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Federal Register

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-AH70

List of Approved Spent Fuel Storage Casks: VSC-24 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the BNG Fuel Solutions Corporation Ventilated Storage Cask (VSC-24) System listing within the "List of approved spent fuel storage casks" to include Amendment No. 5 to Certificate of Compliance Number (CoC No.) 1007. Amendment No. 5 will change the certificate holder's name from Pacific Sierra Nuclear Associates to BNG Fuel Solutions Corporation. No changes were required to be made to the VSC-24 Final Safety Analysis Report nor its Technical Specifications.

DATES: The final rule is effective September 13, 2005, unless significant adverse comments are received by August 1, 2005. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150-AH70) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove

any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher (301) 415-5905; e-mail cag@nrc.gov. Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays (telephone (301) 415-1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML050310446.

CoC No. 1007, the Technical Specifications (TS), and the underlying SER for Amendment No. 5 are available for inspection at the NRC PDR, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail jmm2@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415-6219, e-mail jmm2@nrc.gov, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPAA), requires that "[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPAA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR Part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72, entitled "Approval of Spent Fuel Storage Casks" containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on April 7, 1993 (58 FR 17948), that approved the VSC-24 cask design and added it to the list of NRC-approved

cask designs in § 72.214 as CoC No. 1007.

Discussion

On November 2, 2004, and as supplemented on April 27, 2005, the certificate holder, BNG Fuel Solutions Corporation, submitted an application to the NRC to amend CoC No. 1007 for the VSC-24 System to change the certificate holder's name from Pacific Sierra Nuclear Associates (PSNA) to BNG Fuel Solutions Corporation (BFS). The requested change did not require any changes to the VSC-24 Final Safety Analysis Report (FSAR) nor its TS. PSNA, the current certificate holder of CoC No. 1007 for the VSC-24 System, is jointly owned by BFS and Sierra Nuclear Corporation (SNC). BNG, Inc., the parent company of BFS and SNC, intends to have SNC transfer all of its assets and liabilities to BFS, and then dissolve SNC. Given that BFS will have sole ownership of PSNA, the applicant has requested that the certificate holder be changed from PSNA to BFS. No other changes to the VSC-24 System were requested in this application. Due to the administrative nature of the change requested, this amendment does not require any changes to the VSC-24 FSAR nor its TS. In addition, the NRC staff has determined that there continues to be reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the VSC-24 cask design listing in § 72.214 by adding Amendment No. 5 to CoC No. 1007. As discussed above, the amendment does not require any changes to the FSAR nor its TS.

The amended VSC-24 System, when used in accordance with the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1007 is revised by adding the effective date of Amendment Number 5.

Procedural Background

This rule is limited to the change contained in Amendment 5 to CoC No. 1007 and does not include other aspects of the VSC-24 cask design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be

noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on September 13, 2005. However, if the NRC receives significant adverse comments by August 1, 2005, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**, in a subsequent final rule.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC is revising the VSC-24 listing in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this

rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Environmental Impact: Categorical Exclusion

The NRC has determined that this direct final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this direct final rule.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), Approval Number 3150-0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

A regulatory analysis has not been prepared for this direct final rule because this rule is considered a minor, nonsubstantive amendment that has no economic impact on NRC licensees or the public.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule consists of an administrative change to the company name and does not affect any small entities.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment would not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec.

10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1007 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1007.

Initial Certificate Effective Date: May 7, 1993.

Amendment Number 1 Effective Date: May 30, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: May 21, 2001.

Amendment Number 4 Effective Date: February 3, 2003.

Amendment Number 5 Effective Date: September 13, 2005.

SAR Submitted by: BNG Fuel Solutions Corporation.

SAR Title: Final Safety Analysis Report for the Ventilated Storage Cask System.

Docket Number: 72–1007.

Certificate Expiration Date: May 7, 2013.

Model Number: VSC–24.

Dated at Rockville, Maryland, this 14th day of June, 2005.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. 05–12889 Filed 6–29–05; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 300

[Notice 2005–17]

Candidate Solicitation at State, District, and Local Party Fundraising Events

AGENCY: Federal Election Commission.

ACTION: Revised Explanation and Justification.

SUMMARY: The Federal Election Commission is publishing a revised Explanation and Justification for its rule regarding appearances by Federal officeholders and candidates at State, district, and local party fundraising events under the Federal Election Campaign Act of 1971, as amended (“FECA”). The rule, which is not being amended, contains an exemption permitting Federal officeholders and candidates to speak at State, district, and local party fundraising events “without restriction or regulation.” These revisions to the Explanation and Justification conform to the decision of the U.S. District Court for the District of Columbia in *Shays v. FEC*. Further information is provided in the supplementary information that follows.

