulate matter mass emission rate, kilograms per hour, determined using Equation 2.

P = The asphalt roofing product manufacturing rate during the emissions sampling period, including any material trimmed from the final product, megagram per hour.

M_PM = C * Q * K (Eq. 2)

Where:

M_PM = Particulate matter mass emission rate, kilograms per hour.

C = Concentration of particulate matter on a dry basis, grams per dry standard cubic meter (g/dscm), as measured by the test method specified in Table 3 to this subpart.

Q = Vent gas stream flow rate (dry standard cubic meters per minute) at a temperature of 20 °C as measured by the test method specified in Table 3 to this subpart.

K = Unit conversion constant (0.06 minute-kilogram/hour-gram).

(2) To determine compliance with the total hydrocarbon percent reduction standard, you must use Equations 3 and 4 of this section as follows:

■ 4. Section 63.8698 is amended by revising the definitions of Group 1 asphalt loading rack, Group 2 asphalt loading rack, and Group 1 asphalt storage tank to read as follows:

§ 63.8698 What definitions apply to this subpart?

* * * * *

Group 1 asphalt loading rack means an asphalt loading rack that loads asphalt with a maximum temperature of 260° C (500° F) or greater and has a maximum true vapor pressure of 10.4

kiloPascals (kPa) (1.5 pounds per square inch absolute (psia)) or greater.

Group 2 asphalt loading rack means an asphalt loading rack that is not a Group 1 asphalt loading rack.

Group 1 asphalt storage tank means an asphalt storage tank that meets both of the following criteria:

- (1) Has a capacity of 177 cubic meters (47,000 gallons) of asphalt or greater; and

- (2) Stores asphalt at a maximum temperature of 260 °C (500 °F) or greater and has a maximum true vapor pressure of 10.4 kPa (1.5 psia) or greater.

* * * * *

■ 5. Footnote “a” to Table 5 to Subpart LLLLL is amended by revising the last sentence as follows:

Tables to Subpart LLLLL of Part 63

* * * * *

**Table 5 to Subpart LLLLL of Part 63—
Continuous Compliance With Operating Limits^a**

* * * * *

^a * * * Data from the CEMS and COMS must be reduced as specified in § 63.8(g).

* * * * *

[FR Doc. 05-9594 Filed 5-16-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[OAR-2002-0035; FRL-7911-7]

RIN 2060-AM10

National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule; amendments.

SUMMARY: The EPA is proposing amendments to the national emission standards for hazardous air pollutants (NESHAP) for asphalt processing and asphalt roofing manufacturing, which were issued on April 29, 2003 under section 112 of the Clean Air Act (CAA). This action proposes to correct minor errors and add a clarifying exemption inadvertently omitted in the final rule.

In the Rules and Regulations section of this **Federal Register**, we are taking direct final action on the proposed amendments because we view the amendments as noncontroversial, and we anticipate no significant adverse comments. We have explained our reasons for the proposed amendments in the preamble to the direct final rule.

If we receive no significant adverse comments, we will take no further action on the proposed amendments. If we receive significant adverse comments, we will withdraw only those provisions on which we received significant adverse comments. We will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn. If part or all of the direct final rule amendments in the Rules and Regulations section of this **Federal Register** are withdrawn, all comments pertaining to those provisions will be addressed in a subsequent final action based on the proposed amendments. We will not institute a second comment period on the subsequent final action. Any parties interested in commenting must do so at this time.

The regulatory text for the proposal is identical to that for the direct final rule published in the Rules and Regulations section of this **Federal Register**. For further supplementary information, see the direct final rule.

DATES: *Comments.* Written comments must be received by June 16, 2005,

unless a public hearing is requested by May 27, 2005. If a public hearing is requested, written comments must be received by July 1, 2005.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by May 27, 2005, a public hearing will be held on June 1, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR-2002-0035, by one of the following methods:

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

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

- E-mail: a-and-r-docket@epa.gov.

- Fax: (202) 566-1741.

- Mail: EPA Docket Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a duplicate copy, if possible.

- Hand Delivery: Air and Radiation Docket, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B-108, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

We request that a separate copy also be sent to the contact person listed below (*see FOR FURTHER INFORMATION CONTACT*).

Instructions: Direct your comments to Docket ID No. OAR-2002-0035. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA EDOCKET and the federal [regulations.gov](http://www.regulations.gov) Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through

EDOCKET or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

Public Hearing. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, North Carolina or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Colyer, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504-05), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541-5262; facsimile number (919) 541-5600; electronic mail address colyer.rick@epa.gov.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

Category	NAICS ^a		SIC ^b	
	Code	Description	Code	Description
Manufacturing	324122	Asphalt shingle and coating materials manufacturing.	2952	Asphalt felts and coatings.
Manufacturing	32411	Petroleum refineries	2911	Petroleum refining.
Federal Government	Not affected		Not affected	
State/Local/Tribal Government	Not affected		Not affected	

^a Standard Industrial Classification Code.

^b North American Information Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in §§ 63.8681 and 63.8682 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Pamela Garrett, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504-05), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-7966, at least 2 days in advance of the potential date of the public hearing. Persons interested in attending the public hearing must also call Ms. Garrett to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides

information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

Statutory and Executive Order Reviews

For information regarding other administrative requirements for this action, please see the direct final rule action that is located in the Rules and Regulations section of this **Federal Register**.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed amendments on small entities, a small entity is defined as: (1) A small business that is primarily engaged in the processing of asphalt or the manufacture of asphalt roofing materials according to Small Business Administration (SBA) size standards by NAICS code (in this case, less than 750 employees for affected businesses classified in NAICS code 324122, Asphalt Shingles and Coating Materials

Manufacturing and less than 1,500 employees for businesses in NAICS code 32411, Petroleum Refineries); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed amendments on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities. The proposed amendments will not impose any requirements on small entities. The proposed amendments in today's action would improve the emission standards by correcting errors and omissions. We continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 6, 2005.

Stephen L. Johnson,
Administrator.

[FR Doc. 05-9593 Filed 5-16-05; 8:45 am]

BILLING CODE 6560-50-P



Federal Register

**Tuesday,
May 17, 2005**

Part III

**Department of
Health and Human
Services**

**42 CFR Parts 50 and 93
Public Health Service Policies on
Research Misconduct; Final Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES**42 CFR Parts 50 and 93**

RIN 0940-AA04

Public Health Service Policies on Research Misconduct**AGENCY:** U.S. Department of Health and Human Services (HHS).**ACTION:** Final rule.

SUMMARY: This final rule removes 42 CFR part 50, subpart A, "Responsibilities of Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science," and replaces it with a new, more comprehensive part 93, "Public Health Service Policies on Research Misconduct." The proposed part 93 was published for public comment on April 16, 2004. The final rule reflects both substantive and non-substantive amendments in response to public comments and to correct errors and improve clarity, but the general approach of the NPRM is retained. The purpose of the final rule is to implement legislative and policy changes applicable to research misconduct that occurred over the last several years, including the common Federal policies and procedures on research misconduct issued by the Office of Science and Technology Policy on December 6, 2000.

DATES: This final rule will become effective June 16, 2005.

ADDRESSES: Address any comments or questions regarding this final rule to: Chris B. Pascal, J.D., Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852. Some commonly asked questions and answers to them will be posted on the Office of Research Integrity Web site prior to the effective date of the regulation. The URL for the ORI Web site is: <http://ori.hhs.gov>.

You may submit comments and questions on this final rule by sending electronic mail (e-mail) to research@osophs.dhhs.gov. Submit electronic comments as either a WordPerfect file, version 9.1 or higher, or a Microsoft Word 97 or 2000 file format. You may also submit comments or questions as an ASCII file avoiding the use of special characters and any form of encryption.

FOR FURTHER INFORMATION CONTACT: Brenda Harrington, (301) 443-3400. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Public Comments—General

The Notice of Proposed Rulemaking (NPRM) proposing to remove 42 CFR part 50, subpart A and replace it with a new part 93 was published in the **Federal Register** on April 16, 2004 (69 FR 20778). Comments were requested on or before June 15, 2004. In addition to this invitation for public comment on any aspect of the proposed rulemaking, the NPRM requested comment on specific aspects of the proposed rule including: (A) Whether there should be any limitation on the ability of institutions to conduct a research misconduct proceeding through a consortium or other entity qualified by practice and experience to conduct research misconduct proceedings (§ 93.306); (B) the use of Administrative Law Judges (ALJs) to conduct HHS research misconduct hearings rather than a panel of three decisionmakers (§ 93.502); (C) treating the decision of the ALJ as a recommended decision to the Assistant Secretary for Health (ASH) as opposed to the current practice in which the decision of the panel on the merits of the HHS findings of misconduct and administrative actions, other than debarment, constitutes final agency action (§§ 93.500(d) and 93.523(c)); (D) authorizing the ALJ to appoint a scientific expert (that appointment is required if requested by either party) to advise the ALJ on scientific issues, but not provide testimony for the record (§ 93.502(b)); (E) consistent with current practice, permitting HHS to amend its findings of research misconduct up to 30 days before the scheduled hearing (§ 93.514); (F) extending the period for retaining records of the research misconduct proceeding, including inquiries, from 3 to 7 years (§ 93.317); (G) imposing a 120-day deadline for the completion of any institutional appeal from a finding of research misconduct (§ 93.314); and (H) whether the HHS estimates on the potential burden of information collection requirements are accurate and whether those requirements are necessary for the proper performance of HHS functions.

Twenty-eight documents commenting on the NPRM were submitted to HHS by mail or e-mail. Most of the documents addressed multiple sections of the proposed rule. A number of the commentators made general positive comments such as that: the proposed rule is well drafted, provides valuable guidance for researchers and institutions and is much improved over the current regulation; the detail and transparency of the procedures will result in a better focus on the merits of

a case rather than procedural complications; the proposal recognizes the importance of primary reliance on the institutions to respond to allegations of research misconduct; and the clarification and harmonization of definitions, standards, and procedures are appreciated.

Most of the commentators endorsed the changes in the definition of research misconduct and the incorporation of the three elements necessary for a finding of research misconduct in conformity with the Federal Policy on Research Misconduct issued by the Office of Science and Technology Policy (OSTP). Some expressed support for the PHS practice of excluding coverage of authorship disputes in the absence of a clear allegation of plagiarism. There were expressions of support for the coverage of PHS intramural programs and PHS contractors, the coverage of the plagiarism of a PHS supported research record, even if the respondent does not receive such support, the clarification of the role of the complainant, the adoption of a six-year limitation on the pursuit of misconduct allegations, separation of adjudication and appeal from the inquiry and investigation stages, setting a time limit on the investigation by the institution, and the inclusion of ALJs in the hearing process. These and other supportive comments may be discussed in the consideration of specific changes to the proposed rule that follows.

There were also general, negative comments on the proposed rule, some of which were in direct opposition to positive comments. Some commentators feel that the proposal is overly detailed and thus contrary to the OSTP goal of a more uniform Federal-wide approach. Another criticizes the continuation in the proposed rule of a trend toward legalization of scientific disputes by immediately casting parties into adversarial roles. Other commentators object to the change from a hearing conducted by a three-member panel to one conducted by an ALJ, stating that there has not been any showing of a need to change the current practice. One commentator felt that HHS should be responsible for investigating allegations of misconduct at institutions that have repeatedly failed to properly investigate research misconduct. These and other critical comments may be discussed in the consideration of specific changes that follow.

Some letters of comment repeated comments that had been made in response to the OSTP proposal for a government-wide Federal policy on research misconduct. Because OSTP considered those comments prior to

issuing its final policy and this final rule is consistent with the aspects of the OSTP policy addressed in the comments, those comments will not be further discussed here.

Comments on specific sections of the regulation are addressed below under headings based on the general issue raised by the comments. If that issue encompasses more than one section of the regulation, all those sections will be discussed under that heading.

II. Changes Made in Response to Comments

A. Applicability, Secs. 93.100(b) and 93.102(b)

A number of commentators concluded that the applicability section, 93.102, and the descriptions of applicability in other sections unreasonably extend HHS jurisdiction beyond PHS supported biomedical or behavioral research and research training. One commentator recommended that descriptions of applicability be uniform throughout the regulation. There were specific objections to: (1) The statement in Sec. 93.100(b) that covered institutions must comply with the regulation with respect to allegations of misconduct "occurring at or involving research or research training projects or staff of the institution"; (2) the coverage, in Sec. 93.102(a) and other sections describing applicability, of "activities related to that research or research training;" and (3) the extension of coverage in Sec. 93.102(a) to allegations of misconduct involving any research record generated from covered research, research training, or activities related to that research or training, regardless of whether the user or reviewer receives PHS support or whether an application resulted in any PHS support.

Several clarifying changes have been made in response to these comments, but these changes do not change the intended substance of the provisions in the NPRM. The current regulation, 42 CFR 50.101, covers each entity that applies for a "research, research-training or research-related grant or cooperative agreement" under the PHS Act. Such an entity must establish policies and procedures for investigating and reporting instances of alleged misconduct involving "research or research training or related research activities that are supported with funds available under the PHS Act." Thus, applicability to research-related activities is not new. The NPRM was not intended to change the applicability to those activities as it is expressed in the current regulation and has been applied in practice under that regulation.

This rulemaking establishes the necessary HHS jurisdiction to implement the new term "reviewing research" in the OSTP definition of research misconduct. In ORI's experience, plagiarism can occur during the review process when a manuscript is submitted for publication. In the great majority of cases where an allegation arises that a PHS supported research record was plagiarized, we expect that the reviewers will be current recipients of PHS research funds because the reviewers are selected based on their subject matter expertise and the research in question is PHS funded biomedical and behavioral research. In cases where the respondent is PHS supported or affiliated with a PHS supported institution, we would expect the misconduct allegation to be pursued by the PHS supported institution. In those cases where the reviewer who is alleged to have committed plagiarism is solely funded by another Federal agency, ORI would refer the allegation to that agency. In addition, jurisdiction does not attach to allegations of plagiarism where there is no PHS support for the research record in question. Thus, we have removed the phrase "regardless of whether the user or reviewer currently receives PHS support" from Sec. 93.102.

To eliminate redundancy and clarify the general policy and applicability provisions, Secs. 93.100 and 93.102, we have: (1) Moved the statement of applicability to institutions from Sec. 93.100(b) to Sec. 93.102(b) and rewritten it to be more concise; and (2) moved paragraph (c) of Sec. 93.100 to paragraph (a) of that section and combined the proposed paragraphs (a) and (d) into a new paragraph (b).

The provision setting forth the types of allegations to which the regulation applies has been moved from Sec. 93.102(a) to paragraph (b) of that section and has been amended to clarify that the regulation applies to allegations of research misconduct involving: (i) Applications or proposals for PHS support for biomedical or behavioral extramural or intramural research, research training, or activities related to that research or research training, such as the operation of tissue or data banks or the dissemination of research information; (ii) PHS supported biomedical or behavioral extramural or intramural research; (iii) PHS supported biomedical or behavioral extramural or intramural research training programs; (iv) PHS supported extramural or intramural activities that are related to biomedical or behavioral research or research training, such as the operation of tissue and data banks or the

dissemination of research information; and (v) plagiarism of research records produced in the course of PHS supported research, research training, or PHS supported activities related to that research or research training. The examples of activities that are related to research or research training are intended to be illustrative, not exhaustive. They are intended to convey the concept that under its research and research training authorities, PHS funds many activities that are closely related to research and research training, but might not be considered to be within the common understanding of what constitutes research or research training. Consistent with the intent of, and practice under the current regulation, allegations of research misconduct involving those funded activities, or applications for the funding of those activities, are covered.

In each section that refers to the applicability of the regulation we have referenced the applicability section or repeated the applicability of the regulation to PHS supported research, research training, and activities related to that research or research training.

B. Subsequent Use Exception to Six Year Limitation on Misconduct Allegations, Sec. 93.105(b)(1)

In response to a comment requesting clarification, we have amended paragraph (b)(1) of Sec. 93.105. The amendment clarifies that even though HHS or an institution does not receive an allegation of research misconduct within six years of when the misconduct is alleged to have occurred, the regulation would apply if, within six years of when the allegation is received, the respondent has cited, republished, or otherwise used for his or her potential benefit the research record that is the subject of the allegation of misconduct.

C. Rebuttable Presumption of Misconduct in the Absence of Records, Secs. 93.106(a)(1) and 93.516(b)

Commentators raised several concerns about proposed Sec. 93.106(a)(1) and Sec. 93.516(b) under which the absence of, or respondent's failure to provide research records adequately documenting the questioned research establishes a presumption of research misconduct that can be rebutted by credible evidence corroborating the research or providing a reasonable explanation for the absence of, or respondent's failure to provide the research records. The concerns included: (1) Retroactive application of the provision where there was no previous requirement for the retention

of the records; (2) holding the respondent responsible for the retention of records over which he/she may have no control; and (3) there is no guidance on what would be a "reasonable explanation" for the absence of records.

In response to these comments, we have eliminated the rebuttable presumption of research misconduct. Sections 93.106 and 93.516 have been changed to state that the destruction, absence of, or respondent's failure to provide records adequately documenting the questioned research is evidence of research misconduct where the institution or HHS establishes by a preponderance of the evidence that the respondent intentionally, knowingly, or recklessly had research records and destroyed them, had the opportunity to maintain the records but failed to do so, or maintained the records, but failed to produce them in a timely manner, and that respondent's conduct constitutes a significant departure from accepted practices of the relevant research community. This is in keeping with the definition of falsification to include omitting data or results such that the research is not accurately represented in the research record (Sec. 93.103(b)) and with the requirements for a finding of research misconduct in Sec. 93.104. This answers the concerns about retroactive application and that the respondent may not have had control over the records by holding the respondent to the accepted practices of his/her research community. The weight to be accorded the evidence of research misconduct under these circumstances must be determined by the trier of fact in each case.

D. Respondent's Burden To Prove Honest Error or Difference of Opinion, Secs. 93.106(a)(2) and 93.516(b)

As proposed, Sec. 93.106(a)(2) provided that once the institution or HHS makes a *prima facie* showing of research misconduct the respondent has the burden of proving any affirmative defenses raised, including honest error or difference of opinion. There were a number of objections to that section on the grounds that shifting the burden of proving honest error or difference of opinion to the respondent effectively shifts the burden of the institution and HHS to prove each element of research misconduct or, at the least, creates confusion. Some of the commentators opined that the institution and the HHS have the burden of proving the absence of honest error or difference of opinion.

As stated in the preamble of the **Federal Register** notice promulgating the final OSTP Research Misconduct Policy (65 FR 76260, Dec. 6, 2000), the

exclusion of honest error or difference of opinion from the definition of research misconduct does not create a separate element of proof; institutions and agencies are not required to disprove possible honest error or difference of opinion. Given that guidance, this final rule retains honest error or difference of opinion as an affirmative defense that the respondent has the burden of proving by a preponderance of the evidence.

However, we recognize that there is an overlap between the responsibility of respondents to prove this affirmative defense and the burden of institutions and HHS to prove that research misconduct was committed intentionally, knowingly, or recklessly. Accordingly, consistent with the opinion of the United States Supreme Court in *Martin v. Ohio*, 480 U.S. 228, 107 S. Ct. 1098 (1987), we have amended Sec. 93.106 to require consideration of admissible, credible evidence respondent submits to prove honest error or difference of opinion in determining whether the institution and HHS have carried their burden of proving by a preponderance of the evidence that the alleged research misconduct was committed intentionally, knowingly, or recklessly. This consideration would be required, regardless of whether respondent carries his/her burden of proving honest error or difference of opinion by a preponderance of the evidence.

In light of this change, we have removed the reference to the institution or HHS making a *prima facie* showing of research misconduct as unnecessary and confusing. Because this is the only use of *prima facie* in the regulation, we have removed the definition of that term.

E. Coordination With Other Agencies, Sec. 93.109

Some commentators pointed out that Sec. 93.109(a), as proposed, is not consistent with the statement in the OSTP Policy that a lead agency should be designated when more than one agency has jurisdiction. We have amended paragraph (a) to state that if more than one agency of the Federal government has jurisdiction, HHS will cooperate with the other agencies in designating a lead agency. We have added a sentence clarifying that where HHS is not the lead agency, it may, in consultation with the lead agency, take action to protect the health and safety of the public, promote the integrity of the PHS supported research and research process, or to conserve public funds.

F. Definition of Research Record, Sec. 93.224

One commentator recommended that the research record include the comments of the complainant and respondent on the inquiry and investigation reports. We agree that documents and materials provided by the respondent as part of his/her comments on the inquiry and investigation reports, or at any other stage of the research misconduct proceeding do not differ significantly from those provided in response to questions regarding the research. Only the latter were included in the proposed definition of research record. Accordingly, we have amended Sec. 93.224 (formerly Sec. 93.226) so that the definition of research record includes documents and materials that embody the facts resulting from the research that are provided by the respondent at any point in the course of the research misconduct proceeding. The purpose of including documents provided by respondent in the research record is to hold the respondent responsible for the integrity of those research documents regardless of when they were prepared or furnished to the institution or HHS.

Because the complainant is not being held responsible for the record of data or results that embodies the facts resulting from the research at issue, we are not including comments provided by the complainant during the research misconduct proceeding in the definition of the term "research record." Those comments may be considered by the institution and/or HHS and they may be admitted as evidence in any hearing, but they are not part of the research record. If the complainant possesses documents that embody the facts resulting from the research that is the subject of the research misconduct proceeding, those documents are research records and the institution is responsible for maintaining and securing those documents in the same manner as other research records. Those documents are distinct from analyses of research records or results that a complainant may prepare prior to or in the course of a research misconduct proceeding to support his or her allegation of misconduct. Any such documents may be considered evidence pertinent to the allegation, but they are not part of the research record.

G. Reporting Inquiries to ORI, Sec. 93.300(a)

Several commentators interpreted the general language in proposed Sec. 93.300(a), requiring institutions to have policies and procedures for "reporting

inquiries and investigations of alleged research misconduct in compliance with this part," to require the reporting of all inquiries to ORI, contrary to the requirement in Sec. 93.309 for reporting only those inquiries resulting in a finding that an investigation is warranted. We have amended Sec. 93.300(a) to clarify that the institution's policies and procedures must comply with the requirements of the regulation for addressing allegations of research misconduct. This includes the requirements of Sec. 93.309.

It was also recommended that this section be amended to require that the institution's written policies and procedures be provided to the complainant and other interested parties on request. We have added a requirement that the policies and procedures be provided to members of the public upon request to Sec. 93.302(a)(1) because it addresses the availability of the institution's policies and procedures to HHS and ORI upon request.

H. Precautions To Protect Against Conflicts of Interest, Secs. 93.300(b) and 93.304(b)

In response to a general comment that the regulation should ensure that those conducting inquiries and investigations do not have conflicts of interest, we have amended Secs. 93.300(b) and 93.304(b) to require institutions to include precautions against conflicts of interest on the part of those involved in the inquiry or investigation. This expands upon the requirement in Sec. 93.310(f) that institutions take reasonable steps to ensure an impartial investigation, "including participation of persons with appropriate scientific expertise who do not have unresolved personal, professional, or financial conflicts of interest with those involved with the inquiry or investigation."

I. Reporting of Aggregated Information by Institutions, Sec. 93.302(c)

Several commentators recommended deletion of proposed Sec. 93.302(c) because its broad language would encompass research misconduct proceedings that are outside the jurisdiction of HHS. We agree with the intent of these comments and have amended this provision to refer to aggregated information on the institution's research misconduct proceedings covered by this part.

J. Responsibility for Securing Research Records and Evidence, Secs. 93.305, 93.307(b) and 93.310(d)

Several commentators recommended that Sec. 93.305 be amended to ensure

that any securing of scientific instruments not interfere with ongoing research. Scientific instruments are included in the definition of "research record" in Sec. 93.224 to the extent they are, or contain physical or electronic records of data or results that embody the facts resulting from scientific inquiry. In response to these comments we have added language to paragraphs (a) and (c) of Sec. 93.305, paragraph (b) of Sec. 93.307, and paragraph (d) of Sec. 93.310 permitting institutions to secure copies of data or other research records on shared scientific instruments, so long as those copies are substantially equivalent in evidentiary value to the instruments themselves. It is expected that institutions will exercise discretion in determining whether copies of the data are substantially equivalent in evidentiary value to the instruments themselves, consulting with ORI as the institution determines necessary. The evidentiary value of scientific instruments will vary from case to case. In some cases their value may be dependent upon the manner in which they record data, rather than the data they contain. In those cases, it may be reasonable for the institution to permit continued use of the instrument, so long as it remains available for inspection by those conducting the inquiry and investigation.

K. Using a Consortium or Other Entity To Conduct Research Misconduct Proceedings, Sec. 93.306

One commentator recommended that there should be greater detail regarding the kinds of practice and experience that would qualify an outside entity to conduct research misconduct proceedings, how possible conflicts of interest would be handled, and whose responsibility it would be to determine whether the outside entity is qualified.

The proposed Sec. 93.306 contains a catchall phrase providing that an institution may use a consortium or other entity to conduct research misconduct proceedings, if the institution prefers not to conduct its own proceeding. In light of the incorporation of this broad discretion in the proposed section, we have simplified Sec. 93.306 to provide that an institution may use the services of a consortium or person that the institution reasonably determines to be qualified by practice and experience to conduct research misconduct proceedings. Thus, the institution may decide to use an outside consortium or person for any reason and it determines whether that outside consortium or person is qualified. We have substituted the defined term "person" for the term

"entity." Any outside person conducting a research misconduct proceeding would be subject to the requirements for precautions against conflicts of interest in Secs. 93.300(b) and 93.304(b).

L. Standards for Investigation, Sec. 93.310(g) and (h)

A number of commentators felt that the provisions of proposed Sec. 93.310(g) and (h) establish a performance standard that cannot be met through the use of the terms "any" and "all." We have amended paragraphs (g) and (h) to require, respectively, interviews of each person who has been reasonably identified as having information regarding relevant aspects of the investigation, and the pursuit of all significant issues and leads discovered that are determined relevant to the investigation. The institutions are responsible for making the relevancy determinations that are included in these paragraphs.

M. Opportunity To Comment on the Investigation Report and Review the Supporting Evidence, Sec. 93.312(a) and (b)

One commentator proposed language clarifying the period for the respondent to comment on the investigation report. Another commentator felt that the institution should be required to give the respondent an opportunity to review all research records and evidence upon which the investigation report is based. We believe that clarification of the 30-day period for comment by the respondent and for comment by the complainant, at the discretion of the institution, is needed. We have amended paragraphs (a) and (b) of Sec. 93.312 accordingly. In addition, we have amended paragraph (b) to make it clear that institutions have the discretion to provide the complete investigation report to the complainant for comment or relevant portions of it.

The OSTP Guidelines for Fair and Timely Procedures, Section IV of the Uniform Federal Policy, provide that one of the safeguards for subjects of allegations is reasonable access to the data and other evidence supporting the allegations and the opportunity to respond to the allegations, the supporting evidence and the proposed findings of research misconduct, if any. Consistent with that guidance, we have amended Sec. 93.312(a) to require institutions to give the respondent, concurrently with the draft investigation report, a copy of, or supervised access to, the evidence on which the report is based.

N. Institutional Appeals, Sec. 93.314(a)

One commentator requested language clarifying that the 120-day period for completing institutional appeals applies only to appeals from the finding of misconduct, not appeals from personnel actions. We have implemented this comment through the addition of appropriate language to Sec. 93.314(a).

O. Completing the Research Misconduct Process, Sec. 93.316

Several commentators objected to this provision because they interpreted it as requiring that ORI be notified when an inquiry ends in a finding of no misconduct. These commentators recommended that the regulation address the question of whether settlements based on an admission of misconduct are reportable. In response to these comments we have amended Sec. 93.316(a) to require that institutions notify ORI if they plan to close a case at the inquiry, investigation, or appeal stage on the basis that the respondent has admitted research misconduct, a settlement with the respondent has been reached, or for any other reason, except a determination at the inquiry stage that an investigation is not warranted, or a finding of no misconduct at the investigation stage, which must be reported to ORI under Sec. 93.315. We have also changed Sec. 93.316(b) to provide for ORI consultation with the institution on its basis for closing a case, rather than simply reviewing the institution's decision, and expanded the actions ORI may take to include approving or conditionally approving closure of the case and taking compliance action.

P. Retention and Custody of Records of the Research Misconduct Proceeding, Sec. 93.317

There were several objections that the seven-year retention period: (1) Creates storage problems; (2) should not apply to scientific instruments; and (3) is contrary to the 3-year retention period for records relating to grants in OMB Circular A-110. One commentator recommended that the term "records of research misconduct proceedings" be defined to include a relevancy standard.

In order to clarify what must be retained, we have added a new paragraph (a) to Sec. 93.317 defining records of research misconduct proceedings by referring to the sections of the regulation that describe what records institutions must prepare in the course of research misconduct proceedings. The definition includes a relevancy standard and requires that an institution document any determination

that records are irrelevant. We have added two exceptions to the requirement for retention of the records for a period of 7 years that is now in paragraph (b) of Sec. 93.317. The institution is not responsible for maintaining the records if they have been transferred to HHS in accordance with paragraph (c), formerly (b), or ORI has advised the institution in writing that it no longer needs to retain the records.

As stated in the preamble of the NPRM (69 FR at 20784) the 7-year retention period is based on concerns that the 3-year period for retaining inquiry records in the current regulation, 42 CFR 50.103(d)(6) is too short to permit HHS or the Department of Justice to investigate potential civil or criminal fraud cases. While the 7-year retention period is potentially burdensome, that burden will fall on a limited number of institutions, 53 according to the Paperwork Reduction Act burden estimate in the preamble to the NPR, and the burden is mitigated by exceptions for transfer of custody to HHS and for a written notification from ORI that the records do not have to be retained by the institution. Upon the effective date of this final rule, the 7-year retention period for records of research misconduct proceedings will supercede the more general requirements for the retention of records relating to grants. We note that the 7-year retention period is consistent with the provision in the HHS general grants administration regulation, 45 CFR 74.53(b)(1) providing that if any review, claim, financial management review, or audit is started during the 3-year retention period, the pertinent records must be retained until all such matters have been resolved and final action taken.

Q. ORI Allegation Assessments, Sec. 93.402

Several commentators recommended requiring that ORI notify the institution of any allegation received by ORI, regardless of how ORI disposes of the allegation. Consistent with this recommendation, we have amended paragraph (d) of Sec. 93.402 to provide that if ORI decides that an inquiry is not warranted, it will close the case and may forward the allegation in accordance with paragraph (e) which provides that allegations not covered by the regulation may be forwarded to the appropriate HHS component, Federal or State agency, institution or other appropriate entity. In deciding whether to forward a specific allegation to the institution, ORI will consider potential confidentiality issues for the

complainant and others. We are open to further dialogue with the research community on this issue.

R. Standard for the Assistant Secretary for Health's Review of the ALJ's Decision, Secs. 93.500(d) and 93.523

One commentator recommended that there be criteria for the Assistant Secretary for Health (ASH) to review the ALJ's decision, similar to the "arbitrary and capricious, or clearly erroneous" standard for the HHS debarring official to review the ALJ's decision (paragraph (e) of Sec. 93.500).

In response to this comment, we have added to Sec. 93.523(b) a standard of review for the ASH's review of the decision of the ALJ. The standard of review for the ASH is the same "arbitrary and capricious or clearly erroneous" standard that applies to the debarring official's review where debarment or suspension is a recommended HHS administrative action. In addition, we have amended Secs. 93.500 and 93.523 to establish a procedure for the ASH review, clarify the relationship between the ASH review and the debarring official's decision on recommended debarment or suspension actions, and identify what constitutes the final HHS action. The Assistant Secretary for Health notifies the parties of an intention to review the ALJ's recommended decision within 30 days after service of the recommended decision. Upon review, the ASH may modify or reject the decision in whole or in part after determining it, or the part modified or rejected, to be arbitrary and capricious or clearly erroneous. If the ASH does not notify the parties of an intent to review the recommended decision within the 30-day period, that decision becomes final and constitutes the final HHS action, unless debarment or suspension is an administrative action recommended in the decision. If debarment or suspension is a recommended HHS action either in a decision of the ALJ that the ASH does not review, or in the decision of the ASH after review, the decision constitutes proposed findings of fact to the HHS debarring official.

As noted in the discussion of changes not based on comments, we have amended several sections to ensure that the Assistant Secretary for Health cannot be responsible both for making findings of research misconduct and for reviewing the ALJ's recommended decision on those findings, if respondent contests the findings by requesting a hearing. ORI will be responsible for making those findings, consistent with its responsibilities as the reviewer of institutional findings of

research misconduct and as a party to any hearing on those findings. This maintains the separation between investigation and adjudication, because any inquiry or investigation would be conducted by the institution, or if conducted by HHS, it would not be conducted by ORI (Sec. 93.400(a)(4)).

S. Extension for Good Cause To Supplement the Hearing Request, Sec. 93.501(d)

One commentator recommended that the 30-day limit for supplementing the hearing request be measured from notification of the appointment of the ALJ, rather than from receipt of the charge letter. The commentator notes that the ALJ may not be appointed within 30 days after receipt of the charge letter and recommends an amendment providing that the ALJ may grant an additional period of no more than 60 days from the respondent's receipt of notification of the appointment of the ALJ. This comment makes a good point, but 60 days from notice of the appointment of the ALJ is too long a period, given that there may be an additional 30 days for appointment of the ALJ after the request for a hearing is filed. Thus, we have amended paragraph (d) to provide that after receiving notification of the appointment of the ALJ, the respondent has 10 days to file with the ALJ a proposal for supplementation of the hearing request that includes a showing of good cause for supplementation. Note that this 10-day period is consistent with the period for responding to a motion in Sec. 93.510(c) and that in accordance with Sec. 93.509(d), the ALJ may modify the 10-day period for good cause shown.

T. Role of Scientific Expert Appointed by ALJ, Sec. 93.502

It was recommended that advice of the scientific expert appointed to advise the ALJ be part of the record and available to both parties. It was further recommended that the scientific expert be available for questioning by the parties. Another commentator recommended specific guidance in the regulation to assist ALJs in retaining appropriate scientific expertise. Another commentator felt that the appointment of an expert to assist the ALJ should be mandatory in every case, while others felt such an appointment should be mandatory in those cases involving complex scientific, medical or technical issues. For the reasons explained below under the heading, "Significant Comments Not Resulting in Changes," we are not requiring the appointment of an expert to assist the ALJ in every case.

The proposed Sec. 93.502 provides some guidance on the selection of scientific and technical experts by requiring that they have appropriate expertise to assist the ALJ in evaluating scientific or technical issues related to the HHS findings of research misconduct. Furthermore, experts may not have real or apparent conflicts of interest, or as added in this final rule, bias or prejudice that might reasonably impair their objectivity in the proceeding.

In paragraph (b)(1) of Sec. 93.502 of this final rule we are providing further guidance on the selection of an expert to advise the ALJ. Upon a motion by the ALJ or one of the parties to appoint an expert to advise the ALJ, the ALJ must permit the parties to submit nominations. If such a motion is made by a party, the ALJ must appoint an expert, either: (1) The expert, if any, who is agreeable to both parties and found to be qualified by the ALJ; or, (2) if the parties cannot agree upon an expert, the expert chosen by the ALJ.

These provisions will ensure the selection of well-qualified experts, minimize disputes, speed the appointment process by providing precise procedural rules, and enhance fairness by providing for greater involvement of the parties in the process.

Consistent with the greater involvement of the parties in the selection of the expert and with the comment recommending a more formalized process for the expert to provide advice, we are adding Sec. 93.502(b)(2) to clarify the role of the expert appointed by the ALJ. The ALJ may seek advice from the appointed expert at any time during the discovery or hearing phase of the proceeding. Advice must be provided in the form of a written report, containing the expert's background and qualifications, which is served upon the parties. The report and the expert's qualifications and advice may be challenged by the parties in the form of a motion or through testimony of the parties' own experts, unless the ALJ determines such testimony to be inadmissible in accordance with Sec. 93.519, or that such testimony would unduly delay the proceeding. In this manner, the report and any comment on it would be part of the record. These procedures will greatly enhance the detail and quality of the expert advice available for consideration by the ALJ and provide greater transparency and confidence to the scientific community on the expertise provided to the ALJ.

II. Changes Not Based on Comments

A. Grandfather Exception to Six Year Limitation on Receipt of Misconduct Allegations, Sec. 93.105(b)(3)

We have changed the condition for the grandfather exception from "had the allegation of research misconduct under review or investigation on the effective date of this regulation" to "had received the allegation of research misconduct before the effective date of this part." This makes the condition for the grandfather exception consistent with the event that tolls the running of the six-year limitation: the receipt of the misconduct allegation by the institution or HHS.

B. Confidentiality, 93.108

Consistent with longstanding practice and with Sec. 93.403, we have added a provision to clarify that ORI is within the category of those who need to know the identity of the respondent and complainant and that an institution may not invoke confidentiality to withhold that information from ORI as it conducts its review under Sec. 93.403.

C. Definition of Deciding Official, Sec. 93.207, and Authority of ORI, Sec. 93.400.

To ensure that the Assistant Secretary for Health is not responsible for both making findings of research misconduct and for reviewing the recommended decision of the ALJ on those findings if respondent contests the findings by requesting a hearing, Sec. 93.400 has been amended to give ORI the authority to make findings of research misconduct. That section and Sec. 93.404 have also been amended to clarify that ORI proposes administrative actions to HHS (defined as the Secretary or his delegate) and upon HHS approval, proceeds to implement those proposed actions in accordance with the procedures in the regulation. Accordingly, the definition of, and references to the term "deciding official" have been deleted. Giving ORI the responsibility for making findings of research misconduct is consistent with its responsibilities for reviewing institutional findings of research misconduct and for defending those findings if the respondent challenges them. This change will maintain the separation between investigation and adjudication, because ORI will not conduct any inquiry or investigation on behalf of HHS.

These changes have necessitated changing references to HHS and ORI and other clarifying changes in Secs. 93.403–406, 93.411, 93.500–501, 93.503, and 93.516–517. As provided in Sec.

93.406, the ORI finding of research misconduct is the final HHS action only if the respondent does not contest the charge letter within the prescribed period. The administrative actions, proposed by ORI and approved by HHS, become final in the same manner, except that the debarring official's decision is the final HHS action on any debarment or suspension action.

C. Definition of Good Faith, Sec. 93.210

Under Secs. 93.227 and 93.300(d), committee members are protected against retaliation for good faith cooperation with a research misconduct proceeding. As proposed, Sec. 93.211 (now Sec. 93.210) defined "good faith" for complainants and witnesses, but not for committee members. We have added such a definition, stating that a committee member acts in good faith if he/she cooperates with the research misconduct proceeding by carrying out the duties assigned impartially for the purpose of helping an institution meet its responsibilities under this regulation. A committee member does not act in good faith if his/her acts or omissions on the committee are dishonest or influenced by personal, professional, or financial conflicts of interest with those involved in the research misconduct proceeding.

D. Definition of Institutional Member, Sec. 93.214

We have added more examples of institutional members.

E. Institutional Policies and Procedures—Reporting the Opening of an Investigation, Sec. 93.304(d)

We have simplified the date for institutions to report the opening of investigations to ORI. This report must be made on or before the date on which the investigation begins. Institutions are encouraged to report the opening of an investigation to ORI as promptly as possible after the decision to open an investigation is made.

F. Taking Custody of and Securing Records at the Beginning of an Inquiry, Sec. 93.307(b)

We have added a requirement that on or before the date on which the respondent is notified of the inquiry, or the inquiry begins, whichever is earlier, the institution must, to the extent it has not already done so, promptly take all reasonable and practical steps to obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding, inventory the records and evidence and sequester them in a secure manner, except that where the research records

or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments. This is consistent with the identical requirements that become applicable when the institution notifies the respondent of the allegation and when the respondent is notified of an investigation. (Secs. 93.305(a) and 93.310(d)). These requirements are necessary because of the potential for the destruction or alteration of the research records. To minimize that potential, an institution should take custody of the records whenever it has reason to believe that the records may be subject to alteration or destruction because of an allegation or potential allegation of research misconduct. This may protect the respondent, as well as the institution.

G. Interaction With Other Offices, Sec. 93.401

To accurately reflect ORI's authority and practices, we have expanded this section to authorize ORI to provide expertise and assistance to the Department of Justice, the HHS Inspector General, PHS and other Federal offices, and State or local offices involved in investigating or otherwise pursuing research misconduct allegations or related matters.

H. Procedures for Debarment or Suspension Actions Based on Misconduct Findings, Secs. 93.405, 93.500–501, 93.503 and 93.523.

We have amended these sections to clarify the relationship between the regulations governing debarment and suspension and the procedures in subpart E for contesting ORI findings of research misconduct and proposed HHS administrative actions. Section 93.500(d) (comparable to Sec. 93.500(c) of the NPRM) explains that the procedures under subpart E provide the notification, opportunity to contest and fact finding required under the HHS regulation governing debarment and suspension. Consistent with that regulation, the debarring official provides notification of the proposed debarment or suspension as part of the charge letter (Sec. 93.405(a)) and makes the final decision on debarment and suspension actions whether that decision is based upon respondent's failure to contest the charge letter (Secs. 93.406, 93.501(a) and 93.503(c)), the decision of the ALJ, or the decision of the ALJ as modified by the Assistant

Secretary for Health (Secs. 93.500(c) and 93.523(b) and (c)).

I. HHS Administrative Action—Recovery of Funds, Sec. 93.407(b)

We have clarified what funds HHS may seek to recover in connection with a finding of research misconduct by amending Sec. 93.407(b) to refer to the potential recovery of PHS funds spent in support of activities that involved research misconduct.

J. Appointment of the ALJ—Description of Functions, Sec. 93.502(a)

We have amended Sec. 93.502(a) to describe the functions of the ALJ more completely.

K. Limits on the Authority of the ALJ, Sec. 93.506(a) and (c)

We have added references in Secs. 93.506(a) and (c) stating that the ALJ does not have the authority to find invalid or refuse to follow Federal statutes or regulations, Secretarial delegations of authority, or HHS policies. This is consistent with a similar provision in the regulation upon which the research misconduct hearing process is based, 42 CFR part 1005, which governs the hearing process for OIG exclusion of health care providers.

L. Actions for Violating an Order or Disruptive Conduct, Sec. 93.515(b)(6)

We have changed "taking a negative inference from the absence of research records, documents, or other information" to "drawing the inference that spoliated evidence was unfavorable to the party responsible for its spoliation." This change is intended to clarify the nature of the negative inference that may be reached by the ALJ and distinguish the spoliation of evidence during or in anticipation of the hearing, from the absence or destruction of records that may be evidence of research misconduct. In this context, spoliation has essentially the same meaning as is accepted by Federal courts, *i.e.*, the destruction or significant alteration of evidence during or in anticipation of the hearing.

M. Corrections and Minor Changes

In addition to the significant changes not based on comments described above, we have made changes to: (1) Correct errors, such as references to PHS rather than HHS, or to a hearing officer, rather than the ALJ; (2) use uniform language in describing the same condition or event in different sections of the regulation; (3) adding citations to other sections, where appropriate, to make cross-references more concise and

technically correct; and (4) use plain, and more precise language.

III. Significant Comments Not Resulting in Changes

A. Definition of Research Misconduct, Sec. 93.103

Although most commentators supported the new definition of research misconduct, there were a number of comments recommending changes, including that: (1) The definition should be based on deception; (2) the definition of falsification is inadequate because it does not cover the nonexperimental manipulation of human or animal subjects with the goal of influencing research results, or bias in the coding of qualitative data; (3) the definition of plagiarism should expressly exclude authorship and credit disputes; and (4) the definition of misconduct should be expanded to include negligent and intentional mistreatment of animals.

As explained in the preamble of the NPRM, the proposed definition of research misconduct, which is included in this final rule without change, includes OSTP's description of "fabrication, falsification, and plagiarism." That description is clear and sufficiently concrete to provide the basis for reasonable determinations of whether research misconduct has occurred and whether the misconduct was intentional, knowing, or reckless. Given the careful consideration that has been given to this definition and the value of a uniform government-wide definition, we are adopting the definition as it was proposed. We note that the nonexperimental manipulation of human or animal subjects to influence the research results would appear to be a manipulation of research materials or processes within the intent of the definition of falsification.

B. Confidentiality, Secs. 93.108, 93.300(e) and 93.304(a)

Several commentators recommended including witnesses and committee members and strengthening the confidentiality protections to provide the same protections as the OSTP Policy. Other commentators recommended that: (1) The rule give examples of what disclosures are limited and state when an institution is free to announce the results of an investigation to scientific journals; (2) the identity of the complainant and his/her statement be disclosed to the respondent; and (3) that the sanctions for a violation of confidentiality be specified.

We have not changed Sec. 93.108 or the other provisions requiring institutions to provide confidentiality to respondents, complainants, and research subjects who are identifiable from research records or evidence. We believe these provisions provide the same protections as the OSTP policy. Institutions have considerable discretion in implementing the confidentiality protections and are free to extend them to witnesses and committee members. However, consistent with the limitation of the OSTP confidentiality provision to complainants and respondents, we are not requiring that they do so.

C. Definition of Allegation—Inclusion of Oral Allegations, Sec. 93.201

Several commentators objected to the inclusion of oral allegations in the definition of the term "allegation." Although, the current PHS regulation at 42 CFR part 50, subpart A, does not define the term allegation, it has been longstanding ORI practice to accept oral allegations, including oral, anonymous allegations. Experience has shown that oral allegations may contain relatively complete information, but if they do not, they are often followed by more complete allegations, or lead to more complete information.

The definition of allegation must be considered in the context of the criteria warranting an inquiry. Under Sec. 93.307(a), an inquiry is warranted if the allegation: (1) Falls within the definition of research misconduct; (2) involves PHS supported biomedical or behavioral research, research training, or activities related to that research or research training; and (3) is sufficiently credible and specific so that potential evidence of research misconduct may be identified. Information sufficient to make these determinations can be transmitted orally. If such information is not transmitted orally or by other means, the institution cannot initiate an inquiry based upon the oral allegation. Under Sec. 93.300(b), an institution is obligated to respond to each allegation of research misconduct involving PHS supported biomedical or behavioral research, research training or activities related to that research or research training. The response must consist of assessing the allegation to determine if the criteria for initiating an inquiry are met and should consist of reasonable efforts to obtain further information about the allegation. We do not believe these are unreasonable burdens in response to oral allegations, particularly since oral allegations can, and have conveyed information leading to findings of research misconduct that

have protected the integrity of PHS supported research. We also note that the Offices of the Inspector General at various Federal agencies routinely accept oral and anonymous allegations in their pursuit of fraud, waste, and abuse.

D. Definition of Research Record, Sec. 93.226

We did not make any changes in this section in response to comments that the inclusion of oral presentations will inhibit open scientific discourse and objections to the interpretation of "data and results" to include computers and scientific equipment. The definition of "research record" is consistent with the definition of that term in the OSTP Policy. Oral presentations are a widely accepted method of conveying scientific information and research results. There is no logical reason why scientists should be permitted to falsify, fabricate, and plagiarize PHS supported biomedical and behavioral research, research training and activities related to that research and research training in oral presentations. The interpretation of the OSTP definition to include computers and scientific instruments is reasonable and consistent with the wording of the definition. Laboratory records, "both physical and electronic," are covered in the OSTP definition. Computers and scientific instruments contain electronic records. As explained above, we have made changes to clarify that if those electronic records can be extracted from the computer or instrument without change and recorded for later use, the computer or instrument need not be retained as the repository of the record.

E. Definition of Retaliation, Sec. 93.226; Protection From Retaliation Secs. 93.300(d) and 93.304(l)

One commentator recommended that the definition be amended to include retaliation against the respondent for his/her efforts to defend against the charges of research misconduct. The proposed definition would not include action resulting from research misconduct proceedings or personnel actions. It was also recommended that Secs. 93.300(d) and 93.304(l) be amended to require institutions to protect respondents from retaliation by referring to "all participants."