DATES: Effective June 30, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Assistant General Counsel, Mr. Robert M. Knop, Attorney, or Ms. Margaret G. Perl, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 (“BCRA”), Pub. L. 107–155, 116 Stat. 81 (2002), limits the amounts and types of funds that can be raised in connection with Federal and non-Federal elections by Federal officeholders and candidates, their agents, and entities directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of Federal officeholders or candidates (“covered persons”). See 2 U.S.C. 441i(e). Covered persons may not “solicit, receive, direct, transfer or spend” non-Federal funds in connection with an election for Federal, State, or local office except under limited circumstances. See 2 U.S.C. 441i(e); 11 CFR part 300, subpart D.

Section 441i(e)(3) of FECA states that “notwithstanding” the prohibition on raising non-Federal funds, including Levin funds, in connection with a Federal or non-Federal election in section 441i(b)(2)(C) and (e)(1), “a candidate or an individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party.” *Id.* During its 2002 rulemaking to implement this provision, the Commission considered competing interpretations of this provision. The Commission decided to promulgate rules at 11 CFR 300.64(b) construing the statutory provision to permit Federal officeholders and candidates to attend, speak, and appear as featured guests at fundraising events for a State, district, and local committee of a political party

(“State party”) “without restriction or regulation.” See Final Rules on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 FR 49064, 49108 (July 29, 2002).

In *Shays v. FEC*, the district court held that the Commission’s Explanation and Justification for the fundraising provision in 11 CFR 300.64(b) did not satisfy the reasoned analysis requirement of the Administrative Procedure Act, 5 U.S.C. 553 (2000) (“APA”). See 337 F. Supp. 2d 28, 93 (D.D.C. 2004), *appeal pending* No. 04–5352 (D.C. Cir.). The court held, however, that the regulation did not necessarily run contrary to Congress’s intent in creating the fundraising exemption, was based on a permissible construction of the statute, and did not “unduly compromise[] the Act’s purposes.” *Id.* at 90–92 (finding the regulation survived *Chevron* review).¹ The Commission did not appeal this portion of the district court decision.

To comply with the district court’s order, the Commission issued a Notice of Proposed Rulemaking to provide proposed revisions to the Explanation and Justification for the current rule in section 300.64. See Notice of Proposed Rulemaking on Candidate Solicitation at State, District and Local Party Fundraising Events, 70 FR 9013, 9015 (Feb. 24, 2005) (“NPRM”). As an alternative to providing a new Explanation and Justification for the current rule, the NPRM also proposed revisions to current section 300.64 that would prohibit Federal officeholders and candidates from soliciting or directing non-Federal funds when attending or speaking at State party fundraising events. See *id.* at 9015–16. The NPRM sought public comment on both options.

The public comment period closed on March 28, 2005. The Commission received eleven comments from sixteen commenters in response to the NPRM, including a letter from the Internal Revenue Service stating “the proposed explanation and the proposed rules do not pose a conflict with the Internal

Revenue Code or the regulations thereunder.” The Commission held a public hearing on May 17, 2005 at which six witnesses testified. The comments and a transcript of the public hearing are available at http://www.fec.gov/law/law_rulemakings.shtml under “Candidate Solicitation at State, District and Local Party Fundraising Events.” For the purposes of this document, the terms “comment” and “commenter” apply to both written comments and oral testimony at the public hearing.

The commenters were divided between those supporting the current exemption in section 300.64 and those supporting the alternative proposed rule. Several commenters urged the Commission to retain the current exemption as a proper interpretation of 2 U.S.C. 441i(e)(3). One commenter argued that section 441i(e)(3) created a total exemption because Congress knew that State and local parties requested Federal officeholders and candidates to speak at these fundraisers to increase attendance, but that these appearances do not create any *quid pro quo* contributions for the speaker. Some commenters stressed the importance of the relationship between Federal and State candidates and stated that the current exemption properly recognizes the need for Federal officeholders and candidates to participate in State party fundraising events.

Some commenters viewed the alternative proposed rule requiring a candidate to avoid “words of solicitation” as problematic because it would necessitate Commission review of speech at such events. These commenters asserted that the alternative rule would cause Federal officeholders and candidates to refuse to participate in State party fundraising events for fear that political rivals will attempt to seize on something in a speech as an impermissible solicitation. One commenter noted that Federal officeholders and candidates, who are attending State party fundraisers, are expected to thank attendees for their past and continued support for the State party, and without a complete exemption, such a courtesy could be treated as a solicitation.

Another commenter noted that party committees and campaign staff have worked hard over the past two years doing training, following Commission meetings and advisory opinions, and absorbing enforcement cases as they have developed. Another commenter noted that State parties have already had to adjust their fundraising practices during the 2004 election cycle to comply with BCRA. Two commenters

argued that further regulatory changes at this point would only increase the costs of compliance and fundraising for State parties that already operate on a small budget.