The purpose of the retaliation provision is to encourage researchers to come forward with good faith allegations of research misconduct and to encourage good faith cooperation with a research misconduct proceeding. In ORI's experience, there has been no showing of a need to protect

respondents from retaliation in order to ensure they will take steps to defend against an allegation of misconduct. In contrast, experience has shown a need to restore the reputations of respondents where there is a finding of no misconduct and Sec. 93.304(k) requires institutions to do that. If a need to protect respondents from retaliation is shown, institutions have broad discretion under the rule to address that situation on a case-by-case basis or adopt a policy to remedy the problem.

F. Responsibility of Institutions To Foster Responsible Conduct of Research, Sec. 93.300(c)

Several commentators objected to the requirement that institutions foster a research environment that promotes the responsible conduct of research, arguing that it is beyond the scope of a regulation on research misconduct. One letter, signed by four separate organizations, stated: "Though responsible conduct of research is clearly an imperative that our institutions embrace, the nature of the general research environment and the promotion of the responsible conduct of research are not tied only to research misconduct as ORI staff have asserted in many venues, and, as a consequence, should not be linked in this particular policy."

These commentators are reading too much into this provision. This is not a requirement for institutions to establish a new program for the responsible conduct of research. Rather, this provision appropriately updates the language of the current regulation requiring institutions to foster a research environment that discourages misconduct in all research and deals forthrightly with possible misconduct associated with research for which PHS funds have been provided or requested (42 CFR 50.105). The new provision recognizes the continuing importance of the responsible conduct of research to competent research that is free of any research misconduct. As stated by the Institute of Medicine (IOM) in its 2002 report, *Integrity in Scientific Research: Creating an Environment That Promotes Responsible Conduct*, "instruction in the responsible conduct of research need not be driven by federal mandates, for it derives from a premise fundamental to doing science: the responsible conduct of research is not distinct from research; on the contrary, competency in research encompasses the responsible conduct of that research and the capacity for ethical decisionmaking." (Report at p. 9). In the context of this regulation, the directive in Sec. 93.300(c) to foster a research

environment that promotes the responsible conduct of research means an environment that promotes competent, ethical research that is free of misconduct. This is directly related to the purposes of the regulation to establish the responsibilities of institutions in responding to research misconduct issues and to promote the integrity of PHS supported research and the research process (Sec. 93.101).

G. Responsibility for Maintenance of Research Records and Evidence, Sec. 93.305

One commentator recommended that this section be amended to require the prompt return to the respondent of records that, upon inventory, are found not to be relevant to the misconduct proceeding. Paragraph (a) of Sec. 93.305 requires the institution to obtain custody of all records and evidence needed to conduct the research misconduct proceeding. That requirement would not extend to records that are reasonably determined by the institution not to be needed to conduct the proceeding. We believe the imposition of an affirmative duty to return records that are determined to be irrelevant could adversely affect inquiries and investigations, because experience has shown that research misconduct proceedings are better served by broadly securing all records thought to be relevant. The respondent is protected by paragraph (b) of Sec. 93.305 under which he/she may obtain copies of the records or reasonable, supervised access.

H. Institutional Inquiry—Consideration of Honest Error or Difference of Opinion, Sec. 93.307

Several commentators recommended amending this section to impose an affirmative burden on institutions to assess whether honest error or difference of opinion exempts the allegation from consideration as research misconduct.

As noted earlier in this supplementary information, we have concluded that honest error or difference of opinion is an affirmative defense based on the statement in the preamble of the OSTP final rule that institutions and agencies are not required to disprove possible honest error or difference of opinion in order to make a finding of research misconduct. However, because of the overlap between this affirmative defense and the responsibility of institutions and HHS to prove that the alleged research misconduct was committed intentionally, knowingly, or recklessly, evidence of honest error or difference of

opinion is to be considered in determining whether the institutions and HHS have met their burden of proving that element, a prerequisite to a finding of research misconduct.

Under Sec. 93.307(c), the purpose of an inquiry is to conduct an initial review of the evidence to determine if an investigation is warranted. An investigation is warranted under Sec. 93.307(d) if: (1) There is a reasonable basis for concluding that the allegation involves PHS supported research, research training, or activities related to that research or research training and falls within the definition of research misconduct, and (2) preliminary information-gathering and fact-finding from the inquiry indicates that the allegation may have substance. It is important to note that possible honest error or difference of opinion goes to the issue of whether the alleged research misconduct was committed intentionally, knowingly, or recklessly, not whether the allegation involves fabrication, falsification, or plagiarism. A finding that the research misconduct is conducted intentionally, knowingly, or recklessly is necessary for a finding of research misconduct; a finding that is not made until the investigation is completed, absent an admission at an earlier stage.

Given this fact, and the preliminary nature of the fact finding at the inquiry stage, it would be appropriate for the inquiry report to note if there is possible evidence of honest error or difference of opinion for consideration in the investigation, but it would be inappropriate for the inquiry report to conclude, on the basis of an initial review of the evidence of honest error or difference of opinion, that the allegation should be dismissed. The determination of whether the alleged misconduct is intentional, knowing, or reckless, including consideration of evidence of honest error or difference of opinion, should be made at the investigation stage, following a complete review of the evidence. As noted in the preamble of the OSTP final policy, institutions and HHS do not have the burden of disproving possible honest error or differences of opinion.

I. Institutional Investigation, Sec. 93.310 and Investigation Time Limits, Sec. 93.311

Some commentators recommended that complainants be given a right to participate in the process. As explained in the preamble of the NPRM, complainants are witnesses in that they do not control or direct the process, do not have special access to evidence, except as determined by the institution

or ORI, and do not act as decision makers. This ensures that the institution will carry out its responsibility under Sec. 93.310(f) to conduct investigations that are fair.

Other commentators felt that the respondent should have an explicit right to review and comment on evidence and cross-examine witnesses at the investigation stage, and the right to request an extension of time for conducting the investigation. The proposed regulation requires that: (1) Where appropriate, the respondent be given copies of, or reasonable, supervised access to the research records secured by the institution on or before the date it notifies the respondent of the allegation, inquiry or investigation (Sec. 93.305(b)); (2) the respondent be notified in writing of the allegations before the investigation begins (Sec. 93.310(c)); (3) the institution interview the respondent and any witnesses he/she identifies who may have substantive information regarding any relevant aspects of the investigation (Sec. 93.310(g)); and (4) the respondent be given 30 days to review and comment on the investigation report (Sec. 93.312). These provisions have been retained and, as noted above, we have added to this final rule a requirement that respondent be given copies of, or supervised access to the evidence supporting the investigation report, concurrent with the period for comment. We believe these requirements ensure that the respondent will have a fair opportunity to present relevant evidence during the research misconduct proceeding, particularly when viewed in the context of the respondent's right to contest any HHS findings of research misconduct and proposed administrative sanctions before an ALJ. It is important to note that the final rule does not prohibit institutions from giving respondents greater rights during the investigation, so long as they do not contravene HHS requirements; the rule establishes a floor for their participation.

J. Appointment of the ALJ and Scientific Expert, Sec. 93.502

Two scientific societies objected to the ALJ provision, recommending that the current three member adjudication panel be retained. Another scientific society raised concerns about the extent to which scientists would be involved in the process, if they were not part of the adjudication panel (these concerns have been addressed through the changes in this section discussed above) and four associations supported the ALJ provision, provided that scientific or technical experts are required to

participate in those cases involving complex scientific, medical or technical issues. As stated in the preamble of the NPRM, we believe that the change to a single decisionmaker will substantially improve and simplify the process for all parties. The change provides a process similar to Medicare and State health care program exclusion cases brought by the Office of the Inspector General (OIG), which have similar impacts on the reputations of the respondents. This process is also consistent with Recommendation 92-7 of the Administrative Conference of the United States that ALJs should hear and decide cases involving the imposition of sanctions having a substantial economic effect. Use of an ALJ with ready access to scientific and technical expertise, rather than multiple decision makers, will streamline the process without compromising the quality of decisions that are dependent upon resolution of scientific, medical, or technical issues.

In addition to the comments recommending mandatory appointment of an expert in complex cases, another commentator recommended that the ALJ be required to appoint a scientific or technical expert to assist the ALJ in every case, rather than the ALJ being authorized to appoint such an expert and being required to appoint such an expert upon the request of one of the parties, as proposed in the NPRM. We are not changing the provision to require the appointment of an expert in every case or in all cases involving complex issues. We believe that such a rigid requirement is not needed to ensure fairness. In complex cases, it will always be in the interest of at least one of the parties to ensure that the ALJ fully understands the issues by requesting the appointment of an expert. Upon such a request, the appointment of an expert is mandatory. Furthermore, the ALJ, who is in the best position to assess the complexity of the case in light of his/her own knowledge and training, may appoint an expert in the absence of any motion by a party. The self-interest of the parties and the duty of the ALJ to exercise his/her discretion to provide a fair hearing should ensure that an expert is appointed where necessary to ensure fairness. We will closely monitor the appointment of experts in future hearings and, if problems are apparent, consider amending the regulations to compel the appointment of an expert in order to ensure that the ALJ will have the benefit of expert advice in cases involving complex issues.

IV. General Issues and Requests for Clarification

Several general comments and requests for clarification are addressed in the following question and answer format.

Q. Is the detail in the final rule contrary to the goal of the OSTP Federal Policy on Research Misconduct to provide a more uniform Federal-wide approach?

A. No, the final rule is consistent with the OSTP Federal Policy. As stated elsewhere in this Supplementary Information we have made some changes in order to adhere more closely to the Federal Policy and refused to make other changes that would have been inconsistent with the Federal Policy. The Supplementary Information section of the Notice of Proposed Rulemaking (69 FR 20778, 20780 (April 16, 2004)) explained that the proposed rule contained more detail than the existing rule because institutions had over the years asked for more detailed guidance and that detailed guidance would ensure thorough and fair inquiries and investigations and greater accountability on the part of all participants in research misconduct proceedings. Similarly, it was explained that the more detailed hearing process was being proposed in response to concerns that the current informal procedures lack the consistency and clarity provided by binding rules of procedure for other types of cases. Thus, the detail in the final rule is necessary to ensure more uniformity among the various institutions that will be conducting research misconduct proceedings and to ensure fair, uniform procedures for the benefit of respondents. The detail in the proposed rule, which is retained in this final rule, is entirely consistent with the goals of the OSTP Federal Policy to provide for fair and timely procedures and to strive for uniformity in implementation.

Q. How should institutions deal with bad faith allegations?

A. The final rule, Sec. 93.300(d), requires institutions to take all reasonable and practical steps to protect the positions and reputations of good faith complainants and protect them from retaliation by respondents and other institutional members. By negative implication, such steps are not required for bad faith complainants. Bad faith complainants are those who, under the definition of "good faith" in Sec. 93.210, do not have a belief in the truth of their allegation that a reasonable person in the complainant's position could have based on the information known to the complainant at the time.

We have determined there is no need for the final rule to further address bad faith allegations, given that institutions may have internal standards of conduct that address matters not addressed in the final rule (Sec. 93.319). However, the definition of "good faith" provides important guidance for institutions because it makes clear that an allegation can lack sufficient credibility and specificity so that potential evidence of research misconduct cannot be identified (Sec. 93.307(a)(3)), but still may not be a bad faith allegation. Thus, if institutions exercise their discretion to adopt procedures addressing bad faith allegations, we urge them to include fair procedures for determining whether there has been a bad faith allegation. ORI is prepared to work collaboratively with the research community to develop guidance in this area if research institutions and associations desire to do so.

Q. Will the final rule apply retroactively?

A. No, the final rule will become effective 30 days after the date it is published in the **Federal Register** and will apply prospectively. The effect of that prospective application will depend upon how the provisions of the rule interact with the activities of the institution and ORI. Upon the expiration of 30 days, the final rule will immediately apply to institutions that are receiving PHS support for research, research training or activities related to that research or research training. For institutions not receiving such PHS support, the regulation will not apply until they submit an application for that support.

If an institution to which the final rule applies immediately has completed an inquiry or investigation and reports to ORI after the effective date of the final rule, ORI will take further action, make findings, and provide an opportunity for a hearing in accordance with the final rule. If a request for a hearing is received by the DAB Chair after the effective date of the final rule, the hearing will be conducted in accordance with the final rule. This will ensure that respondents have the benefit of the detailed, fair hearing procedures in the final rule. Because it is not possible to address every possible scenario relating to the prospective application of the final rule, institutions that have received allegations of misconduct, or have ongoing inquiries or investigations upon the effective date of this final rule should contact ORI to determine how the rule will apply to those ongoing activities. ORI will make every effort to minimize burdens and ensure that all parties are treated fairly. Generally, if an

institution has a research misconduct proceeding pending at the time the new regulation becomes effective with respect to that institution, ORI would expect the new procedural requirements to be applicable to the institution's subsequent steps in that proceeding, unless the institution or respondent would be unduly burdened or treated unfairly. However, the definition of research misconduct that was in effect at the time the misconduct occurred would apply.

Q. Should HHS take action to provide immunity from personal liability for institutions, committee members, and witnesses who participate in research misconduct proceedings?

A. As the commentator who raised this issue implied, a Federal statute, rather than an HHS regulation, would be needed to provide this immunity. Earlier attempts by HHS to develop legislation providing immunity were unsuccessful. ORI does not currently have sufficient data to make the case for Federal legislation. Interested parties are encouraged to submit evidence that would help us in determining whether there is a need for Federal legislation to provide immunity for committee members and witnesses or to propose ways to provide such protection in the absence of such legislation.

Q. Should HHS have primary responsibility for responding to allegations of research misconduct at institutions that have repeatedly failed to handle such allegations properly?

A. Under the final rule, HHS has the discretion to take responsibility for responding to allegations of research misconduct at institutions that are failing to handle such allegations properly. Under Sec. 93.400, ORI may respond directly to any allegation of research misconduct at any time before, during, or after an institution's response to the matter. The ORI response may include, but is not limited to, reviewing an institution's findings and process and recommending that HHS perform an inquiry or investigation. In addition, ORI may make findings and impose HHS administrative actions related to an institution's compliance with the final rule. Where an institution has failed in the past to respond promptly or properly to allegations of research misconduct, ORI will monitor closely its subsequent responses to allegations of research misconduct. However, ORI would intervene only as it determines necessary and would first provide advice and assistance to the institution. ORI would exercise its discretion to respond directly to an allegation of research misconduct only if the institution disregarded that advice or

assistance or otherwise continued to fail to properly carry out its responsibilities under the final rule.

Q. Are sanctions required or available for imposition against those who violate the confidentiality requirements in the final rule?

A. The final rule does not provide for specific sanctions against those who violate the confidentiality protections in Sec. 93.108, but an institution would be subject to the general sanctions for failure to comply with the final rule and its assurance if it fails to comply with Sec. 93.108. Section 93.300(e) requires institutions to provide confidentiality to the extent required by Sec. 93.108, and Sec. 93.304 requires that an institution seeking an approved assurance have written policies and procedures that, consistent with Sec. 93.108, provide for protecting the confidentiality of respondents, complainants and research subjects. The final rule does not impose, or require institutions to impose sanctions against institutional members who violate the confidentiality provisions of Sec. 93.108, but institutions have the discretion to impose such sanctions by making compliance with those provisions a condition of employment. Institutions may also wish to develop specific policies addressing actions the institution may take when institutional members violate the confidentiality requirements.

Q. Does a respondent have a right to continue his/her research after allegations of research misconduct have been made?

A. The final rule does not directly address the issue of whether the respondent has a right to continue his/her research after an allegation of research misconduct has been made. Section 93.305 requires the institution to: (1) promptly obtain custody of and sequester all research records and evidence needed to conduct the research misconduct proceeding; and (2) where appropriate, give the respondent copies of, or reasonable, supervised access to the research records. There are at least two reasons for providing such access: to enable the respondent to prepare a defense against the allegation, and/or to continue the research.

As proposed and adopted in this final rule, Sec. 93.305(b) requires the institution to provide the respondent copies of, or supervised access to the research records secured by the institution, unless that would be inappropriate. The determination of when it would be inappropriate to provide such copies or access is left to the discretion of the institution. In exercising this discretion, institutions

should consider separately the issues of whether the respondent should continue the research and whether and under what circumstances the respondent should be given copies of or access to the research records. In considering the former issue, institutions should weigh, among other factors, the special circumstances listed in Sec. 93.318, the importance of continuing the research, and whether the expertise of the respondent is unique. Institutions must also be cognizant of the interests of the PHS funding agency and the need to confer with that agency about suspension or discontinuation of the research or to obtain approval if the Principal Investigator is being replaced. If the respondent does not continue the research, it would be appropriate, absent special circumstances, to give him/her a copy of the records, or reasonable, supervised access to them for the purpose of preparing a defense to the allegations. In order to ensure that the respondent has this opportunity at the investigation stage, Sec. 93.312(a) requires the institution to give the respondent a copy of, or supervised access to the evidence upon which the draft investigation report is based concurrently with the provision of the draft report for comment by the respondent.

Q. Does the 120-day time limit for completing an investigation include the 30-day period for respondent to review and comment on the draft report?

A. Yes. Section 93.311 provides in pertinent part that an institution must complete all aspects of an investigation within 120 days of beginning it, including providing the draft report for comment in accordance with Sec. 93.312, and sending the final report to ORI under Sec. 93.315. Under Sec. 93.313(g), the final report must include and consider any comments made by the respondent or complainant on the draft investigation report. If additional time is needed, the institution can request reasonable extensions for completion of the investigation.

Analysis of Impacts

As discussed in greater detail below, we have examined the potential impact of this final rule as directed by Executive Orders 12866 and 13132, the Unfunded Mandates Act of 1995, the Regulatory Flexibility Act, and the Paperwork Reduction Act of 1995.

We have also determined that this final rule will not: (1) Have an impact on family well-being under section 654 of the Treasury and General Government Appropriations Act of 1999; nor (2) have a significant adverse

effect on the supply, distribution, or use of energy sources under Executive Order 13211.

A. Executive Order 12866

These final regulations have been drafted and reviewed in accordance with Executive Order 12866 (58 FR 51735), section 1(b), Principles of Regulation. The Department has determined that this final rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review because it will materially alter the obligations of recipients of PHS biomedical and behavioral research and research training grants. However, the final regulation is not economically significant as defined in section 3(f)(1), because it will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Therefore, the information enumerated in section 6(a)(3)(C) of the Executive Order is not required. The final rule has been reviewed by the Office of Management and Budget (OMB) under the terms of the Executive Order.

Recipients of PHS biomedical and behavioral research grants will have to comply with the reporting and record keeping requirements in the proposed regulation. As shown below in the Paperwork Reduction Act analysis, those burdens encompass essentially all of the activities of the institutions that are required under the proposed regulation. The estimated total annual burden is 19,727.5 hours. The U.S. Department of Labor, Bureau of Labor Statistics, sets the mean hourly wage for Educational Administrators, Postsecondary at \$ 36.12. The mean hourly wage for lawyers is \$ 51.56. The average hourly cost of benefits for all civilian workers would add \$ 7.40 to these amounts. In order to ensure that all possible costs are included and to account for potentially higher rates at some institutions, we estimated the cost per burden hour at \$ 100. This results in a total annual cost for all institutions of \$ 1,972,750.

B. The Unfunded Mandates Reform Act of 1995

Sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 and 1535) require that agencies prepare several analytic statements before promulgating a rule that may result in annual expenditures of State, local, and tribal governments, or by the

private sector, of \$100 million or more in any one year. This final rule will not result in expenditures of this magnitude, and thus the Secretary certifies that such statements are not necessary.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires agencies to prepare a regulatory flexibility analysis describing the impact of the final rule on small entities, but also permits agency heads to certify that the final rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The primary effect of this rule is to require covered institutions to implement policies and procedures for responding to research misconduct cases. The Department certifies that this rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, based on the following facts.

Approximately 47 percent (1862) of the 4000 institutions that currently have research misconduct assurances are small entities. The primary impact of the final rule on covered institutions results from the reporting and record keeping provisions which are analyzed in detail under the heading, "The Paperwork Reduction Act." Significant annual burdens apply only if an institution learns of possible research misconduct and begins an inquiry, investigation, or both. In 2001, 86 inquiries and 46 investigations were conducted among all the institutions. No investigations were conducted by a small entity and only one conducted an inquiry. Small entities would be able to avoid entirely the potential burden of conducting an inquiry or investigation by filing a Small Organization Statement under section 93.303. The burden of filing this Statement is .5 hour. Thus, the significant burden of conducting inquiries and investigations will not fall on a substantial number of small entities.

A small organization that files the Small Organization Statement must report allegations of research misconduct to ORI and comply with all provisions of the proposed regulation other than those requiring the conduct of inquiries and investigations. The total annual average burden per response for creating written policies and procedures for addressing research misconduct is approximately 16 hours. However, approximately 99 percent of currently funded institutions already have these policies and procedures in place and spend approximately .5 hour updating

them. The most significant of the burdens that might fall on an entity filing a Small Organization Statement is taking custody of research records and evidence when there is an allegation of research misconduct. The average burden per response is 35 hours, but based on reports of research misconduct over the last three years, less than 5 small entities would have to incur that burden in any year.

Based on the forgoing analysis that was not commented upon when it appeared in the Notice of Proposed Rulemaking, the Department concludes that this final rule will not impose a significant burden on a substantial number of small entities.

D. Executive Order 13132: Federalism

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, we have determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. The Paperwork Reduction Act

Sections 300–305, 307–311, 313–318, and 413 of the rule contain information collection requirements that are subject to review by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting burdens. Included in the estimates is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comments on these estimates and other aspects of compliance with the Paperwork Reduction Act were invited in the NPRM.

As indicated in the foregoing discussion of the comments, a number of them addressed reporting and recordkeeping burdens. In response to comments that the proposed reporting requirements in Secs. 93.300(a), 93.302(c) and 93.316 were subject to an overly broad interpretation, we have made clarifying changes to limit their scope. This did not result in any change in the burden estimates, because those estimates were based upon a restrictive interpretation of the requirements. While changes were made to make it easier for institutions to meet the

requirements in Secs. 93.305, 93.307, and 93.310 for securing records contained in scientific instruments we do not believe that those changes significantly affect the burden of the collection requirements.

As explained above, the addition of a relevancy standard to Sec. 93.317 and provisions for transferring the custody of records to HHS will lessen the overall burden of retaining records of research misconduct proceedings, although we have added a requirement that the institutions document any determination that records are irrelevant. In addition, we are adding an explanatory note to the burden estimate for Sec. 93.317. This note explains that not all of the 53 respondents that are expected to conduct research misconduct proceedings each year, on average, will have to retain the records of those proceedings for a full seven years. If ORI determines that a thorough, complete investigation has been conducted and finds that there was no research misconduct or settles a case, it will notify the institution that it does not have to retain the records of the research misconduct proceeding, unless ORI is aware of an action by federal or state government to which the records may pertain. Historically, about 60 percent of cases closed by ORI do not result in PHS misconduct findings or PHS administrative actions. Thus, it is expected that in the majority of cases ORI will notify the institutions that they do not have to retain the records for the full seven-year period.

We have added a burden statement for the requirement in Sec. 93.302(a)(1) that institutions provide their policies and procedures on research misconduct, upon request, to ORI, HHS, and members of the public (this third item was added in response to comments). Based on recent data, we have increased the number of respondents in the items relating to the conduct of investigations by institutions. In addition, we have made minor changes to account for the renumbering of sections and paragraphs and to correct errors. With these changes, the estimates published in the NPRM are adopted as the burden estimates of the final rule. The information collection requirements in the final rule have been submitted to OMB for review.

Title: Public Health Service Policies on Research Misconduct.

Description: This final rule revises the current regulation, 42 CFR 50.101, *et seq.*, in three significant ways and will supersede the current regulation. First, the proposed rule integrates the White House Office of Science and Technology Policy's (OSTP) December 6, 2000,

government wide Federal Policy on Research Misconduct. Second, the proposed rule incorporates the recommendations of the HHS Review Group on Research Misconduct and Research Integrity that were approved by the Secretary of HHS on August 25, 1999. Third, the proposed rule integrates a decade's worth of experience and understanding since the agency's first regulations were promulgated.

Description of Respondents: The "respondents" for the collection of information described in this regulation are institutions that apply for or receive PHS support through grants, contracts, or cooperative agreements for any project or program that involves the conduct of biomedical or behavioral research, biomedical or behavioral research training, or activities related to that research or training (*see* definition of "Institution" at Sec. 93.213).

Subpart C—Responsibilities of Institutions

Compliance and Assurances

Section 93.300(a)

See Sec. 93.304 for burden statement.

Section 93.300(c)

See Sec. 93.302(a)(2)(i) for burden statement.

Section 93.300(i)

See Sec. 93.301(a) for burden statement.

Section 93.301(a)

Covered institutions must provide ORI with an assurance either by submitting the initial certification (500 institutions) or by submitting an annual report (3500 institutions).

Number of Respondents—4000.

Number of Responses per Respondent—1.

Annual Average Burden per Response—.5 hour.

Total Annual Burden—2000 hours.

Section 93.302(a)(1)

Covered institutions must, upon request, provide their policies and procedures on research misconduct to ORI, authorized HHS personnel, and members of the public.

Number of Respondents—2000.

Number of Responses per Respondent—1.

Annual Average Burden per Response—.5 hour.

Total Annual Burden—1000 hours.

Section 93.302(a)(2)(i)

Each applicant institution must inform its research members

participating in or otherwise involved with PHS supported biomedical or behavioral research, research training or activities related to that research or research training, including those applying for PHS support, of the institution's policies and procedures and emphasize the importance of compliance with these policies and procedures.

Number of Respondents—4000.

Number of Responses per Respondent—1.

Annual Average Burden per Response—.5 hour.

Total Annual Burden—2000 hours.

Section 93.302(b)

See Sec. 93.301(a) for burden statement.

Section 93.302(c)

In addition to the annual report, covered institutions must submit aggregated information to ORI on request regarding research misconduct proceedings.

Number of Respondents—100.

Number of Responses per Respondent—1.

Annual Average Burden per Response—1 hour.

Total Annual Burden—100.

Section 93.303

Covered institutions that, due to their small size, lack the resources to develop their own research misconduct policies and procedures may elect to file a "Small Organization Statement" with ORI.

Number of Respondents—75.

Number of Responses per Respondent—1.

Annual Average Burden per Response—.5 hour.

Total Annual Burden—37.5 hours.

Section 93.304

Covered institutions with active assurances must have written policies and procedures for addressing research misconduct. Approximately 3500 institutions already have these policies and procedures in place in any given year and spend minimal time (.5 hour) updating them. Approximately 500 institutions each year spend an average of two days creating these policies and procedures for the first time.

Number of Respondents—4000.

Number of Responses per Respondent—1.

Annual Average Burden per Response—2.5 hours.

Total Annual Burden—10,000 hours.

Section 93.305(a), (c), and (d)

When a covered institution learns of possible research misconduct, it must

promptly take custody of all research records and evidence and then inventory and sequester them. Covered institutions must also take custody of additional research records or evidence discovered during the course of a research misconduct proceeding. Once the records are in custody, the institutions must maintain them until ORI requests them, HHS takes final action, or as required under Sec. 93.317.

Number of Respondents—53.

Number of Responses per Respondent—1.

Annual Average Burden per Response—35 hours.

Total Annual Burden—1855 hours.

Section 93.305(b)

Where appropriate, covered institutions must give the respondent copies of or reasonable, supervised access to the research record.

Number of Respondents—53.

Number of Responses per Respondent—1.

Annual Average Burden per Response—5 hours.

Total Annual Burden—265 hours.

The Institutional Inquiry

Section 93.307(b)

At the time of or before beginning an inquiry, covered institutions must notify the presumed respondent in writing.

Number of Respondents—53.

Number of Responses per Respondent—1.

Annual Average Burden per Response—1 hour.

Total Annual Burden—53 hours.

Section 93.307(e)

See Sec. 93.309 for burden statement.

Section 93.307(f)

Covered institutions must provide the respondent an opportunity to review and comment on the inquiry report and attach any comments to the report.

Number of Respondents—53.

Number of Responses per Respondent—1.

Annual Average Burden per Response—1 hour.

Total Annual Burden—53 hours.

Section 93.308(a)

Covered institutions must notify the respondent whether the inquiry found that an investigation is warranted.

Number of Respondents—53.

Number of Responses per Respondent—1.

Annual Average Burden per Response—.5 hour.

Total Annual Burden—26.5 hours.

Section 93.309(a)

When a covered institution issues an inquiry report in which it finds that an investigation is warranted, the institution must provide ORI with a specified list of information within 30 days of the inquiry report's issuance.

Number of Respondents—20.

Number of Responses per Respondent—1.

Annual Average Burden per Response—16 hours.

Total Annual Burden—320 hours.

Section 93.309(c)

Covered institutions must keep sufficiently detailed documentation of inquiries to permit a later assessment by ORI of reasons why decision was made to forego an investigation.

Number of Respondents—37.

Number of Responses per Respondent—1.

Annual Average Burden per Response—1 hour.

Total Annual Burden—37 hours.

The Institutional Investigation

Section 93.310(b)

See Sec. 93.309(a) for burden statement.

Section 93.310(c)

Covered institutions must notify the respondent of allegations of research misconduct before beginning the investigation.

Number of Respondents—20.

Number of Responses per Respondent—1.

Annual Average Burden per Response—1.

Total Annual Burden—20 hours.

Section 93.310(d)

See Sec. 93.305(a), (c), and (d) for burden statement.

Section 93.310(g)

Covered institutions must record or transcribe all witness interviews, provide the recording or transcript to the witness for correction, and include the recording or transcript in the record of the investigation.

Number of Respondents—20.

Number of Responses per Respondent—1.

Annual Average Burden per Response—15 hours.

Total Annual Burden—300 hours.

Section 93.311(b)

If unable to complete the investigation in 120 days, covered institutions must submit a written request for an extension from ORI.

Number of Respondents—16.

Number of Responses per Respondent—1.
Annual Average Burden per Response—1 hour.
Total Annual Burden—16 hours.

Section 93.313

See Sec. 93.315 for burden statement.

Section 93.314(b)

If unable to complete any institutional appeals process relating to the institutional finding of misconduct within 120 days from the appeal's filing, covered institutions must request an extension in writing and provide an explanation.

Number of Respondents—5.
Number of Responses per Respondent—1.
Annual Average Burden per Response—.5 hour.
Total Annual Burden—2.5 hours.

Section 93.315

At the conclusion of the institutional investigation process, covered institutions must submit four items to ORI: the investigation report (with attachments and appeals), final institutional actions, the institutional finding, and any institutional administrative actions.

Number of Respondents—20.
Number of Responses per Respondent—1.
Annual Average Burden per Response—80 hours.
Total Annual Burden—1600 hours.

Section 93.316(a)

Covered institutions that plan to end an inquiry or investigation before completion for any reason must contact ORI before closing the case and submitting its final report.

Number of Respondents—10.
Number of Responses per Respondent—1.
Annual Average Burden per Response—2 hours.
Total Annual Burden—20 hours.

Other Institutional Responsibilities

Section 93.317(a) and (b)

See Sec. 93.305(a), (c), and (d), for burden statement. It is expected that not all of the 53 respondents that learn of misconduct will have to retain the records of their research misconduct proceedings for seven years. If ORI determines that a thorough, complete investigation has been conducted and finds that there was no research misconduct, or settles the case, it will notify the institution that it does not have to retain the records of the research misconduct proceeding, unless ORI is aware of an action by federal or state

government to which the records pertain.

Section 93.318

Covered institutions must notify ORI immediately in the event of any of an enumerated list of exigent circumstances.

Number of Respondents—2.
Number of Responses per Respondent—1.

Annual Average Burden per Response—1 hour.

Total Annual Burden—2 hours.

Subpart D—Responsibilities of the U.S. Department of Health and Human Services Institutional Compliance Issues

Section 93.413(c)(6)

ORI may require noncompliant institutions to adopt institutional integrity agreements.

Number of Respondents—1.
Number of Responses per Respondent—1.

Annual Average Burden per Response—20 hours.

Total Annual Burden—20 hours.

The Department has submitted a copy of this final rule to OMB for its review of these information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Prior to the effective date of this final rule, HHS will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. 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.

List of Subjects*42 CFR Part 50*

Administrative practice and procedure, Science and technology, Reporting and recordkeeping requirements, Research, Government contracts, Grant programs.

42 CFR Part 93

Administrative practice and procedure, Science and technology, Reporting and recordkeeping requirements, Research, Government contracts, Grant programs.

Dated: January 14, 2005.

Cristina V. Beato,

Acting Assistant Secretary for Health.

Dated: May 3, 2005.

Michael O. Leavitt,

Secretary of Health and Human Services.

■ Accordingly, under the authority of 42 U.S.C. 289b, HHS is amending 42 CFR parts 50 and 93 as follows:

PART 50—POLICIES OF GENERAL APPLICABILITY

■ 1. The authority citation for 42 CFR part 50 continues to as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); Sec. 1006, Public Health Service Act, 84 Stat. 1507 (42 U.S.C. 300a–4), unless otherwise noted.

Subpart A [Removed]

■ 2. Part 50, Subpart A (§§ 50.101–50.105) is removed and reserved.

■ 3. A new Part 93, with subparts A, B, C, D and E is added to read as follows:

PART 93—PUBLIC HEALTH SERVICE POLICIES ON RESEARCH MISCONDUCT

Sec.

93.25 Organization of this part.

93.50 Special terms.

Subpart A—General

- 93.100 General policy.
- 93.101 Purpose.
- 93.102 Applicability.
- 93.103 Research misconduct.
- 93.104 Requirements for findings of research misconduct.
- 93.105 Time limitations.
- 93.106 Evidentiary standards.
- 93.107 Rule of interpretation.
- 93.108 Confidentiality.
- 93.109 Coordination with other agencies.

Subpart B—Definitions

- 93.200 Administrative action.
- 93.201 Allegation.
- 93.202 Charge letter.
- 93.203 Complainant.
- 93.204 Contract.
- 93.205 Debarment or suspension.
- 93.206 Debarring official.
- 93.207 Departmental Appeals Board or DAB.
- 93.208 Evidence.
- 93.209 Funding component.
- 93.210 Good faith.
- 93.211 Hearing.
- 93.212 Inquiry.
- 93.213 Institution.
- 93.214 Institutional member
- 93.215 Investigation.
- 93.216 Notice.
- 93.217 Office of Research Integrity or ORI.
- 93.218 Person.
- 93.219 Preponderance of the evidence.
- 93.220 Public Health Service or PHS.
- 93.221 PHS support.
- 93.222 Research.
- 93.223 Research misconduct proceeding.

- 93.224 Research record.
- 93.225 Respondent.
- 93.226 Retaliation.
- 93.227 Secretary or HHS.

Subpart C—Responsibilities of Institutions

Compliance and Assurances

- 93.300 General responsibilities for compliance.
- 93.301 Institutional assurances.
- 93.302 Institutional compliance with assurances.
- 93.303 Assurances for small institutions.
- 93.304 Institutional policies and procedures.
- 93.305 Responsibility for maintenance and custody of research records and evidence.
- 93.306 Using a consortium or person for research misconduct proceedings.

The Institutional Inquiry

- 93.307 Institutional inquiry.
- 93.308 Notice of the results of the inquiry.
- 93.309 Reporting to ORI on the decision to initiate an investigation.

The Institutional Investigation

- 93.310 Institutional investigation.
- 93.311 Investigation time limits.
- 93.312 Opportunity to comment on the investigation report.
- 93.313 Institutional investigation report.
- 93.314 Institutional appeals.
- 93.315 Notice to ORI of institutional findings and actions.
- 93.316 Completing the research misconduct process.

Other Institutional Responsibilities

- 93.317 Retention and custody of the research misconduct proceeding record.
- 93.318 Notifying ORI of special circumstances.
- 93.319 Institutional standards.

Subpart D—Responsibilities of the U.S. Department of Health and Human Services

General Information

- 93.400 General statement of ORI authority.
- 93.401 Interaction with other offices and interim actions.

Research Misconduct Issues

- 93.402 ORI allegation assessments.
- 93.403 ORI review of research misconduct proceedings.
- 93.404 Findings of research misconduct and proposed administrative actions.
- 93.405 Notifying the respondent of findings of research misconduct and HHS administrative actions.
- 93.406 Final HHS actions.
- 93.407 HHS administrative actions.
- 93.408 Mitigating and aggravating factors in HHS administrative actions.
- 93.409 Settlement of research misconduct proceedings.
- 93.410 Final HHS action with no settlement or finding of research misconduct.
- 93.411 Final HHS action with a settlement or finding of misconduct.

Institutional Compliance Issues

- 93.412 Making decisions on institutional noncompliance.

- 93.413 HHS compliance actions.

Disclosure of Information

- 93.414 Notice.

Subpart E—Opportunity to Contest ORI Findings of Research Misconduct and HHS Administrative Actions

General Information

- 93.500 General policy.
- 93.501 Opportunity to contest findings of research misconduct and administrative actions.

Hearing Process

- 93.502 Appointment of the Administrative Law Judge and scientific expert.
- 93.503 Grounds for granting a hearing request.
- 93.504 Grounds for dismissal of a hearing request.
- 93.505 Rights of the parties.
- 93.506 Authority of the Administrative Law Judge.
- 93.507 Ex parte communications.
- 93.508 Filing, forms, and service.
- 93.509 Computation of time.
- 93.510 Filing motions.
- 93.511 Prehearing conferences.
- 93.512 Discovery.
- 93.513 Submission of witness lists, witness statements, and exhibits.
- 93.514 Amendment to the charge letter.
- 93.515 Actions for violating an order or for disruptive conduct.
- 93.516 Standard and burden of proof.
- 93.517 The hearing.
- 93.518 Witnesses.
- 93.519 Admissibility of evidence.
- 93.520 The record.
- 93.521 Correction of the transcript.
- 93.522 Filing post-hearing briefs.
- 93.523 The Administrative Law Judge's ruling.

Authority: 42 U.S.C. 216, 241, and 289b.

§ 93.25 Organization of this part.

This part is subdivided into five subparts. Each subpart contains information related to a broad topic or specific audience with special responsibilities as shown in the following table.

In subpart . . .	You will find provisions related to . . .
A	General information about this rule.
B	Definitions of terms used in this part.
C	Responsibilities of institutions with PHS support.
D	Responsibilities of the U.S. Department of Health and Human Services and the Office of Research Integrity.
E	Information on how to contest ORI research misconduct findings and HHS administrative actions.

§ 93.50 Special terms.

This part uses terms throughout the text that have special meaning. Those terms are defined in Subpart B of this part.

Subpart A—General

§ 93.100 General policy.

(a) Research misconduct involving PHS support is contrary to the interests of the PHS and the Federal government and to the health and safety of the public, to the integrity of research, and to the conservation of public funds.

(b) The U.S. Department of Health and Human Services (HHS) and institutions that apply for or receive Public Health Service (PHS) support for biomedical or behavioral research, biomedical or behavioral research training, or activities related to that research or research training share responsibility for the integrity of the research process. HHS has ultimate oversight authority for PHS supported research, and for taking other actions as appropriate or necessary, including the right to assess allegations and perform inquiries or investigations at any time. Institutions and institutional members have an affirmative duty to protect PHS funds from misuse by ensuring the integrity of all PHS supported work, and primary responsibility for responding to and reporting allegations of research misconduct, as provided in this part.

§ 93.101 Purpose.

The purpose of this part is to—
 (a) Establish the responsibilities of HHS, PHS, the Office of Research Integrity (ORI), and institutions in responding to research misconduct issues;

(b) Define what constitutes misconduct in PHS supported research;

(c) Define the general types of administrative actions HHS and the PHS may take in response to research misconduct; and

(d) Require institutions to develop and implement policies and procedures for—

(1) Reporting and responding to allegations of research misconduct covered by this part;

(2) Providing HHS with the assurances necessary to permit the institutions to participate in PHS supported research.

(e) Protect the health and safety of the public, promote the integrity of PHS supported research and the research process, and conserve public funds.

§ 93.102 Applicability.

(a) Each institution that applies for or receives PHS support for biomedical or

behavioral research, research training or activities related to that research or research training must comply with this part.

(b)(1) This part applies to allegations of research misconduct and research misconduct involving:

(i) Applications or proposals for PHS support for biomedical or behavioral extramural or intramural research, research training or activities related to that research or research training, such as the operation of tissue and data banks and the dissemination of research information;

(ii) PHS supported biomedical or behavioral extramural or intramural research;

(iii) PHS supported biomedical or behavioral extramural or intramural research training programs;

(iv) PHS supported extramural or intramural activities that are related to biomedical or behavioral research or research training, such as the operation of tissue and data banks or the dissemination of research information; and

(v) Plagiarism of research records produced in the course of PHS supported research, research training or activities related to that research or research training.

(2) This includes any research proposed, performed, reviewed, or reported, or any research record generated from that research, regardless of whether an application or proposal for PHS funds resulted in a grant, contract, cooperative agreement, or other form of PHS support.

(c) This part does not supersede or establish an alternative to any existing regulations or procedures for handling fiscal improprieties, the ethical treatment of human or animal subjects, criminal matters, personnel actions against Federal employees, or actions taken under the HHS debarment and suspension regulations at 45 CFR part 76 and 48 CFR subparts 9.4 and 309.4.

(d) This part does not prohibit or otherwise limit how institutions handle allegations of misconduct that do not fall within this part's definition of research misconduct or that do not involve PHS support.

§ 93.103 Research misconduct.

Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.

(a) Fabrication is making up data or results and recording or reporting them.

(b) Falsification is manipulating research materials, equipment, or processes, or changing or omitting data

or results such that the research is not accurately represented in the research record.

(c) Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

(d) Research misconduct does not include honest error or differences of opinion.

§ 93.104 Requirements for findings of research misconduct.

A finding of research misconduct made under this part requires that—

(a) There be a significant departure from accepted practices of the relevant research community; and

(b) The misconduct be committed intentionally, knowingly, or recklessly; and

(c) The allegation be proven by a preponderance of the evidence.

§ 93.105 Time limitations.

(a) *Six-year limitation.* This part applies only to research misconduct occurring within six years of the date HHS or an institution receives an allegation of research misconduct.

(b) *Exceptions to the six-year limitation.* Paragraph (a) of this section does not apply in the following instances:

(1) *Subsequent use exception.* The respondent continues or renews any incident of alleged research misconduct that occurred before the six-year limitation through the citation, republication or other use for the potential benefit of the respondent of the research record that is alleged to have been fabricated, falsified, or plagiarized.

(2) *Health or safety of the public exception.* If ORI or the institution, following consultation with ORI, determines that the alleged misconduct, if it occurred, would possibly have a substantial adverse effect on the health or safety of the public.

(3) *“Grandfather” exception.* If HHS or an institution received the allegation of research misconduct before the effective date of this part.

§ 93.106 Evidentiary standards.

The following evidentiary standards apply to findings made under this part.

(a) *Standard of proof.* An institutional or HHS finding of research misconduct must be proved by a preponderance of the evidence.

(b) *Burden of proof.* (1) The institution or HHS has the burden of proof for making a finding of research misconduct. The destruction, absence of, or respondent's failure to provide research records adequately

documenting the questioned research is evidence of research misconduct where the institution or HHS establishes by a preponderance of the evidence that the respondent intentionally, knowingly, or recklessly had research records and destroyed them, had the opportunity to maintain the records but did not do so, or maintained the records and failed to produce them in a timely manner and that the respondent's conduct constitutes a significant departure from accepted practices of the relevant research community.

(2) The respondent has the burden of going forward with and the burden of proving, by a preponderance of the evidence, any and all affirmative defenses raised. In determining whether HHS or the institution has carried the burden of proof imposed by this part, the finder of fact shall give due consideration to admissible, credible evidence of honest error or difference of opinion presented by the respondent.

(3) The respondent has the burden of going forward with and proving by a preponderance of the evidence any mitigating factors that are relevant to a decision to impose administrative actions following a research misconduct proceeding.

§ 93.107 Rule of interpretation.

Any interpretation of this part must further the policy and purpose of the HHS and the Federal government to protect the health and safety of the public, to promote the integrity of research, and to conserve public funds.

§ 93.108 Confidentiality.

(a) Disclosure of the identity of respondents and complainants in research misconduct proceedings is limited, to the extent possible, to those who need to know, consistent with a thorough, competent, objective and fair research misconduct proceeding, and as allowed by law. Provided, however, that:

(1) The institution must disclose the identity of respondents and complainants to ORI pursuant to an ORI review of research misconduct proceedings under § 93.403.

(2) Under § 93.517(g), HHS administrative hearings must be open to the public.

(b) Except as may otherwise be prescribed by applicable law, confidentiality must be maintained for any records or evidence from which research subjects might be identified. Disclosure is limited to those who have a need to know to carry out a research misconduct proceeding.

§ 93.109 Coordination with other agencies.

(a) When more than one agency of the Federal government has jurisdiction of the subject misconduct allegation, HHS will cooperate in designating a lead agency to coordinate the response of the agencies to the allegation. Where HHS is not the lead agency, it may, in consultation with the lead agency, take appropriate action to protect the health and safety of the public, promote the integrity of the PHS supported research and research process and conserve public funds.

(b) In cases involving more than one agency, HHS may refer to evidence or reports developed by that agency if HHS determines that the evidence or reports will assist in resolving HHS issues. In appropriate cases, HHS will seek to resolve allegations jointly with the other agency or agencies.

Subpart B—Definitions**§ 93.200 Administrative action.**

Administrative action means—

(a) An HHS action in response to a research misconduct proceeding taken to protect the health and safety of the public, to promote the integrity of PHS supported biomedical or behavioral research, research training, or activities related to that research or research training and to conserve public funds; or

(b) An HHS action in response either to a breach of a material provision of a settlement agreement in a research misconduct proceeding or to a breach of any HHS debarment or suspension.

§ 93.201 Allegation.

Allegation means a disclosure of possible research misconduct through any means of communication. The disclosure may be by written or oral statement or other communication to an institutional or HHS official.

§ 93.202 Charge letter.

Charge letter means the written notice, as well as any amendments to the notice, that are sent to the respondent stating the findings of research misconduct and any HHS administrative actions. If the charge letter includes a debarment or suspension action, it may be issued jointly by the ORI and the debarring official.

§ 93.203 Complainant.

Complainant means a person who in good faith makes an allegation of research misconduct.

§ 93.204 Contract.

Contract means an acquisition instrument awarded under the HHS

Federal Acquisition Regulation (FAR), 48 CFR Chapter 1, excluding any small purchases awarded pursuant to FAR Part 13.

§ 93.205 Debarment or suspension.

Debarment or suspension means the Government wide exclusion, whether temporary or for a set term, of a person from eligibility for Federal grants, contracts, and cooperative agreements under the HHS regulations at 45 CFR part 76 (nonprocurement) and 48 CFR subparts 9.4 and 309.4 (procurement).

§ 93.206 Debarring official.

Debarring official means an official authorized to impose debarment or suspension. The HHS debarring official is either—

(a) The Secretary; or

(b) An official designated by the Secretary.

§ 93.207 Departmental Appeals Board or DAB.

Departmental Appeals Board or DAB means, depending on the context—

(a) The organization, within the Office of the Secretary, established to conduct hearings and provide impartial review of disputed decisions made by HHS operating components; or

(b) An Administrative Law Judge (ALJ) at the DAB.

§ 93.208 Evidence.

Evidence means any document, tangible item, or testimony offered or obtained during a research misconduct proceeding that tends to prove or disprove the existence of an alleged fact.

§ 93.209 Funding component.

Funding component means any organizational unit of the PHS authorized to award grants, contracts, or cooperative agreements for any activity that involves the conduct of biomedical or behavioral research, research training or activities related to that research or research training, e.g., agencies, bureaus, centers, institutes, divisions, or offices and other awarding units within the PHS.

§ 93.210 Good faith.