In contrast, some commenters supported the alternative proposed rule that would bar Federal candidates and officeholders from soliciting non-Federal funds when appearing and speaking at State party fundraising events. Some commenters argued that the *Shays* opinion, while upholding section 300.64 under *Chevron*, criticized the Commission’s interpretation as “likely contraven[ing] what Congress intended * * * as well as * * * the more natural reading of the statute * * *.” (*Quoting Shays*, 337 F. Supp. 2d at 91.) Thus, these commenters argued that the structure of section 441i(e) as a whole, as well as the specific wording of section 441i(e)(3), when compared to the exceptions for candidates for State and local office and certain tax-exempt organizations (sections 441i(e)(2) and (e)(4), respectively), demonstrate that section 441i(e)(3) should not be construed as a total exemption from the soft money solicitation prohibitions. Accordingly, these commenters argued that the legislative history of BCRA better supports the interpretation in the alternative proposed rule. These commenters also argued that the Commission’s proposed Explanation and Justification did not sufficiently address the district court’s concern as to why the Commission believed that monitoring speech at State party fundraising events is more difficult or intrusive than in other contexts where solicitations of non-Federal funds are almost completely barred. *Shays*, 337 F. Supp. 2d at 93. Finally, these commenters noted that Federal officeholders and candidates should be able to distinguish speaking from “soliciting,” as they are required to do in other situations such as charitable activity governed by the Senate Ethics Rules or political activity regulated by the Federal Hatch Act, 5 U.S.C. 7323, and could properly tailor their speeches to comply with the alternative proposed rule.

The Commission has decided, after carefully weighing the relevant factors, to retain the current exemption in section 300.64 permitting Federal officeholders and candidates to attend, speak, or be featured guests at State party fundraising events without restriction or regulation. The reasons for this decision are set forth below in the revised Explanation and Justification for current section 300.64.

¹ The district court described the first step of the *Chevron* analysis, which courts use to review an agency’s regulations: “a court first asks ‘whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.’” See *Shays*, at 51 (*quoting Chevron, U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 842–43(1984)). In the second step of the *Chevron* analysis, the court determines if the agency interpretation is a permissible construction of the statute which does not “unduly compromise” FECA’s purposes by “creat[ing] the potential for gross abuse.” See *Shays* at 91, *citing Orloski v. FEC*, 795 F.2d 156, 164–65 (D.C. Cir. 1986) (internal citations omitted).

Explanation and Justification

11 CFR 300.64—Exemption for Attending, Speaking, or Appearing as a Featured Guest at Fundraising Events

11 CFR 300.64(a)

The introductory paragraph in 11 CFR 300.64 restates the general rule from the statutory provision in section 441i(e)(3): “[n]otwithstanding the provisions of 11 CFR 100.24, 300.61 and 300.62, a Federal candidate or individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party, including but not limited to a fundraising event at which Levin funds are raised, or at which non-Federal funds are raised.”

The Commission clarifies in section 300.64(a) that State parties are free within the rule to publicize featured appearances of Federal officeholders and candidates at these events, including references to these individuals in invitations. However, Federal officeholders and candidates are prohibited from serving on “host committees” for a party fundraising event at which non-Federal funds are raised or from signing a solicitation in connection with a party fundraising event at which non-Federal funds are raised, on the basis that these pre-event activities are outside the statutory exemption in section 441i(e)(3) permitting Federal candidates and officeholders to “attend, speak, or be a featured guest” at fundraising events for State, district, or local party committees.

11 CFR 300.64(b)

In promulgating 11 CFR 300.64(b), the Commission construes 2 U.S.C. 441i(e)(3) to exempt Federal officeholders and candidates from the general solicitation ban, so that they may attend and speak “without restriction or regulation” at State party fundraising events. The Commission bases this interpretation on Congress’s inclusion of the “notwithstanding paragraph (1)” phrase in section 441i(e)(3), which suggests Congress intended the provision to be a complete exemption. See *Cisneros v. Alpine Ridge Group*, 508 U.S. 10, 18 (1993) (“[T]he Courts of Appeals generally have interpreted similar “notwithstanding” language * * * to supercede all other laws, stating that a clearer statement is difficult to imagine.”) (internal citation omitted).

Although some commenters argue that section 441i(e)(3) of FECA does not permit solicitation because Congress did not include the word “solicit” in that exception, the *Shays* court stated:

“[w]hile it is true that Congress created carve-outs for its general ban in other provisions of BCRA utilizing the term ‘solicit’ or ‘solicitation,’ see 2 U.S.C. 441i(e)(2), (4), these provisions do not conflict with the FEC’s reading of Section (e)(3).” See *Shays*, 337 F. Supp. 2d at 90; see also *Shays* at 89 (“However, as Defendant observes, ‘if Congress had wanted to adopt a provision allowing Federal officeholders and candidates to attend, speak, and be featured guests at state party fundraisers but denying them permission to speak about soliciting funds, Congress could have easily done so.’”).