Good faith as applied to a complainant or witness, means having a belief in the truth of one's allegation or testimony that a reasonable person in the complainant's or witness's position could have based on the information known to the complainant or witness at the time. An allegation or cooperation with a research misconduct proceeding is not in good faith if made with knowing or reckless disregard for information that would negate the allegation or testimony. Good faith as

applied to a committee member means cooperating with the research misconduct proceeding by carrying out the duties assigned impartially for the purpose of helping an institution meet its responsibilities under this part. A committee member does not act in good faith if his/her acts or omissions on the committee are dishonest or influenced by personal, professional, or financial conflicts of interest with those involved in the research misconduct proceeding.

§ 93.211 Hearing.

Hearing means that part of the research misconduct proceeding from the time a respondent files a request for an administrative hearing to contest ORI findings of research misconduct and HHS administrative actions until the time the ALJ issues a recommended decision.

§ 93.212 Inquiry.

Inquiry means preliminary information-gathering and preliminary fact-finding that meets the criteria and follows the procedures of §§ 93.307–93.309.

§ 93.213 Institution.

Institution means any individual or person that applies for or receives PHS support for any activity or program that involves the conduct of biomedical or behavioral research, biomedical or behavioral research training, or activities related to that research or training. This includes, but is not limited to colleges and universities, PHS intramural biomedical or behavioral research laboratories, research and development centers, national user facilities, industrial laboratories or other research institutes, small research institutions, and independent researchers.

§ 93.214 Institutional member.

Institutional member or members means a person who is employed by, is an agent of, or is affiliated by contract or agreement with an institution. Institutional members may include, but are not limited to, officials, tenured and untenured faculty, teaching and support staff, researchers, research coordinators, clinical technicians, postdoctoral and other fellows, students, volunteers, agents, and contractors, subcontractors, and subawardees, and their employees.

§ 93.215 Investigation.

Investigation means the formal development of a factual record and the examination of that record leading to a decision not to make a finding of research misconduct or to a recommendation for a finding of research misconduct which may include

a recommendation for other appropriate actions, including administrative actions.

§ 93.216 Notice.

Notice means a written communication served in person, sent by mail or its equivalent to the last known street address, facsimile number or e-mail address of the addressee. Several sections of Subpart E of this part have special notice requirements.

§ 93.217 Office of Research Integrity or ORI.

Office of Research Integrity or *ORI* means the office to which the HHS Secretary has delegated responsibility for addressing research integrity and misconduct issues related to PHS supported activities.

§ 93.218 Person.

Person means any individual, corporation, partnership, institution, association, unit of government, or legal entity, however organized.

§ 93.219 Preponderance of the evidence.

Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

§ 93.220 Public Health Service or PHS.

Public Health Service or *PHS* means the unit within the Department of Health and Human Services that includes the Office of Public Health and Science and the following Operating Divisions: Agency for Healthcare Research and Quality, Agency for Toxic Substances and Disease Registry, Centers for Disease Control and Prevention, Food and Drug Administration, Health Resources and Services Administration, Indian Health Service, National Institutes of Health, and the Substance Abuse and Mental Health Services Administration, and the offices of the Regional Health Administrators.

§ 93.221 PHS support.

PHS support means PHS funding, or applications or proposals therefor, for biomedical or behavioral research, biomedical or behavioral research training, or activities related to that research or training, that may be provided through: Funding for PHS intramural research; PHS grants, cooperative agreements, or contracts or subgrants or subcontracts under those PHS funding instruments; or salary or other payments under PHS grants, cooperative agreements or contracts.

§ 93.222 Research.

Research means a systematic experiment, study, evaluation, demonstration or survey designed to develop or contribute to general knowledge (basic research) or specific knowledge (applied research) relating broadly to public health by establishing, discovering, developing, elucidating or confirming information about, or the underlying mechanism relating to, biological causes, functions or effects, diseases, treatments, or related matters to be studied.

§ 93.223 Research misconduct proceeding.

Research misconduct proceeding means any actions related to alleged research misconduct taken under this part, including but not limited to, allegation assessments, inquiries, investigations, ORI oversight reviews, hearings, and administrative appeals.

§ 93.224 Research record.

Research record means the record of data or results that embody the facts resulting from scientific inquiry, including but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, journal articles, and any documents and materials provided to HHS or an institutional official by a respondent in the course of the research misconduct proceeding.

§ 93.225 Respondent.

Respondent means the person against whom an allegation of research misconduct is directed or who is the subject of a research misconduct proceeding.

§ 93.226 Retaliation.

Retaliation for the purpose of this part means an adverse action taken against a complainant, witness, or committee member by an institution or one of its members in response to—

- (a) A good faith allegation of research misconduct; or
- (b) Good faith cooperation with a research misconduct proceeding.

§ 93.227 Secretary or HHS.

Secretary or *HHS* means the Secretary of HHS or any other officer or employee of the HHS to whom the Secretary delegates authority.

Subpart C—Responsibilities of Institutions

Compliance and Assurances

§ 93.300 General responsibilities for compliance.

Institutions under this part must—

- (a) Have written policies and procedures for addressing allegations of research misconduct that meet the requirements of this part;

- (b) Respond to each allegation of research misconduct for which the institution is responsible under this part in a thorough, competent, objective and fair manner, including precautions to ensure that individuals responsible for carrying out any part of the research misconduct proceeding do not have unresolved personal, professional or financial conflicts of interest with the complainant, respondent or witnesses;

- (c) Foster a research environment that promotes the responsible conduct of research, research training, and activities related to that research or research training, discourages research misconduct, and deals promptly with allegations or evidence of possible research misconduct;

- (d) Take all reasonable and practical steps to protect the positions and reputations of good faith complainants, witnesses and committee members and protect them from retaliation by respondents and other institutional members;

- (e) Provide confidentiality to the extent required by § 93.108 to all respondents, complainants, and research subjects identifiable from research records or evidence;

- (f) Take all reasonable and practical steps to ensure the cooperation of respondents and other institutional members with research misconduct proceedings, including, but not limited to, their providing information, research records, and evidence;

- (g) Cooperate with HHS during any research misconduct proceeding or compliance review;

- (h) Assist in administering and enforcing any HHS administrative actions imposed on its institutional members; and

- (i) Have an active assurance of compliance.

§ 93.301 Institutional assurances.

- (a) *General policy.* An institution with PHS supported biomedical or behavioral research, research training or activities related to that research or research training must provide PHS with an assurance of compliance with this part, satisfactory to the Secretary. PHS funding components may authorize

funds for biomedical and behavioral research, research training, or activities related to that research or research training only to institutions that have approved assurances and required renewals on file with ORI.

(b) *Institutional Assurance.* The responsible institutional official must assure on behalf of the institution that the institution—

(1) Has written policies and procedures in compliance with this part for inquiring into and investigating allegations of research misconduct; and

(2) Complies with its own policies and procedures and the requirements of this part.

§ 93.302 Institutional compliance with assurances.

(a) *Compliance with assurance.* ORI considers an institution in compliance with its assurance if the institution—

(1) Establishes policies and procedures according to this part, keeps them in compliance with this part, and upon request, provides them to ORI, other HHS personnel, and members of the public;

(2) Takes all reasonable and practical specific steps to foster research integrity consistent with § 93.300, including—

(i) Informs the institution's research members participating in or otherwise involved with PHS supported biomedical or behavioral research, research training or activities related to that research or research training, including those applying for support from any PHS funding component, about its policies and procedures for responding to allegations of research misconduct, and the institution's commitment to compliance with the policies and procedures; and

(ii) Complies with its policies and procedures and each specific provision of this part.

(b) *Annual report.* An institution must file an annual report with ORI which contains information specified by ORI on the institution's compliance with this part.

(c) *Additional information.* Along with its assurance or annual report, an institution must send ORI such other aggregated information as ORI may request on the institution's research misconduct proceedings covered by this part and the institution's compliance with the requirements of this part.

§ 93.303 Assurances for small institutions.

(a) If an institution is too small to handle research misconduct proceedings, it may file a "Small Organization Statement" with ORI in place of the formal institutional policies and procedures required by §§ 93.301 and 93.304.

(b) By submitting a Small Organization Statement, the institution agrees to report all allegations of research misconduct to ORI. ORI or another appropriate HHS office will work with the institution to develop and implement a process for handling allegations of research misconduct consistent with this part.

(c) The Small Organization Statement does not relieve the institution from complying with any other provision of this part.

§ 93.304 Institutional policies and procedures.

Institutions seeking an approved assurance must have written policies and procedures for addressing research misconduct that include the following—

(a) Consistent with § 93.108, protection of the confidentiality of respondents, complainants, and research subjects identifiable from research records or evidence;

(b) A thorough, competent, objective, and fair response to allegations of research misconduct consistent with and within the time limits of this part, including precautions to ensure that individuals responsible for carrying out any part of the research misconduct proceeding do not have unresolved personal, professional, or financial conflicts of interest with the complainant, respondent, or witnesses;

(c) Notice to the respondent, consistent with and within the time limits of this part;

(d) Written notice to ORI of any decision to open an investigation on or before the date on which the investigation begins;

(e) Opportunity for the respondent to provide written comments on the institution's inquiry report;

(f) Opportunity for the respondent to provide written comments on the draft report of the investigation, and provisions for the institutional investigation committee to consider and address the comments before issuing the final report;

(g) Protocols for handling the research record and evidence, including the requirements of § 93.305;

(h) Appropriate interim institutional actions to protect public health, Federal funds and equipment, and the integrity of the PHS supported research process;

(i) Notice to ORI under § 93.318 and notice of any facts that may be relevant to protect public health, Federal funds and equipment, and the integrity of the PHS supported research process;

(j) Institutional actions in response to final findings of research misconduct;

(k) All reasonable and practical efforts, if requested and as appropriate,

to protect or restore the reputation of persons alleged to have engaged in research misconduct but against whom no finding of research misconduct is made;

(l) All reasonable and practical efforts to protect or restore the position and reputation of any complainant, witness, or committee member and to counter potential or actual retaliation against these complainants, witnesses, and committee members; and

(m) Full and continuing cooperation with ORI during its oversight review under Subpart D of this part or any subsequent administrative hearings or appeals under Subpart E of this part. This includes providing all research records and evidence under the institution's control, custody, or possession and access to all persons within its authority necessary to develop a complete record of relevant evidence.

§ 93.305 Responsibility for maintenance and custody of research records and evidence.

An institution, as the responsible legal entity for the PHS supported research, has a continuing obligation under this part to ensure that it maintains adequate records for a research misconduct proceeding. The institution must—

(a) Either before or when the institution notifies the respondent of the allegation, inquiry or investigation, promptly take all reasonable and practical steps to obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding, inventory the records and evidence, and sequester them in a secure manner, except that where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments;

(b) Where appropriate, give the respondent copies of, or reasonable, supervised access to the research records;

(c) Undertake all reasonable and practical efforts to take custody of additional research records or evidence that is discovered during the course of a research misconduct proceeding, except that where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the

evidentiary value of the instruments; and

(d) Maintain the research records and evidence as required by § 93.317.

§ 93.306 Using a consortium or other person for research misconduct proceedings.

(a) An institution may use the services of a consortium or person that the institution reasonably determines to be qualified by practice and experience to conduct research misconduct proceedings.

(b) A consortium may be a group of institutions, professional organizations, or mixed groups which will conduct research misconduct proceedings for other institutions.

(c) A consortium or person acting on behalf of an institution must follow the requirements of this part in conducting research misconduct proceedings.

The Institutional Inquiry

§ 93.307 Institutional inquiry.

(a) *Criteria warranting an inquiry.* An inquiry is warranted if the allegation—

(1) Falls within the definition of research misconduct under this part;

(2) Is within § 93.102; and

(3) Is sufficiently credible and specific so that potential evidence of research misconduct may be identified.

(b) *Notice to respondent and custody of research records.* At the time of or before beginning an inquiry, an institution must make a good faith effort to notify in writing the presumed respondent, if any. If the inquiry subsequently identifies additional respondents, the institution must notify them. To the extent it has not already done so at the allegation stage, the institution must, on or before the date on which the respondent is notified or the inquiry begins, whichever is earlier, promptly take all reasonable and practical steps to obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding, inventory the records and evidence, and sequester them in a secure manner, except that where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments.

(c) *Review of evidence.* The purpose of an inquiry is to conduct an initial review of the evidence to determine whether to conduct an investigation. Therefore, an inquiry does not require a full review of all the evidence related to the allegation.

(d) *Criteria warranting an investigation.* An inquiry's purpose is to decide if an allegation warrants an investigation. An investigation is warranted if there is—

(1) A reasonable basis for concluding that the allegation falls within the definition of research misconduct under this part and involves PHS supported biomedical or behavioral research, research training or activities related to that research or research training, as provided in § 93.102; and

(2) Preliminary information-gathering and preliminary fact-finding from the inquiry indicates that the allegation may have substance.

(e) *Inquiry report.* The institution must prepare a written report that meets the requirements of this section and § 93.309.

(f) *Opportunity to comment.* The institution must provide the respondent an opportunity to review and comment on the inquiry report and attach any comments received to the report.

(g) *Time for completion.* The institution must complete the inquiry within 60 calendar days of its initiation unless circumstances clearly warrant a longer period. If the inquiry takes longer than 60 days to complete, the inquiry record must include documentation of the reasons for exceeding the 60-day period.

§ 93.308 Notice of the results of the inquiry.

(a) *Notice to respondent.* The institution must notify the respondent whether the inquiry found that an investigation is warranted. The notice must include a copy of the inquiry report and include a copy of or refer to this part and the institution's policies and procedures adopted under its assurance.

(b) *Notice to complainants.* The institution may notify the complainant who made the allegation whether the inquiry found that an investigation is warranted. The institution may provide relevant portions of the report to the complainant for comment.

§ 93.309 Reporting to ORI on the decision to initiate an investigation.

(a) Within 30 days of finding that an investigation is warranted, the institution must provide ORI with the written finding by the responsible institutional official and a copy of the inquiry report which includes the following information—

(1) The name and position of the respondent;

(2) A description of the allegations of research misconduct;

(3) The PHS support, including, for example, grant numbers, grant

applications, contracts, and publications listing PHS support;

(4) The basis for recommending that the alleged actions warrant an investigation; and

(5) Any comments on the report by the respondent or the complainant.

(b) The institution must provide the following information to ORI on request—

(1) The institutional policies and procedures under which the inquiry was conducted;

(2) The research records and evidence reviewed, transcripts or recordings of any interviews, and copies of all relevant documents; and

(3) The charges for the investigation to consider.

(c) *Documentation of decision not to investigate.* Institutions must keep sufficiently detailed documentation of inquiries to permit a later assessment by ORI of the reasons why the institution decided not to conduct an investigation. Consistent with § 93.317, institutions must keep these records in a secure manner for at least 7 years after the termination of the inquiry, and upon request, provide them to ORI or other authorized HHS personnel.

(d) *Notification of special circumstances.* In accordance with § 93.318, institutions must notify ORI and other PHS agencies, as relevant, of any special circumstances that may exist.

The Institutional Investigation

§ 93.310 Institutional investigation.

Institutions conducting research misconduct investigations must:

(a) *Time.* Begin the investigation within 30 days after determining that an investigation is warranted.

(b) *Notice to ORI.* Notify the ORI Director of the decision to begin an investigation on or before the date the investigation begins and provide an inquiry report that meets the requirements of § 93.307 and § 93.309.

(c) *Notice to the respondent.* Notify the respondent in writing of the allegations within a reasonable amount of time after determining that an investigation is warranted, but before the investigation begins. The institution must give the respondent written notice of any new allegations of research misconduct within a reasonable amount of time of deciding to pursue allegations not addressed during the inquiry or in the initial notice of investigation.

(d) *Custody of the records.* To the extent they have not already done so at the allegation or inquiry stages, take all reasonable and practical steps to obtain custody of all the research records and

evidence needed to conduct the research misconduct proceeding, inventory the records and evidence, and sequester them in a secure manner, except that where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments. Whenever possible, the institution must take custody of the records—

(1) Before or at the time the institution notifies the respondent; and

(2) Whenever additional items become known or relevant to the investigation.

(e) *Documentation.* Use diligent efforts to ensure that the investigation is thorough and sufficiently documented and includes examination of all research records and evidence relevant to reaching a decision on the merits of the allegations.

(f) *Ensuring a fair investigation.* Take reasonable steps to ensure an impartial and unbiased investigation to the maximum extent practicable, including participation of persons with appropriate scientific expertise who do not have unresolved personal, professional, or financial conflicts of interest with those involved with the inquiry or investigation.

(g) *Interviews.* Interview each respondent, complainant, and any other available person who has been reasonably identified as having information regarding any relevant aspects of the investigation, including witnesses identified by the respondent, and record or transcribe each interview, provide the recording or transcript to the interviewee for correction, and include the recording or transcript in the record of the investigation.

(h) *Pursue leads.* Pursue diligently all significant issues and leads discovered that are determined relevant to the investigation, including any evidence of additional instances of possible research misconduct, and continue the investigation to completion.

§ 93.311 Investigation time limits.

(a) *Time limit for completing an investigation.* An institution must complete all aspects of an investigation within 120 days of beginning it, including conducting the investigation, preparing the report of findings, providing the draft report for comment in accordance with § 93.312, and sending the final report to ORI under § 93.315.

(b) *Extension of time limit.* If unable to complete the investigation in 120

days, the institution must ask ORI for an extension in writing.

(c) *Progress reports.* If ORI grants an extension, it may direct the institution to file periodic progress reports.

§ 93.312 Opportunity to comment on the investigation report.

(a) The institution must give the respondent a copy of the draft investigation report and, concurrently, a copy of, or supervised access to, the evidence on which the report is based. The comments of the respondent on the draft report, if any, must be submitted within 30 days of the date on which the respondent received the draft investigation report.

(b) The institution may provide the complainant a copy of the draft investigation report or relevant portions of that report. The comments of the complainant, if any, must be submitted within 30 days of the date on which the complainant received the draft investigation report or relevant portions of it.

§ 93.313 Institutional investigation report.

The final institutional investigation report must be in writing and include:

(a) *Allegations.* Describe the nature of the allegations of research misconduct.

(b) *PHS support.* Describe and document the PHS support, including, for example, any grant numbers, grant applications, contracts, and publications listing PHS support.

(c) *Institutional charge.* Describe the specific allegations of research misconduct for consideration in the investigation.

(d) *Policies and procedures.* If not already provided to ORI with the inquiry report, include the institutional policies and procedures under which the investigation was conducted.

(e) *Research records and evidence.* Identify and summarize the research records and evidence reviewed, and identify any evidence taken into custody but not reviewed.

(f) *Statement of findings.* For each separate allegation of research misconduct identified during the investigation, provide a finding as to whether research misconduct did or did not occur, and if so—

(1) Identify whether the research misconduct was falsification, fabrication, or plagiarism, and if it was intentional, knowing, or in reckless disregard;

(2) Summarize the facts and the analysis which support the conclusion and consider the merits of any reasonable explanation by the respondent;

(3) Identify the specific PHS support;

(4) Identify whether any publications need correction or retraction;

(5) Identify the person(s) responsible for the misconduct; and

(6) List any current support or known applications or proposals for support that the respondent has pending with non-PHS Federal agencies.

(g) *Comments.* Include and consider any comments made by the respondent and complainant on the draft investigation report.

(h) *Maintain and provide records.* Maintain and provide to ORI upon request all relevant research records and records of the institution's research misconduct proceeding, including results of all interviews and the transcripts or recordings of such interviews.

§ 93.314 Institutional appeals.

(a) While not required by this part, if the institution's procedures provide for an appeal by the respondent that could result in a reversal or modification of the findings of research misconduct in the investigation report, the institution must complete any such appeal within 120 days of its filing. Appeals from personnel or similar actions that would not result in a reversal or modification of the findings of research misconduct are excluded from the 120-day limit.

(b) If unable to complete any appeals within 120 days, the institution must ask ORI for an extension in writing and provide an explanation for the request.

(c) ORI may grant requests for extension for good cause. If ORI grants an extension, it may direct the institution to file periodic progress reports.

§ 93.315 Notice to ORI of institutional findings and actions.

The institution must give ORI the following:

(a) *Investigation Report.* Include a copy of the report, all attachments, and any appeals.

(b) *Final institutional action.* State whether the institution found research misconduct, and if so, who committed the misconduct.

(c) *Findings.* State whether the institution accepts the investigation's findings.

(d) *Institutional administrative actions.* Describe any pending or completed administrative actions against the respondent.

§ 93.316 Completing the research misconduct process.

(a) ORI expects institutions to carry inquiries and investigations through to completion and to pursue diligently all significant issues. An institution must

notify ORI in advance if the institution plans to close a case at the inquiry, investigation, or appeal stage on the basis that the respondent has admitted guilt, a settlement with the respondent has been reached, or for any other reason, except the closing of a case at the inquiry stage on the basis that an investigation is not warranted or a finding of no misconduct at the investigation stage, which must be reported to ORI under § 93.315.

(b) After consulting with the institution on its basis for closing a case under paragraph (a) of this section, ORI may conduct an oversight review of the institution's handling of the case and take appropriate action including:

- (1) Approving or conditionally approving closure of the case;
- (2) Directing the institution to complete its process;
- (3) Referring the matter for further investigation by HHS; or,
- (4) Taking a compliance action.

Other Institutional Responsibilities

§ 93.317 Retention and custody of the research misconduct proceeding record.

(a) *Definition of records of research misconduct proceedings.* As used in this section, the term "records of research misconduct proceedings" includes:

- (1) The records that the institution secures for the proceeding pursuant to §§ 93.305, 93.307(b) and 93.310(d), except to the extent the institution subsequently determines and documents that those records are not relevant to the proceeding or that the records duplicate other records that are being retained;
- (2) The documentation of the determination of irrelevant or duplicate records;
- (3) The inquiry report and final documents (not drafts) produced in the course of preparing that report, including the documentation of any decision not to investigate as required by § 93.309(d);
- (4) The investigation report and all records (other than drafts of the report) in support of that report, including the recordings or transcriptions of each interview conducted pursuant to § 93.310(g); and
- (5) The complete record of any institutional appeal covered by § 93.314.

(b) *Maintenance of record.* Unless custody has been transferred to HHS under paragraph (c) of this section, or ORI has advised the institution in writing that it no longer needs to retain the records, an institution must maintain records of research misconduct proceedings in a secure manner for 7 years after completion of the proceeding or the completion of any

PHS proceeding involving the research misconduct allegation under subparts D and E of this part, whichever is later.

(c) *Provision for HHS custody.* On request, institutions must transfer custody of or provide copies to HHS, of any institutional record relevant to a research misconduct allegation covered by this part, including the research records and evidence, to perform forensic or other analyses or as otherwise needed to conduct an HHS inquiry or investigation or for ORI to conduct its review or to present evidence in any proceeding under subparts D and E of this part.

§ 93.318 Notifying ORI of special circumstances.

At any time during a research misconduct proceeding, as defined in § 93.223, an institution must notify ORI immediately if it has reason to believe that any of the following conditions exist:

(a) Health or safety of the public is at risk, including an immediate need to protect human or animal subjects.

(b) HHS resources or interests are threatened.

(c) Research activities should be suspended.

(d) There is reasonable indication of possible violations of civil or criminal law.

(e) Federal action is required to protect the interests of those involved in the research misconduct proceeding.

(f) The research institution believes the research misconduct proceeding may be made public prematurely so that HHS may take appropriate steps to safeguard evidence and protect the rights of those involved.

(g) The research community or public should be informed.

§ 93.319 Institutional standards.

(a) Institutions may have internal standards of conduct different from the HHS standards for research misconduct under this part. Therefore, an institution may find conduct to be actionable under its standards even if the action does not meet this part's definition of research misconduct.

(b) An HHS finding or settlement does not affect institutional findings or administrative actions based on an institution's internal standards of conduct.

Subpart D—Responsibilities of the U.S. Department of Health and Human Services

General Information

§ 93.400 General statement of ORI authority.

(a) *ORI review.* ORI may respond directly to any allegation of research misconduct at any time before, during, or after an institution's response to the matter. The ORI response may include, but is not limited to—

- (1) Conducting allegation assessments;
- (2) Determining independently if jurisdiction exists under this part in any matter;
- (3) Forwarding allegations of research misconduct to the appropriate institution or HHS component for inquiry or investigation;
- (4) Recommending that HHS should perform an inquiry or investigation or issue findings and taking all appropriate actions in response to the inquiry, investigation, or findings;
- (5) Notifying or requesting assistance and information from PHS funding components or other affected Federal and state offices and agencies or institutions;
- (6) Reviewing an institution's findings and process;
- (7) Making a finding of research misconduct; and
- (8) Proposing administrative actions to HHS.

(b) *Requests for information.* ORI may request clarification or additional information, documentation, research records, or evidence from an institution or its members or other persons or sources to carry out ORI's review.

(c) *HHS administrative actions.* (1) In response to a research misconduct proceeding, ORI may propose administrative actions against any person to the HHS and, upon HHS approval and final action in accordance with this part, implement the actions.

(2) ORI may propose to the HHS debaring official that a person be suspended or debarred from receiving Federal funds and may propose to other appropriate PHS components the implementation of HHS administrative actions within the components' authorities.

(d) *ORI assistance to institutions.* At any time, ORI may provide information, technical assistance, and procedural advice to institutional officials as needed regarding an institution's participation in research misconduct proceedings.

(e) *Review of institutional assurances.* ORI may review institutional assurances

and policies and procedures for compliance with this part.

(f) *Institutional compliance.* ORI may make findings and impose HHS administrative actions related to an institution's compliance with this part and with its policies and procedures, including an institution's participation in research misconduct proceedings.

§ 93.401 Interaction with other offices and interim actions.

(a) ORI may notify and consult with other offices at any time if it has reason to believe that a research misconduct proceeding may involve that office. If ORI believes that a criminal or civil fraud violation may have occurred, it shall promptly refer the matter to the Department of Justice (DOJ), the HHS Inspector General (OIG), or other appropriate investigative body. ORI may provide expertise and assistance to the DOJ, OIG, PHS offices, other Federal offices, and state or local offices involved in investigating or otherwise pursuing research misconduct allegations or related matters.

(b) ORI may notify affected PHS offices and funding components at any time to permit them to make appropriate interim responses to protect the health and safety of the public, to promote the integrity of the PHS supported research and research process, and to conserve public funds.

(c) The information provided will not be disclosed as part of the peer review and advisory committee review processes, but may be used by the Secretary in making decisions about the award or continuation of funding.

Research Misconduct Issues

§ 93.402 ORI allegation assessments.

(a) When ORI receives an allegation of research misconduct directly or becomes aware of an allegation or apparent instance of research misconduct, it may conduct an initial assessment or refer the matter to the relevant institution for an assessment, inquiry, or other appropriate actions.

(b) If ORI conducts an assessment, it considers whether the allegation of research misconduct appears to fall within the definition of research misconduct, appears to involve PHS supported biomedical or behavior research, research training or activities related to that research or research training, as provided in § 93.102, and whether it is sufficiently specific so that potential evidence may be identified and sufficiently substantive to warrant an inquiry. ORI may review all readily accessible, relevant information related to the allegation.

(c) If ORI decides that an inquiry is warranted, it forwards the matter to the appropriate institution or HHS component.

(d) If ORI decides that an inquiry is not warranted it will close the case and forward the allegation in accordance with paragraph(e) of this section.

(e) ORI may forward allegations that do not fall within the jurisdiction of this part to the appropriate HHS component, Federal or State agency, institution, or other appropriate entity.

§ 93.403 ORI review of research misconduct proceedings.

ORI may conduct reviews of research misconduct proceedings. In conducting its review, ORI may—

(a) Determine whether there is HHS jurisdiction under this part;

(b) Consider any reports, institutional findings, research records, and evidence;

(c) Determine if the institution conducted the proceedings in a timely and fair manner in accordance with this part with sufficient thoroughness, objectivity, and competence to support the conclusions;

(d) Obtain additional information or materials from the institution, the respondent, complainants, or other persons or sources;

(e) Conduct additional analyses and develop evidence;

(f) Decide whether research misconduct occurred, and if so who committed it;

(g) Make appropriate research misconduct findings and propose HHS administrative actions; and

(h) Take any other actions necessary to complete HHS' review.

§ 93.404 Findings of research misconduct and proposed administrative actions.

After completing its review, ORI either closes the case without a finding of research misconduct or—

(a) Makes findings of research misconduct and proposes and obtains HHS approval of administrative actions based on the record of the research misconduct proceedings and any other information obtained by ORI during its review; or

(b) Recommends that HHS seek to settle the case.

§ 93.405 Notifying the respondent of findings of research misconduct and HHS administrative actions.

(a) When the ORI makes a finding of research misconduct or seeks to impose or enforce HHS administrative actions, other than debarment or suspension, it notifies the respondent in a charge letter. In cases involving a debarment or suspension action, the HHS debarment

official issues a notice of proposed debarment or suspension to the respondent as part of the charge letter. The charge letter includes the ORI findings of research misconduct and the basis for them and any HHS administrative actions. The letter also advises the respondent of the opportunity to contest the findings and administrative actions under Subpart E of this part.

(b) The ORI sends the charge letter by certified mail or a private delivery service to the last known address of the respondent or the last known principal place of business of the respondent's attorney.

§ 93.406 Final HHS actions.

Unless the respondent contests the charge letter within the 30-day period prescribed in § 93.501, the ORI finding of research misconduct is the final HHS action on the research misconduct issues and the HHS administrative actions become final and will be implemented, except that the debarment official's decision is the final HHS action on any debarment or suspension actions.

§ 93.407 HHS administrative actions.

(a) In response to a research misconduct proceeding, HHS may impose HHS administrative actions that include but are not limited to:

(1) Clarification, correction, or retraction of the research record.

(2) Letters of reprimand.

(3) Imposition of special certification or assurance requirements to ensure compliance with applicable regulations or terms of PHS grants, contracts, or cooperative agreements.

(4) Suspension or termination of a PHS grant, contract, or cooperative agreement.

(5) Restriction on specific activities or expenditures under an active PHS grant, contract, or cooperative agreement.

(6) Special review of all requests for PHS funding.

(7) Imposition of supervision requirements on a PHS grant, contract, or cooperative agreement.

(8) Certification of attribution or authenticity in all requests for support and reports to the PHS.

(9) No participation in any advisory capacity to the PHS.

(10) Adverse personnel action if the respondent is a Federal employee, in compliance with relevant Federal personnel policies and laws.

(11) Suspension or debarment under 45 CFR Part 76, 48 CFR Subparts 9.4 and 309.4, or both.

(b) In connection with findings of research misconduct, HHS also may

seek to recover PHS funds spent in support of the activities that involved research misconduct.

(c) Any authorized HHS component may impose, administer, or enforce HHS administrative actions separately or in coordination with other HHS components, including, but not limited to ORI, the Office of Inspector General, the PHS funding component, and the debarring official.

§ 93.408 Mitigating and aggravating factors in HHS administrative actions.

The purpose of HHS administrative actions is remedial. The appropriate administrative action is commensurate with the seriousness of the misconduct, and the need to protect the health and safety of the public, promote the integrity of the PHS supported research and research process, and conserve public funds. HHS considers aggravating and mitigating factors in determining appropriate HHS administrative actions and their terms. HHS may consider other factors as appropriate in each case. The existence or nonexistence of any factor is not determinative:

(a) *Knowing, intentional, or reckless.* Were the respondent's actions knowing or intentional or was the conduct reckless?

(b) *Pattern.* Was the research misconduct an isolated event or part of a continuing or prior pattern of dishonest conduct?

(c) *Impact.* Did the misconduct have significant impact on the proposed or reported research record, research subjects, other researchers, institutions, or the public health or welfare?

(d) *Acceptance of responsibility.* Has the respondent accepted responsibility for the misconduct by—

- (1) Admitting the conduct;
- (2) Cooperating with the research misconduct proceedings;
- (3) Demonstrating remorse and awareness of the significance and seriousness of the research misconduct; and

(4) Taking steps to correct or prevent the recurrence of the research misconduct.

(e) *Failure to accept responsibility.* Does the respondent blame others rather than accepting responsibility for the actions?

(f) *Retaliation.* Did the respondent retaliate against complainants, witnesses, committee members, or other persons?

(g) *Present responsibility.* Is the respondent presently responsible to conduct PHS supported research?

(h) *Other factors.* Other factors appropriate to the circumstances of a particular case.

§ 93.409 Settlement of research misconduct proceedings.

(a) HHS may settle a research misconduct proceeding at any time it concludes that settlement is in the best interests of the Federal government and the public health or welfare.

(b) Settlement agreements are publicly available, regardless of whether the ORI made a finding of research misconduct.

§ 93.410 Final HHS action with no settlement or finding of research misconduct.

When the final HHS action does not result in a settlement or finding of research misconduct, ORI may:

(a) Provide written notice to the respondent, the relevant institution, the complainant, and HHS officials.

(b) Take any other actions authorized by law.

§ 93.411 Final HHS action with settlement or finding of research misconduct.

When a final HHS action results in a settlement or research misconduct finding, ORI may:

(a) Provide final notification of any research misconduct findings and HHS administrative actions to the respondent, the relevant institution, the complainant, and HHS officials. The debarring official may provide a separate notice of final HHS action on any debarment or suspension actions.

(b) Identify publications which require correction or retraction and prepare and send a notice to the relevant journal.

(c) Publish notice of the research misconduct findings.

(d) Notify the respondent's current employer.

(e) Take any other actions authorized by law.

Institutional Compliance Issues

§ 93.412 Making decisions on institutional noncompliance.

(a) Institutions must foster a research environment that discourages misconduct in all research and that deals forthrightly with possible misconduct associated with PHS supported research.

(b) ORI may decide that an institution is not compliant with this part if the institution shows a disregard for, or inability or unwillingness to implement and follow the requirements of this part and its assurance. In making this decision, ORI may consider, but is not limited to the following factors—

(1) Failure to establish and comply with policies and procedures under this part;

(2) Failure to respond appropriately when allegations of research misconduct arise;

(3) Failure to report to ORI all investigations and findings of research misconduct under this part;

(4) Failure to cooperate with ORI's review of research misconduct proceedings; or

(5) Other actions or omissions that have a material, adverse effect on reporting and responding to allegations of research misconduct.

§ 93.413 HHS compliance actions.

(a) An institution's failure to comply with its assurance and the requirements of this part may result in enforcement action against the institution.

(b) ORI may address institutional deficiencies through technical assistance if the deficiencies do not substantially affect compliance with this part.

(c) If an institution fails to comply with its assurance and the requirements of this part, HHS may take some or all of the following compliance actions:

- (1) Issue a letter of reprimand.
- (2) Direct that research misconduct proceedings be handled by HHS.
- (3) Place the institution on special review status.
- (4) Place information on the institutional noncompliance on the ORI Web site.
- (5) Require the institution to take corrective actions.

(6) Require the institution to adopt and implement an institutional integrity agreement.

(7) Recommend that HHS debar or suspend the entity.

(8) Any other action appropriate to the circumstances.

(d) If the institution's actions constitute a substantial or recurrent failure to comply with this part, ORI may also revoke the institution's assurance under §§ 93.301 or 93.303.

(e) ORI may make public any findings of institutional noncompliance and HHS compliance actions.

Disclosure of Information

§ 93.414 Notice.

(a) ORI may disclose information to other persons for the purpose of providing or obtaining information about research misconduct as permitted under the Privacy Act, 5 U.S.C. 552a.

(b) ORI may publish a notice of final agency findings of research misconduct, settlements, and HHS administrative actions and release and withhold information as permitted by the Privacy Act and the Freedom of Information Act, 5 U.S.C. 552.

Subpart E—Opportunity To Contest ORI Findings of Research Misconduct and HHS Administrative Actions

General Information

§ 93.500 General policy.

(a) This subpart provides a respondent an opportunity to contest ORI findings of research misconduct and HHS administrative actions, including debarment or suspension, arising under 42 U.S.C. 289b in connection with PHS supported biomedical and behavioral research, research training, or activities related to that research or research training.

(b) A respondent has an opportunity to contest ORI research misconduct findings and HHS administrative actions under this part, including debarment or suspension, by requesting an administrative hearing before an Administrative Law Judge (ALJ) affiliated with the HHS DAB, when—

(1) ORI has made a finding of research misconduct against a respondent; and

(2) The respondent has been notified of those findings and any proposed HHS administrative actions, including debarment or suspension, in accordance with this part.

(c) The ALJ's ruling on the merits of the ORI research misconduct findings and the HHS administrative actions is subject to review by the Assistant Secretary for Health in accordance with § 93.523. The decision made under that section is the final HHS action, unless that decision results in a recommendation for debarment or suspension. In that case, the decision under § 93.523 shall constitute findings of fact to the debarring official in accordance with 45 CFR 76.845(c).

(d) Where a proposed debarment or suspension action is based upon an ORI finding of research misconduct, the procedures in this part provide the notification, opportunity to contest, and fact-finding required under the HHS debarment and suspension regulations at 45 CFR part 76, subparts H and G, respectively, and 48 CFR Subparts 9.4 and 309.4.

§ 93.501 Opportunity to contest findings of research misconduct and administrative actions.

(a) *Opportunity to contest.* A respondent may contest ORI findings of research misconduct and HHS administrative actions, including any debarment or suspension action, by requesting a hearing within 30 days of receipt of the charge letter or other written notice provided under § 93.405.

(b) *Form of a request for hearing.* The respondent's request for a hearing must be—

(1) In writing;

(2) Signed by the respondent or by the respondent's attorney; and

(3) Sent by certified mail, or other equivalent (*i.e.*, with a verified method of delivery), to the DAB Chair and ORI.

(c) *Contents of a request for hearing.* The request for a hearing must—

(1) Admit or deny each finding of research misconduct and each factual assertion made in support of the finding;

(2) Accept or challenge each proposed HHS administrative action;

(3) Provide detailed, substantive reasons for each denial or challenge;

(4) Identify any legal issues or defenses that the respondent intends to raise during the proceeding; and

(5) Identify any mitigating factors that the respondent intends to prove.

(d) *Extension for good cause to supplement the hearing request.* (1)

After receiving notification of the appointment of the ALJ, the respondent has 10 days to submit a written request to the ALJ for supplementation of the hearing request to comply fully with the requirements of paragraph (c) of this section. The written request must show good cause in accordance with paragraph (d)(2) of this section and set forth the proposed supplementation of the hearing request. The ALJ may permit the proposed supplementation of the hearing request in whole or in part upon a finding of good cause.

(2) Good cause means circumstances beyond the control of the respondent or respondent's representative and not attributable to neglect or administrative inadequacy.

Hearing Process

§ 93.502 Appointment of the Administrative Law Judge and scientific expert.

(a) Within 30 days of receiving a request for a hearing, the DAB Chair, in consultation with the Chief Administrative Law Judge, must designate an Administrative Law Judge (ALJ) to determine whether the hearing request should be granted and, if the hearing request is granted, to make recommended findings in the case after a hearing or review of the administrative record in accordance with this part.

(b) The ALJ may retain one or more persons with appropriate scientific or technical expertise to assist the ALJ in evaluating scientific or technical issues related to the findings of research misconduct.

(1) On the ALJ's or a party's motion to appoint an expert, the ALJ must give the parties an opportunity to submit nominations. If such a motion is made

by a party, the ALJ must appoint an expert, either:

(i) The expert, if any, who is agreed upon by both parties and found to be qualified by the ALJ; or,

(ii) If the parties cannot agree upon an expert, the expert chosen by the ALJ.

(2) The ALJ may seek advice from the expert(s) at any time during the discovery and hearing phases of the proceeding. The expert(s) shall provide advice to the ALJ in the form of a written report or reports that will be served upon the parties within 10 days of submission to the ALJ. That report must contain a statement of the expert's background and qualifications. Any comment on or response to a report by a party, which may include comments on the expert's qualifications, must be submitted to the ALJ in accordance with § 93.510(c). The written reports and any comment on, or response to them are part of the record. Expert witnesses of the parties may testify on the reports and any comments or responses at the hearing, unless the ALJ determines such testimony to be inadmissible in accordance with § 93.519, or that such testimony would unduly delay the proceeding.

(c) No ALJ, or person hired or appointed to assist the ALJ, may serve in any proceeding under this subpart if he or she has any real or apparent conflict of interest, bias, or prejudice that might reasonably impair his or her objectivity in the proceeding.

(d) Any party to the proceeding may request the ALJ or scientific expert to withdraw from the proceeding because of a real or apparent conflict of interest, bias, or prejudice under paragraph (c) of this section. The motion to disqualify must be timely and state with particularity the grounds for disqualification. The ALJ may rule upon the motion or certify it to the Chief ALJ for decision. If the ALJ rules upon the motion, either party may appeal the decision to the Chief ALJ.

(e) An ALJ must withdraw from any proceeding for any reason found by the ALJ or Chief ALJ to be disqualifying.

§ 93.503 Grounds for granting a hearing request.

(a) The ALJ must grant a respondent's hearing request if the ALJ determines there is a genuine dispute over facts material to the findings of research misconduct or proposed administrative actions, including any debarment or suspension action. The respondent's general denial or assertion of error for each finding of research misconduct, and any basis for the finding, or for the proposed HHS administrative actions in

the charge letter, is not sufficient to establish a genuine dispute.

(b) The hearing request must specifically deny each finding of research misconduct in the charge letter, each basis for the finding and each HHS administrative action in the charge letter, or it is considered an admission by the respondent. If the hearing request does not specifically dispute the HHS administrative actions, including any debarment or suspension actions, they are considered accepted by the respondent.

(c) If the respondent does not request a hearing within the 30-day time period prescribed in § 93.501(a), the finding(s) and any administrative action(s), other than debarment or suspension actions, become final agency actions at the expiration of the 30-day period. Where there is a proposal for debarment or suspension, after the expiration of the 30-day time period the official record is closed and forwarded to the debarring official for a final decision.

(d) If the ALJ grants the hearing request, the respondent may waive the opportunity for any in-person proceeding, and the ALJ may review and decide the case on the basis of the administrative record. The ALJ may grant a respondent's request that waiver of the in-person proceeding be conditioned upon the opportunity for respondent to file additional pleadings and documentation. ORI may also supplement the administrative record through pleadings, documents, in-person or telephonic testimony, and oral presentations.

§ 93.504 Grounds for dismissal of a hearing request.

(a) The ALJ must dismiss a hearing request if the respondent—

(1) Does not file the request within 30 days after receiving the charge letter;

(2) Does not raise a genuine dispute over facts or law material to the findings of research misconduct and any administrative actions, including debarment and suspension actions, in the hearing request or in any extension to supplement granted by the ALJ under § 93.501(d);

(3) Does not raise any issue which may properly be addressed in a hearing;

(4) Withdraws or abandons the hearing request; or

(b) The ALJ may dismiss a hearing request if the respondent fails to provide ORI with notice in the form and manner required by § 93.501.

§ 93.505 Rights of the parties.

(a) The parties to the hearing are the respondent and ORI. The investigating institution is not a party to the case, unless it is a respondent.

(b) Except as otherwise limited by this subpart, the parties may—

(1) Be accompanied, represented, and advised by an attorney;

(2) Participate in any case-related conference held by the ALJ;

(3) Conduct discovery of documents and other tangible items;

(4) Agree to stipulations of fact or law that must be made part of the record;

(5) File motions in writing before the ALJ;

(6) Present evidence relevant to the issues at the hearing;

(7) Present and cross-examine witnesses;

(8) Present oral arguments;

(9) Submit written post-hearing briefs, proposed findings of fact and conclusions of law, and reply briefs within reasonable time frames agreed upon by the parties or established by the ALJ as provided in § 93.522; and

(10) Submit materials to the ALJ and other parties under seal, or in redacted form, when necessary, to protect the confidentiality of any information contained in them consistent with this part, the Privacy Act, the Freedom of Information Act, or other Federal law or regulation.

§ 93.506 Authority of the Administrative Law Judge.

(a) The ALJ assigned to the case must conduct a fair and impartial hearing, avoid unnecessary delay, maintain order, and assure that a complete and accurate record of the proceeding is properly made. The ALJ is bound by all Federal statutes and regulations, Secretarial delegations of authority, and applicable HHS policies and may not refuse to follow them or find them invalid, as provided in paragraph (c)(4) of this section. The ALJ has the authorities set forth in this part.

(b) Subject to review as provided elsewhere in this subpart, the ALJ may—

(1) Set and change the date, time, schedule, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences with the parties to identify or simplify the issues, or to consider other matters that may aid in the prompt disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Require the attendance of witnesses at a hearing;

(6) Rule on motions and other procedural matters;

(7) Require the production of documents and regulate the scope and timing of documentary discovery as permitted by this part;

(8) Require each party before the hearing to provide the other party and the ALJ with copies of any exhibits that the party intends to introduce into evidence;

(9) Issue a ruling, after an *in camera* inspection if necessary, to address the disclosure of any evidence or portion of evidence for which confidentiality is requested under this part or other Federal law or regulation, or which a party submitted under seal;

(10) Regulate the course of the hearing and the conduct of representatives, parties, and witnesses;

(11) Examine witnesses and receive evidence presented at the hearing;

(12) Admit, exclude, or limit evidence offered by a party;

(13) Hear oral arguments on facts or law during or after the hearing;

(14) Upon motion of a party, take judicial notice of facts;

(15) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(16) Conduct any conference or oral argument in person, by telephone, or by audio-visual communication;

(17) Take action against any party for failing to follow an order or procedure or for disruptive conduct.

(c) The ALJ does not have the authority to—

(1) Enter an order in the nature of a directed verdict;

(2) Compel settlement negotiations;

(3) Enjoin any act of the Secretary; or

(4) Find invalid or refuse to follow Federal statutes or regulations, Secretarial delegations of authority, or HHS policies.

§ 93.507 Ex parte communications.

(a) No party, attorney, or other party representative may communicate *ex parte* with the ALJ on any matter at issue in a case, unless both parties have notice and an opportunity to participate in the communication. However, a party, attorney, or other party representative may communicate with DAB staff about administrative or procedural matters.

(b) If an *ex parte* communication occurs, the ALJ will disclose it to the other party and make it part of the record after the other party has an opportunity to comment.

(c) The provisions of this section do not apply to communications between an employee or contractor of the DAB and the ALJ.

§ 93.508 Filing, forms, and service.

(a) *Filing.* (1) Unless the ALJ provides otherwise, all submissions required or authorized to be filed in the proceeding must be filed with the ALJ.

(2) Submissions are considered filed when they are placed in the mail, transmitted to a private delivery service for the purpose of delivering the item to the ALJ, or submitted in another manner authorized by the ALJ.

(b) *Forms.* (1) Unless the ALJ provides otherwise, all submissions filed in the proceeding must include an original and two copies. The ALJ may designate the format for copies of nondocumentary materials such as videotapes, computer disks, or physical evidence. This provision does not apply to the charge letter or other written notice provided under § 93.405.

(2) Every submission filed in the proceeding must include the title of the case, the docket number, and a designation of the nature of the submission, such as a "Motion to Compel the Production of Documents" or "Respondent's Proposed Exhibits."

(3) Every submission filed in the proceeding must be signed by and contain the address and telephone number of the party on whose behalf the document or paper was filed, or the attorney of record for the party.

(c) *Service.* A party filing a submission with the ALJ must, at the time of filing, serve a copy on the other party. Service may be made either to the last known principal place of business of the party's attorney if the party is represented by an attorney, or, if not, to the party's last known address. Service may be made by—

(1) Certified mail;

(2) First-class postage prepaid U.S. Mail;

(3) A private delivery service;

(4) Hand-delivery; or

(5) Facsimile or other electronic means if permitted by the ALJ.

(d) *Proof of service.* Each party filing a document or paper with the ALJ must also provide proof of service at the time of the filing. Any of the following items may constitute proof of service:

(1) A certified mail receipt returned by the postal service with a signature;

(2) An official record of the postal service or private delivery service;

(3) A certificate of service stating the method, place, date of service, and person served that is signed by an individual with personal knowledge of these facts; or

(4) Other proof authorized by the ALJ.

§ 93.509 Computation of time.

(a) In computing any period of time under this part for filing and service or for responding to an order issued by the ALJ, the computation begins with the day following the act or event, and includes the last day of the period unless that day is a Saturday, Sunday,

or legal holiday observed by the Federal government, in which case it includes the next business day.

(b) When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government must be excluded from the computation.

(c) Where a document has been filed by placing it in the mail, an additional 5 days must be added to the time permitted for any response. This paragraph does not apply to a respondent's request for hearing under § 93.501.

(d) Except for the respondent's request for a hearing, the ALJ may modify the time for the filing of any document or paper required or authorized under the rules in this part to be filed for good cause shown. When time permits, notice of a party's request for extension of the time and an opportunity to respond must be provided to the other party.

§ 93.510 Filing motions.

(a) Parties must file all motions and requests for an order or ruling with the ALJ, serve them on the other party, state the nature of the relief requested, provide the legal authority relied upon, and state the facts alleged.

(b) All motions must be in writing except for those made during a prehearing conference or at the hearing.

(c) Within 10 days after being served with a motion, or other time as set by the ALJ, a party may file a response to the motion. The moving party may not file a reply to the responsive pleading unless allowed by the ALJ.

(d) The ALJ may not grant a motion before the time for filing a response has expired, except with the parties' consent or after a hearing on the motion. However, the ALJ may overrule or deny any motion without awaiting a response.

(e) The ALJ must make a reasonable effort to dispose of all motions promptly, and, whenever possible, dispose of all outstanding motions before the hearing.

§ 93.511 Prehearing conferences.

(a) The ALJ must schedule an initial prehearing conference with the parties within 30 days of the DAB Chair's assignment of the case.

(b) The ALJ may use the initial prehearing conference to discuss—

(1) Identification and simplification of the issues, specification of disputes of fact and their materiality to the ORI findings of research misconduct and any HHS administrative actions, and amendments to the pleadings, including any need for a more definite statement;

(2) Stipulations and admissions of fact including the contents, relevancy, and authenticity of documents;

(3) Respondent's waiver of an administrative hearing, if any, and submission of the case on the basis of the administrative record as provided in § 93.503(d);

(4) Identification of legal issues and any need for briefing before the hearing;

(5) Identification of evidence, pleadings, and other materials, if any, that the parties should exchange before the hearing;

(6) Identification of the parties' witnesses, the general nature of their testimony, and the limitation on the number of witnesses and the scope of their testimony;

(7) Scheduling dates such as the filing of briefs on legal issues identified in the charge letter or the respondent's request for hearing, the exchange of witness lists, witness statements, proposed exhibits, requests for the production of documents, and objections to proposed witnesses and documents;

(8) Scheduling the time, place, and anticipated length of the hearing; and

(9) Other matters that may encourage the fair, just, and prompt disposition of the proceedings.

(c) The ALJ may schedule additional prehearing conferences as appropriate, upon reasonable notice to or request of the parties.

(d) All prehearing conferences will be audio-taped with copies provided to the parties upon request.

(e) Whenever possible, the ALJ must memorialize in writing any oral rulings within 10 days after the prehearing conference.

(f) By 15 days before the scheduled hearing date, the ALJ must hold a final prehearing conference to resolve to the maximum extent possible all outstanding issues about evidence, witnesses, stipulations, motions and all other matters that may encourage the fair, just, and prompt disposition of the proceedings.

§ 93.512 Discovery.

(a) *Request to provide documents.* A party may only request another party to produce documents or other tangible items for inspection and copying that are relevant and material to the issues identified in the charge letter and in the respondent's request for hearing.

(b) *Meaning of documents.* For purposes of this subpart, the term documents includes information, reports, answers, records, accounts, papers, tangible items, and other data and documentary evidence. This subpart does not require the creation of any document. However, requested data

stored in an electronic data storage system must be produced in a form reasonably accessible to the requesting party.

(c) *Nondisclosable items.* This section does not authorize the disclosure of—

(1) Interview reports or statements obtained by any party, or on behalf of any party, of persons whom the party will not call as witness in its case-in-chief;

(2) Analyses and summaries prepared in conjunction with the inquiry, investigation, ORI oversight review, or litigation of the case; or

(3) Any privileged documents, including but not limited to those protected by the attorney-client privilege, attorney-work product doctrine, or Federal law or regulation.

(d) *Responses to a discovery request.* Within 30 days of receiving a request for the production of documents, a party must either fully respond to the request, submit a written objection to the discovery request, or seek a protective order from the ALJ. If a party objects to a request for the production of documents, the party must identify each document or item subject to the scope of the request and state the basis of the objection for each document, or any part that the party does not produce.

(1) Within 30 days of receiving any objections, the party seeking production may file a motion to compel the production of the requested documents.

(2) The ALJ may order a party to produce the requested documents for *in camera* inspection to evaluate the merits of a motion to compel or for a protective order.

(3) The ALJ must compel the production of a requested document and deny a motion for a protective order, unless the requested document is—

(i) Not relevant or material to the issues identified in the charge letter or the respondent's request for hearing;

(ii) Unduly costly or burdensome to produce;

(iii) Likely to unduly delay the proceeding or substantially prejudice a party;

(iv) Privileged, including but not limited to documents protected by the attorney-client privilege, attorney-work product doctrine, or Federal law or regulation; or

(v) Collateral to issues to be decided at the hearing.

(4) If any part of a document is protected from disclosure under paragraph (d)(3) of this section, the ALJ must redact the protected portion of a document before giving it to the requesting party.

(5) The party seeking discovery has the burden of showing that the ALJ should allow it.

(e) *Refusal to produce items.* If a party refuses to provide requested documents when ordered by the ALJ, the ALJ may take corrective action, including but not limited to, ordering the noncompliant party to submit written answers under oath to written interrogatories posed by the other party or taking any of the actions at § 93.515.

§ 93.513 Submission of witness lists, witness statements, and exhibits.

(a) By 60 days before the scheduled hearing date, each party must give the ALJ a list of witnesses to be offered during the hearing and a statement describing the substance of their proposed testimony, copies of any prior written statements or transcribed testimony of proposed witnesses, a written report of each expert witness to be called to testify that meets the requirements of Federal Rule of Civil Procedure 26(a)(2)(B), and copies of proposed hearing exhibits, including copies of any written statements that a party intends to offer instead of live direct testimony. If there are no prior written statements or transcribed testimony of a proffered witness, the party must submit a detailed factual affidavit of the proposed testimony.

(b) A party may supplement its submission under paragraph (a) of this section until 30 days before the scheduled hearing date if the ALJ determines:

(1) There are extraordinary circumstances; and

(2) There is no substantial prejudice to the objecting party.

(c) The parties must have an opportunity to object to the admission of evidence submitted under paragraph (a) of this section under a schedule set by the ALJ. However, the parties must file all objections before the final prehearing conference.

(d) If a party tries to introduce evidence after the deadlines in paragraph (a) of this section, the ALJ must exclude the offered evidence from the party's case-in-chief unless the conditions of paragraph (b) of this section are met. If the ALJ admits evidence under paragraph (b) of this section, the objecting party may file a motion to postpone all or part of the hearing to allow sufficient time to prepare and respond to the evidence. The ALJ may not unreasonably deny that motion.

(e) If a party fails to object within the time set by the ALJ and before the final prehearing conference, evidence exchanged under paragraph (a) of this

section is considered authentic, relevant and material for the purpose of admissibility at the hearing.

§ 93.514 Amendment to the charge letter.

(a) The ORI may amend the findings of research misconduct up to 30 days before the scheduled hearing.

(b) The ALJ may not unreasonably deny a respondent's motion to postpone all or part of the hearing to allow sufficient time to prepare and respond to the amended findings.

§ 93.515 Actions for violating an order or for disruptive conduct.

(a) The ALJ may take action against any party in the proceeding for violating an order or procedure or for other conduct that interferes with the prompt, orderly, or fair conduct of the hearing. Any action imposed upon a party must reasonably relate to the severity and nature of the violation or disruptive conduct.

(b) The actions may include—

(1) Prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense;

(2) Striking pleadings, in whole or in part;

(3) Staying the proceedings;

(4) Entering a decision by default;

(5) Refusing to consider any motion or other action not timely filed; or

(6) Drawing the inference that spoliated evidence was unfavorable to the party responsible for its spoliation.

§ 93.516 Standard and burden of proof.

(a) *Standard of proof.* The standard of proof is the preponderance of the evidence.

(b) *Burden of proof.* (1) ORI bears the burden of proving the findings of research misconduct. The destruction, absence of, or respondent's failure to provide research records adequately documenting the questioned research is evidence of research misconduct where ORI establishes by a preponderance of the evidence that the respondent intentionally, knowingly, or recklessly had research records and destroyed them, had the opportunity to maintain the records but did not do so, or maintained the records and failed to produce them in a timely manner and the respondent's conduct constitutes a significant departure from accepted practices of the relevant research community.

(2) The respondent has the burden of going forward with and the burden of proving, by a preponderance of the evidence, any and all affirmative defenses raised. In determining whether ORI has carried the burden of proof

imposed by this part, the ALJ shall give due consideration to admissible, credible evidence of honest error or difference of opinion presented by the respondent.

(3) ORI bears the burden of proving that the proposed HHS administrative actions are reasonable under the circumstances of the case. The respondent has the burden of going forward with and proving by a preponderance of the evidence any mitigating factors that are relevant to a decision to impose HHS administrative actions following a research misconduct proceeding.

§ 93.517 The hearing.

(a) The ALJ will conduct an in-person hearing to decide if the respondent committed research misconduct and if the HHS administrative actions, including any debarment or suspension actions, are appropriate.

(b) The ALJ provides an independent *de novo* review of the ORI findings of research misconduct and the proposed HHS administrative actions. The ALJ does not review the institution's procedures or misconduct findings or ORI's research misconduct proceedings.

(c) A hearing under this subpart is not limited to specific findings and evidence set forth in the charge letter or the respondent's request for hearing. Additional evidence and information may be offered by either party during its case-in-chief unless the offered evidence is—

(1) Privileged, including but not limited to those protected by the attorney-client privilege, attorney-work product doctrine, or Federal law or regulation.

(2) Otherwise inadmissible under §§ 93.515 or 93.519.

(3) Not offered within the times or terms of §§ 93.512 and 93.513.

(d) ORI proceeds first in its presentation of evidence at the hearing.

(e) After both parties have presented their cases-in-chief, the parties may offer rebuttal evidence even if not exchanged earlier under §§ 93.512 and 93.513.

(f) Except as provided in § 93.518(c), the parties may appear at the hearing in person or by an attorney of record in the proceeding.

(g) The hearing must be open to the public, unless the ALJ orders otherwise for good cause shown. However, even if the hearing is closed to the public, the ALJ may not exclude a party or party representative, persons whose presence a party shows to be essential to the presentation of its case, or expert witnesses.

§ 93.518 Witnesses.

(a) Except as provided in paragraph (b) of this section, witnesses must give testimony at the hearing under oath or affirmation.

(b) The ALJ may admit written testimony if the witness is available for cross-examination, including prior sworn testimony of witnesses that has been subject to cross-examination. These written statements must be provided to all other parties under § 93.513.

(c) The parties may conduct direct witness examination and cross-examination in person, by telephone, or by audio-visual communication as permitted by the ALJ. However, a respondent must always appear in-person to present testimony and for cross-examination.

(d) The ALJ may exercise reasonable control over the mode and order of questioning witnesses and presenting evidence to—

(1) Make the witness questioning and presentation relevant to deciding the truth of the matter; and

(2) Avoid undue repetition or needless consumption of time.

(e) The ALJ must permit the parties to conduct cross-examination of witnesses.

(f) Upon request of a party, the ALJ may exclude a witness from the hearing before the witness' own testimony. However, the ALJ may not exclude—

(1) A party or party representative;

(2) Persons whose presence is shown by a party to be essential to the presentation of its case; or

(3) Expert witnesses.

§ 93.519 Admissibility of evidence.

(a) The ALJ decides the admissibility of evidence offered at the hearing.

(b) Except as provided in this part, the ALJ is not bound by the Federal Rules of Evidence (FRE). However, the ALJ may apply the FRE where appropriate (e.g., to exclude unreliable evidence).

(c) The ALJ must admit evidence unless it is clearly irrelevant, immaterial, or unduly repetitious. However, the ALJ may exclude relevant and material evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence under FRE 401–403.

(d) The ALJ must exclude relevant and material evidence if it is privileged, including but not limited to evidence protected by the attorney-client privilege, the attorney-work product doctrine, or Federal law or regulation.

(e) The ALJ may take judicial notice of matters upon the ALJ's own initiative

or upon motion by a party as permitted under FRE 201 (Judicial Notice of Adjudicative Facts).

(1) The ALJ may take judicial notice of any other matter of technical, scientific, or commercial fact of established character.

(2) The ALJ must give the parties adequate notice of matters subject to judicial notice and adequate opportunity to show that the ALJ erroneously noticed the matters.

(f) Evidence of crimes, wrongs, or acts other than those at issue in the hearing is admissible only as permitted under FRE 404(b) (Character Evidence not Admissible to Prove Conduct; Exceptions, Other Crimes).

(g) Methods of proving character are admissible only as permitted under FRE 405 (Methods of Proving Character).

(h) Evidence related to the character and conduct of witnesses is admissible only as permitted under FRE Rule 608 (Evidence of Character and Conduct of Witness).

(i) Evidence about offers of compromise or settlement made in this action is inadmissible as provided in FRE 408 (Compromise and Offers to Compromise).

(j) The ALJ must admit relevant and material hearsay evidence, unless an objecting party shows that the offered hearsay evidence is not reliable.

(k) The parties may introduce witnesses and evidence on rebuttal.

(l) All documents and other evidence offered or admitted into the record must be open to examination by both parties, unless otherwise ordered by the ALJ for good cause shown.

(m) Whenever the ALJ excludes evidence, the party offering the evidence may make an offer of proof, and the ALJ must include the offer in the transcript or recording of the hearing in full. The offer of proof should consist of a brief oral statement describing the evidence excluded. If the offered evidence consists of an exhibit, the ALJ must mark it for identification and place it in the hearing record. However, the ALJ may rely upon the offered evidence in reaching the decision on the case only if the ALJ admits it.

§ 93.520 The record.

(a) HHS will record and transcribe the hearing, and if requested, provide a transcript to the parties at HHS' expense.

(b) The exhibits, transcripts of testimony, any other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ.

(c) For good cause shown, the ALJ may order appropriate redactions made to the record at any time.

(d) The DAB may return original research records and other similar items to the parties or awardee institution upon request after final HHS action, unless under judicial review.

§ 93.521 Correction of the transcript.

(a) At any time, but not later than the time set for the parties to file their post-hearing briefs, any party may file a motion proposing material corrections to the transcript or recording.

(b) At any time before the filing of the ALJ's decision and after consideration of any corrections proposed by the parties, the ALJ may issue an order making any requested corrections in the transcript or recording.

§ 93.522 Filing post-hearing briefs.

(a) After the hearing and under a schedule set by the ALJ, the parties may file post-hearing briefs, and the ALJ may allow the parties to file reply briefs.

(b) The parties may include proposed findings of fact and conclusions of law in their post-hearing briefs.

§ 93.523 The Administrative Law Judge's ruling.

(a) The ALJ shall issue a ruling in writing setting forth proposed findings of fact and any conclusions of law within 60 days after the last submission by the parties in the case. If unable to meet the 60-day deadline, the ALJ must set a new deadline and promptly notify the parties, the Assistant Secretary for Health and the debarring official, if debarment or suspension is under review. The ALJ shall serve a copy of the ruling upon the parties and the Assistant Secretary for Health.

(b) The ruling of the ALJ constitutes a recommended decision to the Assistant Secretary for Health. The Assistant Secretary for Health may review the ALJ's recommended decision and modify or reject it in whole or in part after determining it, or the part modified or rejected, to be arbitrary and capricious or clearly erroneous. The Assistant Secretary for Health shall notify the parties of an intention to review the ALJ's recommended decision within 30 days after service of the recommended decision. If that

notification is not provided within the 30-day period, the ALJ's recommended decision shall become final. An ALJ decision that becomes final in that manner or a decision by the Assistant Secretary for Health modifying or rejecting the ALJ's recommended decision in whole or in part is the final HHS action, unless debarment or suspension is an administrative action recommended in the decision.

(c) If a decision under § 93.523(b) results in a recommendation for debarment or suspension, the Assistant Secretary for Health shall serve a copy of the decision upon the debarring official and the decision shall constitute findings of fact to the debarring official in accordance with 45 CFR 76.845(c). The decision of the debarring official on debarment or suspension is the final HHS decision on those administrative actions.

[FR Doc. 05-9643 Filed 5-16-05; 8:45 am]

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Federal Register

**Tuesday,
May 17, 2005**

Part IV

Department of Labor

**Veterans' Employment and Training
Service**

**20 CFR Part 1001
Funding Formula for Grants to States;
Final Rule**

DEPARTMENT OF LABOR**Veterans' Employment and Training Service****20 CFR Part 1001**

RIN 1293-AA11

Funding Formula for Grants to States

AGENCY: Veterans' Employment and Training Service (VETS), Department of Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is issuing a final rule to implement section 4(a)(1) of Public Law 107-288, the Jobs for Veterans Act (Act), which amends 38 U.S.C. 4102A. This final rule establishes formula criteria for making funds available for veterans' employment services and the Transition Assistance Program (TAP). This rule replaces the Interim Final Rule and covers the second phase-in year of fiscal year 2005 and the permanent program beginning in fiscal year 2006.

DATES: This final rule takes effect June 16, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Robertson, Legislative Analysis Division, VETS, U.S. Department of Labor, Room S-1325, 200 Constitution Avenue NW., Washington, DC 20210, or by e-mail at robertson.paul@dol.gov or call 202-693-4714.

SUPPLEMENTARY INFORMATION: The Preamble to this Final Rule is organized as follows:

- I. Background—provides a brief description of the development of the Final Rule.
- II. Authority—cites the statutory provisions for the Final Rule.
- III. Section-by-Section Review of the Rule—summarizes pertinent aspects of the regulatory text, describes its purposes and application, and summarizes and responds to comments received on the Notice of Proposed Rulemaking published July 6, 2004 (69 FR 40724).
- IV. Administrative Information—sets forth the applicable information as required by law.

This Final Rule is published following a 60-day comment period during which comments were received from three individuals/organizations. Those comments are addressed in the appropriate sections of this Final Rule. We are grateful for the effort a concerned individual took to submit comments through Regulations.gov. We appreciate the commenter's interest in programs serving veterans. However, because the comments do not specifically relate to the provisions of this Rule, we will not address them in this Preamble.

I. Background

The President signed the Jobs for Veterans Act (Pub. L. 107-288) into law on November 7, 2002. The Act amends title 38 of the United States Code to revise and improve employment, training, and placement services furnished to veterans. This rule implements the provisions of 38 U.S.C. 4102A(c) as amended by section 4 of the Act that establishes a new funding formula for making funds available to each State, with an approved State Plan, to support the Disabled Veterans Outreach Program (DVOP) and the Local Veterans Employment Representative (LVER) programs. Additionally, funding will be made available to support TAP and respond to exigent circumstances.

Congress allowed for the phasing in of the new statutory funding formula "over the three fiscal-year period" beginning in fiscal year (FY) 2003, which started on October 1, 2002 (38 U.S.C. 4102A(c)(2)(B)(ii)). Because of the late enactment of the law, funding for year one of the phase-in had already occurred by the date of enactment. Congress intended that the formula be phased-in and fully implemented by the beginning of fiscal year 2006, which is October 1, 2005. The phase-in provision was not intended to delay the anticipated date of full implementation of the formula.

In order to adhere to the implementation expectations of Congress, the phase-in process began in fiscal year 2004, through publication of an Interim Final Rule amending 20 CFR part 1001 on June 30, 2003 (68 FR 39000). The Interim Final Rule set forth the funding criteria to be used in fiscal year 2004. In order to ensure full public comment and adequate public notice of the new funding criteria applicable after fiscal year 2004, the Interim Final Rule was set to expire on September 30, 2004, and the Department committed to issuing a Notice of Proposed Rulemaking to establish the funding formula to be used in fiscal year 2005 and the future.

Accordingly, on July 6, 2004, a Notice of Proposed Rulemaking with a request for comments was published in the **Federal Register**, at 69 FR 40724. The Notice of Proposed Rulemaking used the same formula and data sources as the Interim Final Rule for making allocations among States. We thoroughly reviewed every comment on the proposed rule received during the comment period. These comments are summarized and responded to in section III of this Preamble.

This Final Rule applies the same funding criteria and data sources as that

established in the Notice of Proposed Rulemaking and the Interim Final Rule. These criteria were used as the basis for allocating Fiscal Year 2005 funds (initially made available under a series of Continuing Resolutions) among the States. By so doing we were able to continue funding these programs without harm to the States or to veterans seeking services.

II. Authority

The statutory authority for this Final Rule is 38 U.S.C. 4102A(c)(2)(B), as amended by the Jobs for Veterans Act, enacted November 7, 2002, as Public Law 107-288.

III. Section-by-Section Review of the Rule*A. Funding Formula—Basic Grant*

The Act requires the Secretary to make funds available to each State, upon approval of an "application" (*i.e.*, a State Plan), to support the DVOP and LVER programs designed to provide employment services to veterans and transitioning servicemembers (38 U.S.C. 4102A(c)(2)(B)). The Act further allows the Secretary to use such criteria as the Secretary may establish in regulation, including civilian labor force and unemployment data in determining the funding levels (38 U.S.C. 4102A(c)(B)(i), as amended by the Act). The statute requires that the amount of funding available to each State reflect the ratio of: (1) The total number of veterans residing in the State who are seeking employment; to (2) the total number of veterans seeking employment in all States (38 U.S.C. 4102A(c)(B)(i)(I) and (II)). Additionally, the Act permits the Secretary to establish minimum funding levels and hold-harmless criteria, in order to mitigate the impact upon States whose funding levels may be significantly affected by the implementation of the new formula (38 U.S.C. 4102A(c)(B)(iii)).

The Act states that the use of this formula will be phased-in over the three fiscal-year period beginning October 1, 2002. Since the statute was not enacted until November 7, 2002, after the beginning of fiscal year 2003, we interpret this to mean that the first phase-in year for the funding formula was fiscal year 2004, which began on October 1, 2003. This will only allow a two-year phase-in period, fiscal years 2004 and 2005, instead of the three years as contemplated by the statute. To give the States the maximum phase-in period possible, an Interim Final Rule was published on June 30, 2003, which expired September 30, 2004. This Final Rule replaces the Interim Final Rule and

covers the second phase-in year of fiscal year 2005 and the permanent program beginning in fiscal year 2006. It applies the same funding criteria and data sources as that established in the Notice of Proposed Rulemaking and the Interim Final Rule. These criteria were used as the basis for allocating Fiscal Year 2005 funds (initially made available under a series of Continuing Resolutions) among the States.

1. Basic Grant Funding Formula and Data and Methodology

We are using the same data sources as those used in the FY 2004 formula established by the Interim Final Rule. The ratio of the number of veterans seeking employment in each State to the number of veterans seeking employment in all States is best determined using data collected through the Current Population Survey (CPS) and the Local Area Unemployment Statistics (LAUS), both of which are administered by the Bureau of Labor Statistics (BLS). We are using LAUS data to determine the number of unemployed persons in the civilian labor force because LAUS data are considered to be the most reliable data on the levels of general unemployment at the State level; and the Office of Management and Budget (OMB) requires Agencies allocating Federal funds, that include unemployment as a factor, to use LAUS as the indicator of unemployment unless the authorizing statute specifies otherwise (OMB Statistical Policy Directive 11). We are using the CPS data to determine the number of veterans in the civilian labor force because the CPS is considered to be the most reliable source of data on the levels of veteran participation in the civilian labor force at the State level. A subset of the CPS data on veterans in the civilian labor force does provide State level estimates of the number of unemployed veterans. However, because the sample size of the unemployed veteran subgroup at the State level is so small, these estimates are subject to large sampling errors. Therefore, the funding levels would be subject to undue variability/volatility if that subset of the CPS data were used alone to determine the number of unemployed veterans at the State level.

Because LAUS data are based on the total unemployment level for a State, we concluded that LAUS data are the best available measure of persons who are seeking work. Accordingly, we concluded the number of veterans seeking employment in each State can be best determined by using a ratio of the general unemployment level in each State compared to the general unemployment level in all States (LAUS

for the individual States/LAUS for all States), in combination with the number of veterans in the civilian labor force in each State compared to the number of veterans in the civilian labor force in all States (CPS for the individual States/CPS for all States). The result of these two ratios is averaged and converted to a single ratio of the number of veterans seeking employment in each State compared to the number of veterans seeking employment in all States. Three-year averages of the CPS and LAUS data are used in calculating the funding formula to stabilize the effect of annual fluctuations in the data in order to avoid undue fluctuations in the annual amounts allocated to States.

We received one comment on the use of these data sources in response to the issuance of the Notice of Proposed Rulemaking. The commenter expressed the concern that the "number of unemployed persons" is different than that required by the Act. They offer "[t]he term 'veterans seeking employment' could refer to veterans who are seeking employment because (1) they are unemployed and receiving Unemployment Insurance (UI) benefits; (2) they are out of work, but don't qualify for UI benefits; (3) they are looking for a better job than their current job; or (4) they are preparing for separation from the service."

Response: All individuals, including veterans, who are classified in LAUS as unemployed are considered to be seeking employment, both those who receive UI benefits and those who do not qualify for UI benefits (items 1 and 2, as specified in the comment). Thus, these two groups also are considered in the formula through the use of LAUS data. Currently, there is no valid data source that collects and measures those individuals who are looking for a better job than their current one (item 3, as specified in the comment). However, since these individuals are employed, they are considered a part of the civilian labor force and thus are included in the formula. Individuals who are preparing for separation from military service are not part of the civilian labor force nor are they veterans (item 4, as specified in the comment). Therefore they are properly omitted from the formula. It is noted that separating servicemembers may be served and are served through the Transition Assistance Program (TAP) and funding for services to those individuals is provided in this Final Rule through amounts made available for TAP services based on a State's plan. Therefore, no change is being made.

The same commenter suggested that rather than use "LAUS data for the total number of unemployed persons in each

State, VETS should work with the Employment and Training Administration to ensure that States report data regarding their veterans more consistently in all DOL administered programs."

Response: OMB Statistical Policy Directive 11 requires any federal agency allocating federal funds that include unemployment as a factor to use LAUS as the indicator of unemployment, unless the authorizing statute specifies otherwise. Additionally, it has been determined by the BLS that LAUS data are the most reliable data for determining unemployment at the State level. While we agree that the availability of a more reliable source of information on unemployed veterans would be desirable, we submit that in the absence of such a data source we must use the most reliable data currently available. Accordingly, no change is being made.

An additional comment by the same commenter expressed an opinion that the use of a three-year average is contrary to the express intent of the Act. They further stated, "The change in the prior funding formula was made in order to ensure that the nation's resources for serving veterans are allocated in proportion to the nation's veterans who are seeking employment. The Act authorizes only the use of a hold-harmless criteria and minimum funding levels."

Response: In our view, the Secretary is clearly authorized to include the 3-year average criterion in the formula established under 38 U.S.C. 4102A(c)(2)(B). The Secretary is authorized to use "such criteria as the Secretary may establish" within the parameters of that section (*i.e.*, the required data sources and ratio). The 3-year average criterion is used for sound statistical reasons. The State level data employed in the funding formula on the number of veterans in the civilian labor force are based entirely on the CPS. The State level data employed in the funding formula on the number of unemployed individuals are based upon the LAUS data, which are based partially on the CPS. All CPS data are derived from a survey that is conducted with a statistical sample of households. Like all data derived from statistical samples, the results of the CPS include sampling error. Therefore, the CPS results for a given State can vary from one year to the next simply due to the sampling error, without any change occurring in the underlying labor force characteristic being measured.

When the funding formula methodology was under development, funding allocations for basic grants were

initially estimated based upon the CPS and LAUS data for the most recent year, as suggested by the commenter. These initial estimates clearly indicated that "statistical noise" due to sampling error would have introduced a disruptive pattern of unnecessary annual fluctuations in funding levels, in addition to the desirable shifts in funding attributable to changes in the labor force characteristics being measured. Further development suggested that the three-year average provided the best available means of capturing the underlying labor force trends, while suppressing the year-to-year statistical variation. BLS staff members with specialized expertise related to the CPS and LAUS data sources were consulted during the development of this approach and concurred that the approach and its underlying rationale are technically sound. Based upon this technical foundation, it was concluded that this approach enables each State, and the workforce development system as a whole, to respond to relevant labor force changes in the most orderly manner. Therefore, the three year average is retained in the Final Rule.

One commenter pointed out that State Plans are prepared in response to estimated allocation amounts based upon a projection of the appropriation for a given fiscal year. This commenter requested clarification regarding the policies to be followed if: (a) The actual appropriation was higher than the projection; and (b) The actual appropriation was lower than the projection by a small amount.

Response: In response to these comments, we have revised § 1001.150. A new paragraph (d) sets forth the criteria that the Secretary will apply when the appropriation varies from the projection.

Projecting an appropriation amount for each fiscal year is central to the process prescribed by the Act for calculating and awarding basic grants for veterans' employment services to State Workforce Agencies. At the National level, the funding formula prescribed by the Act is applied to the projected appropriation amount in order to calculate the estimated amounts of the basic grant allocations for each State. At the State level, in turn, these estimated basic grant allocation amounts provide the fiscal foundation for the preparation of State Plans.

The sequence of activities undertaken to estimate basic grant allocation amounts and to prepare State Plans involve application of staff effort and consume calendar time on the part of the State and Federal agencies involved

in this process. Further, in recent years, the timing of the enactment of appropriations generally has made it expedient to award grants to State agencies as soon as possible after the appropriations are enacted and administrative allotments have been completed. Therefore, paragraph (d) of § 1001.150 provides that, if the actual appropriation varies from the projection, the Secretary will make every reasonable effort to avoid recalculating the estimated basic grant allocation amounts, in order to maintain the delivery of services to veterans and to minimize the administrative workload required to recalculate grant allocations and to revise State Plans. For all these reasons, upon enactment of an appropriation, it is the Department's intent to proceed by awarding the estimated basic grant allocation amounts to State agencies, unless the difference between the projection and the appropriation creates a compelling reason to do otherwise. The Department is able to cover small shortfalls between the appropriation and the projection by adjusting the funds set aside for TAP workload and exigent circumstances.

Paragraph (d)(2) provides that if the actual appropriation exceeds the projection, the Secretary will determine whether the higher appropriation creates a compelling reason to recalculate the States' basic grants by reapplying the formula to the amount of funds so appropriated. If there is no compelling reason to recalculate, the increased amount available for basic grants will be retained as undistributed funds, separate from the funds retained for TAP workload and other exigencies. The intent will be to award these undistributed basic grant funds to States during the applicable fiscal year as basic grant supplements, in response to circumstances that arise during that fiscal year. Similarly, paragraph (d)(3) provides that if the appropriation falls below the projection, the Secretary will determine whether the lower appropriation creates a compelling reason to recalculate the States' basic grants. If awarding States the estimated allocation amounts for basic grants would reduce the level of unallocated funds below the threshold amount required for TAP and other exigencies, a compelling reason to recalculate would exist. Therefore, the basic grant allocation amounts will be recalculated in response to a reduced appropriation to the extent that it is necessary to do so to assure the availability of sufficient funding for TAP workload and other exigencies. In cases where the appropriation is insufficient to meet the

hold-harmless provisions, we will follow the procedure outlined in section 1001.152(d).

2. Minimum Funding Levels and Hold-Harmless Criteria

The Act authorizes the Secretary to establish hold-harmless criteria and minimum funding levels (38 U.S.C. 4102A(c)(2)(B)(iii)). This Final Rule establishes a hold-harmless rate of eighty percent for the second phase-in year (fiscal year 2005) to mitigate the impact of the most significant reductions to States' prior funding levels. This is the same rate as that set forth in the Interim Final Rule for Fiscal Year 2004. With the eighty percent hold-harmless during fiscal year 2005 each State will be provided no less than eighty percent of its previous year's allocation. The eighty percent hold-harmless rate will allow the reduction of funding, to those States impacted, to be implemented incrementally. After the funding phase-in period is completed in fiscal year 2005, a ninety percent hold-harmless rate will be applied, ensuring each State will receive at least ninety percent of their previous year's allocation. This will align the hold-harmless level with the hold-harmless level established by Section 6 of the Wagner-Peyser Act (29 U.S.C. 49e(b)(2)). In addition to the hold-harmless provisions in any year, a State minimum funding level of 0.28 percent (.0028) of the prior year's total funding level for all States will be applied, meaning that no State may receive less than that amount. This is the same percentage applied in Section 6 of the Wagner-Peyser Act (29 U.S.C. 49e(b)(3)).

One commenter, noting that State Plans are prepared in response to estimated basic grant allocations based upon a projection of the appropriation for a given fiscal year, requested clarification of the policy that the Department would follow if the actual appropriation fell so far below the projection that sufficient funding was not available to comply with the 90 percent hold-harmless provision.

Response: In response to this comment, a new paragraph (d) has been added to § 1001.152. Section 1001.152 provides that two basic steps would be followed in this instance. In the first step, the Department would confirm or refine, as appropriate, the accuracy of the States' estimates of TAP workload and would reserve sufficient funds from the total amount available for allocation to the States for that purpose. Beyond TAP workload, no funds would be reserved for exigent circumstances because the shortfall in the

appropriation would be the primary exigent circumstance to be addressed.

In the second step, the Department would apply proportionally the remaining balance available for basic grant allocations to the States for that fiscal year. The proportion would be calculated by dividing the remaining balance available for basic grant allocations by the total estimated basic grant allocations for that fiscal year. The proportion resulting from that calculation would be applied to each State's estimated basic grant allocation to calculate the amount to be awarded. For example, if the balance available was 79% of the total estimated basic grant allocations, each State would be awarded 79% of its estimated basic grant allocation for that fiscal year.

B. Other Funding Criteria

In addition to requiring the Secretary to use civilian labor force and unemployment data in establishing States' funding levels, the Act states that the Secretary "shall make available to each State * * * an amount of funding * * * using such criteria as the Secretary may establish in regulation * * *" (38 U.S.C. 4102A(c)(2)(B)(i)). Accordingly, the rule provides that in addition to the amount awarded based on the basic grant funding formula, described in section IV.A.1 of this document, the Secretary may distribute up to four percent of the total amount available for allocation based on TAP workload and exigent circumstances (38 U.S.C. 4102, 4102A(b), and 10 U.S.C. 1141).

A commenter asked us to clear up a perceived inconsistency between the Preamble statement that " * * * the Secretary may distribute up to four percent of the total amount available for allocation" in reference to § 1001.151(a) which states that "[f]our percent of the total amount at the national level will be available" for TAP and exigencies.

Response: The intent of the regulation is to provide that the Secretary has authority to use "up to four percent of the total amount available for allocation will be available for distribution based on Transition Assistance Program (TAP) workload and other exigencies." To avoid any confusion, the regulation has been revised accordingly. The funds set aside for TAP are available for programs in States and overseas.

1. Transition Assistance Program (TAP) Workload

The Act requires the Secretary to implement programs to ease the transition of servicemembers to civilian careers (38 U.S.C. 4102. See also 10 U.S.C. 1141). TAP workshops provide

such employment services for transitioning servicemembers. Because active military personnel are not included in the CPS civilian labor force data, or in the LAUS unemployment data, the level of need for TAP workshops is not reflected in the funding formula for the basic grants. Therefore, supplemental funding is needed in order to ensure adequate funding is available to provide TAP workshops. In the Final Rule, the allocation to the States for TAP workshops is proportional to each State's TAP workload as identified in its State Plan. Policy guidance was provided to States to assist them in determining the amounts needed for this additional workload, which is calculated on a per-workshop basis as identified in the State Plan.

We received one comment supporting the method for allocating TAP workshop funds.

2. Exigent Circumstances

Supplemental funding will be made available for exigencies, including but not limited to, needs based on sharp or unanticipated fluctuations in State unemployment levels and services to transitioning servicemembers (as required by the Act). Economic and unemployment conditions projected at the time of the grant application may not reflect actual conditions. In such cases, program needs may warrant additional funding. These funds will be made available based on need.

IV. Administrative Information

Regulatory Flexibility and Regulatory Impact Analysis

The Regulatory Flexibility Act of 1980, as amended in 1996 (5 U.S.C. chapter 6), requires the Federal government to anticipate and minimize the impact of rules and paperwork requirements on small entities. "Small entities" are defined as small businesses (those with fewer than 500 employees, except where otherwise provided), small non-profit organizations (those with fewer than 500 employees, except where otherwise provided), and small governmental entities (those in areas with fewer than 50,000 residents). We have assessed the potential impact of this rule on small entities. This rule implements reforms to the funding of the State operated veterans' employment and training services and transitional assistance programs for separating servicemembers. Because the rule affects only the distribution of appropriated funds among the States, we have determined that the rule will not have a significant impact on a

substantial number of small governments or other small entities. We are transmitting a copy of our certification to the Chief Counsel for Advocacy for the Small Business Administration. In addition, while these rules govern the distribution and administration of funds appropriated by Congress, the rules themselves do not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises. Accordingly, under the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. Chapter 8), the Department has determined that these are not "major rules," as defined in 5 U.S.C. 804(2).

Paperwork Reduction Act

This Final Rule does not require any information to be collected, therefore is not subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

Executive Order 12866, Regulatory Planning and Review

The Department of Labor has determined that this rule is a "significant regulatory action." However, it is not an economically significant rule, and therefore, does not fall under the cost/benefit assessment provisions of section 6(a)(3)(C) of Executive Order 12866. While this rule affects the distribution among States of funds appropriated by Congress, the rule itself will not materially alter the rights and obligations of the State recipients, particularly in light of the hold-harmless provisions included in the rule. Furthermore, the rule itself will not: materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency, or otherwise interfere with an action taken or planned by another agency. The rule may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866, therefore it has been submitted to OMB for review.

Unfunded Mandates

Executive Order 12875—This rule does not create an unfunded Federal Mandate upon any State, local, or tribal government.

Unfunded Mandate Reform Act of 1995—This rule does not include any Federal mandate that may result in increased expenditures by State, local and tribal governments in the aggregate of \$100 million or more, or increased expenditures by the private sector of \$100 million or more.

Executive Order 13132, Federalism

We have assessed this rule under Executive Order 13132 and found that it will not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, within the meaning of the Executive Order.

Executive Order 12988

This rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The rule has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

Effective Date

This final rule is effective June 16, 2005.

List of Subjects in 20 CFR Part 1001

Employment, Grant Programs, Labor, Reporting and Record Keeping Requirements, Veterans.

■ For the reasons set forth in the preamble, 20 CFR chapter IX is amended as set forth below.

PART 1001—SERVICES FOR VETERANS

■ 1. The authority for part 1001, subpart F continues to read as follows:

Authority: Sec. 4(a), Pub. L. 107-288; 38 U.S.C. 4102A.

■ 2. Part 1001 is amended by revising subpart F to read as follows:

Subpart F—Formula for the Allocation of Grant Funds to State Agencies

1001.150 Method of calculating State basic grant awards.

1001.151 Other funding criteria.

1001.152 Hold-harmless criteria and minimum funding level.

Subpart F—Formula for the Allocation of Grant Funds to State Agencies.**§ 1001.150 Method of calculating State basic grant awards.**

(a) In determining the amount of funds available to each State, the ratio of the number of veterans seeking employment in the State to the number of veterans seeking employment in all States will be used.

(b) The number of veterans seeking employment will be determined based on the number of veterans in the civilian labor force and the number of unemployed persons. The civilian labor force data will be obtained from the Current Population Survey (CPS) and the unemployment data will be obtained from the Local Area Unemployment Statistics (LAUS), both of which are compiled by the Department of Labor's Bureau of Labor Statistics.

(c) Each State's basic grant allocation will be determined by dividing the number of unemployed persons in each State by the number of unemployed persons across all States (LAUS for all States) and by dividing the number of veterans in the civilian labor force in each State by the number of veterans in the civilian labor force across all States (CPS for all States). The result of these two ratios will be averaged and converted to a percentage of veterans seeking employment in the State compared to the percentage of veterans seeking employment in all States. Three-year averages of the CPS and LAUS data will be used in calculating the funding formula to stabilize the effect of annual fluctuations in the data in order to avoid undue fluctuations in the annual basic grant amounts allocated to States.

(d) State Plans are prepared in response to estimated basic grant allocation amounts prepared by the Department of Labor, based upon a projection of the appropriation. Variations from Department of Labor projections will be treated as follows:

(1) If the actual appropriation varies from the projection, the Secretary will make every reasonable effort to avoid recalculating the estimated basic grant allocation amounts, in order to maintain the delivery of services to veterans and to minimize the administrative workload required to recalculate grant allocations and to revise State Plans. Therefore upon enactment and allotment of an appropriated amount, it is the Department's intent to proceed by awarding the estimated basic grant allocation amounts to State agencies, unless the difference between the

projection and the appropriation creates a compelling reason to do otherwise.

(2) If the actual appropriation exceeds the projection, the Secretary will determine whether the appropriation and the projection is large enough to warrant recalculating the State basic grant amounts. In such case, state basic grant amounts will be recalculated in accordance with paragraphs (a) through (c) of this section. If it is determined that no compelling reason to recalculate exists, the increased amount available for basic grants will be retained as undistributed funds. These undistributed basic grant funds will be retained separately from the funds retained for TAP workload and other exigencies, as established by § 1001.151(a). The intent will be to award these undistributed basic grant funds to States as basic grant supplements, in response to circumstances arising during the applicable fiscal year.

(3) If the actual appropriation falls below the projection, the Secretary will determine whether the lower appropriation creates a compelling reason to recalculate the State basic grant amounts. If it is determined that not recalculating the State basic grant amounts would jeopardize the availability of sufficient funding for TAP workload and other exigencies, a compelling reason to recalculate would exist. In that case, the State basic grant amounts will be recalculated under paragraphs (a) through (c) of this section in response to the reduced appropriation, to the extent required to assure that sufficient funding is available for TAP workload and other exigencies.

§ 1001.151 Other funding criteria.

(a) Up to four percent of the total amount available for allocation will be available for distribution based on Transition Assistance Program (TAP) workload and other exigencies.

(b) Funding for TAP workshops will be allocated on a per workshop basis. Funding to the States will be provided pursuant to the approved State Plan.

(c) Funds for exigent circumstances, such as unusually high levels of unemployment, surges in the demand for transitioning services, including the need for TAP workshops, will be allocated based on need.

§ 1001.152 Hold-harmless criteria and minimum funding level.

(a) A hold-harmless rate of 90 percent of the prior year's funding level will be applied after the funding formula phase-in period is completed (beginning fiscal year 2006 and subsequent years).

(b) A hold-harmless rate of 80 percent of the prior year's funding level will be applied for fiscal year 2005.

(c) A minimum funding level is established to ensure that in any year, no State will receive less than 0.28 percent (.0028) of the previous year's total funding for all States.

(d) If the appropriation for a given fiscal year does not provide sufficient funds to comply with the hold-harmless provision, the Department will:

(1) Update, as appropriate, the States' estimates of TAP workload and reserve

sufficient funds for that purpose from the total amount available for allocation to the States. Beyond TAP workload, no funds will be reserved for exigent circumstances because the shortfall in the appropriation will be the primary exigent circumstance to be addressed.

(2) Apply proportionally the remaining balance available for basic grant allocations to the States for that fiscal year. The proportion will be calculated by dividing the remaining balance available for allocation by the

total estimated State basic grant allocations for that fiscal year. The proportion resulting from that calculation will be applied to each State's estimated basic grant allocation to calculate the amount to be awarded.

Signed at Washington, DC, this 11th day of May, 2005.

Charles Ciccolella,

Deputy Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 05-9771 Filed 5-16-05; 8:45 am]

BILLING CODE 4510-79-P



Federal Register

**Tuesday,
May 17, 2005**

Part V

The President

**Proclamation 7900—World Trade Week,
2005**

**Executive Order 13378—Amendments to
Executive Order 12788 Relating to the
Defense Economic Adjustment Program**

Presidential Documents

Title 3—**Proclamation 7900 of May 12, 2005****The President****World Trade Week, 2005****By the President of the United States of America****A Proclamation**

Free and fair trade creates jobs, raises living standards, and lowers prices for families throughout America. It also strengthens our relationships with other countries, helping us to forge new partnerships based on a commitment to generate new prosperity and a better way of life for people in America and throughout the world. This year, as we mark the tenth anniversary of the World Trade Organization, World Trade Week provides an opportunity to recognize the many benefits of free and fair trade in strengthening economies and improving lives.

Because 95 percent of the world's population resides outside of our borders, trade creates opportunities for American farmers, small businesses, and manufacturers to sell their products to consumers across the world. Trade also raises up the world's poor, bringing hope to those in despair.

Millions of American jobs depend on exports, and my Administration is committed to opening markets around the world for American products. Since 2001, we have completed free trade agreements with 12 nations, representing a combined market of 124 million consumers for American products, goods, and services. These agreements will create millions of new consumers for America's farmers, manufacturers, and small business owners, and deepen our friendships with countries in other parts of the world.

As we open up new markets to trade, we must always ensure that American workers are treated fairly. Our workers can compete with anyone, anywhere, so long as the rules are fair. My Administration will continue to enforce trade agreements and insist upon a level playing field for America's workers.

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 15 through May 21, 2005, as World Trade Week. I encourage all Americans to observe this week with events, trade shows, and educational programs that celebrate the benefits of trade to our Nation and the global economy.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth 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.

A handwritten signature in black ink, appearing to read "G. W. Bush". The signature is written in a cursive, flowing style with a large initial "G" and a distinct "W".

[FR Doc. 05-9891

Filed 5-13-05; 11:31 am]

Billing code 3195-01-P

Presidential Documents

Executive Order 13378 of May 12, 2005

Amendments to Executive Order 12788 Relating to the Defense Economic Adjustment Program

By the authority vested in me as President by the Constitution and the laws of the United States of America, including 10 U.S.C. 2391 and the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990, enacted as Division D, section 4001 *et seq.*, of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, and in order to update the Defense Economic Adjustment Program, it is hereby ordered that Executive Order 12788 of January 15, 1992, as amended, is further amended as follows:

Section 1. The text of section 2 of Executive Order 12788 is revised to read as follows: “The Defense Economic Adjustment Program shall (1) assist substantially and seriously affected communities, businesses, and workers from the effects of major Defense base closures, realignments, and Defense contract-related adjustments, and (2) assist State and local governments in preventing the encroachment of civilian communities from impairing the operational utility of military installations.”

Sec. 2. (a) The text of section 3(c) is amended by deleting “and communities” and inserting in lieu thereof “communities, and businesses”;

(b) The text of section 3(l) is amended by deleting “and” after the semicolon;

(c) The text of section 3(m) is amended by adding “and” after “diminish;” and

(d) A new section 3(n) is added to read: “(n) Encourage resolution of regulatory issues that impede encroachment prevention and local economic adjustment efforts.”

Sec. 3. (a) Section 4(a) is amended by: (i) deleting “(19) Director of the United States Arms Control and Disarmament Agency;” (ii) deleting “(21) Director of the Federal Emergency Management Agency;” and (iii) renumbering the remaining subsections listing the officials on the Economic Adjustment Committee (the “Committee”) accordingly;

(b) The text of section 4(b) is revised to read as follows: “The Secretary of Defense, or the Secretary’s designee, shall chair the Committee.”; and

(c) The text of section 4(c) is revised to read as follows: “The Secretaries of Labor and Commerce shall serve as Vice Chairmen of the Committee. The Vice Chairmen shall co-chair the Committee in the absence of both the Chairman and the Chairman’s designee and may also preside over meetings of designated representatives of the concerned executive agencies.”

Sec. 4. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable by any party at law or in

equity against the United States, its departments, agencies, entities, officers, employees, agents, or any other person.

A handwritten signature in black ink, appearing to read "G. W. Bush". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

THE WHITE HOUSE,
May 12, 2005.

[FR Doc. 05-9892

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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 "PLUS" (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.

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