Furthermore, construing section 441i(e)(3) to be a complete exemption from the solicitation restrictions in section 441i(e)(1) gives the exception content and meaning beyond what section 441i(e)(1)(B) already permits. Section 441i(e)(1)(A) establishes a general rule against soliciting non-Federal funds in connection with a Federal election. Section 441i(e)(1)(B) permits the solicitation of non-Federal funds for State and local elections as long as those funds comply with the amount limitations and source prohibitions of the Act. In contrast to assertions by commenters that without section 441i(e)(3) candidates would not be able to attend, appear, or speak at State party events where soft money is raised, the Commission has determined that under section 441i(e)(1)(B) alone, Federal officeholders and candidates would be permitted to speak and solicit funds at a State party fundraiser for the non-Federal account of the State party in amounts permitted by FECA and not from prohibited sources. See Advisory Opinions 2003–03, 2003–05 and 2003–36. Section 441i(e)(3) carves out a further exemption within the context of State party fundraising events for Federal officeholders and candidates to attend and speak at these functions “notwithstanding” the solicitation restrictions otherwise imposed by 441i(e)(1). Interpreting section 441i(e)(3) merely to allow candidates and officeholders to attend or speak at a State party fundraiser, but not to solicit funds without restriction, would render it largely superfluous because Federal candidates and officeholders may already solicit up to \$10,000 per year in non-Federal funds from non-prohibited sources for State parties under section 441i(e)(1)(B).

The Commission agrees with one commenter who stated that the “more natural” interpretation of 2 U.S.C. 441i(e)(3) is that found in current section 300.64. The Commission also believes that such an interpretation is more consistent with legislative intent.

Section 300.64(b) effectuates the careful balance Congress struck between the appearance of corruption engendered by soliciting sizable amounts of soft money, and preserving the legitimate and appropriate role Federal officeholders and candidates play in raising funds for their political parties. Just as Congress expressly permitted these individuals to raise and spend non-Federal funds when they themselves run for non-Federal office (see 2 U.S.C. 441i(e)(2)), and to solicit limited amounts of non-Federal funds for certain 501(c) organizations (see 2 U.S.C. 441i(e)(4)), Congress also enacted 2 U.S.C. 441i(e)(3) to make clear that Federal officeholders and candidates could continue to play a role at State party fundraising events at which non-Federal funds are raised. The limited nature of this statutory exemption embodied in 11 CFR 300.64 is evident in that it does not permit Federal officeholders and candidates to solicit non-Federal funds for State parties in written solicitations, pre-event publicity or through other fundraising appeals. See 11 CFR 300.64(a).

The commenters also stressed the importance of the unique relationship between Federal officeholders and candidates and their State parties. They emphasized that these party fundraising events mainly serve to energize grass roots volunteers vital to the political process.

By definition, the primary activity in which persons attending or speaking at State party fundraising events engage is raising funds for the State parties. It would be contrary to BCRA’s goals of increasing integrity and public faith in the campaign process to read the statute as permitting Federal officeholders and candidates to speak at fundraising events, but to treat only some of what they say as being in furtherance of the goals of the entire event. As one commenter noted regarding Federal candidate appearances at State party fundraising events, “the very purpose of the candidate’s invited involvement—or at least a principal one—is to aid in the successful raising of money. So there is little logic, and undeniably the invitation to confusion, in allowing candidates to speak and appear in aid of fundraising purposes, while insisting that the candidate’s speech be free of apparent fundraising appeals.” Determining what specific words would be merely “speaking” at such an event without crossing the line into “soliciting” or “directing” non-Federal funds raises practical enforcement concerns. See 11 CFR 300.2(m) (definition of “to solicit”) and 300.2(n) (definition of “to direct”). A regulation

that permitted speaking at a party event, the central purpose of which is fundraising, but prohibited soliciting, would require candidates to perform the difficult task of teasing out words of general support for the political party and its causes from words of solicitation for non-Federal funds for that political party. As the U.S. Supreme Court stated in *Buckley v. Valeo*:

[W]hether words intended and designed to fall short of invitation would miss that mark is a question both of intent and of effect. No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation. In short, the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning.

424 U.S. 1, 43 (1976); see also *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632 (1980) (noting that “solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views”); *Thomas v. Collins*, 323 U.S. 516, 534–35 (1945) (stating that “[g]eneral words create different and often particular impressions on different minds. No speaker, however careful, can convey exactly his meaning, or the same meaning, to the different members of an audience * * * [I]t blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim”); *Grayned v. City of Rockford*, 408 U.S. 104, 116 (1972) (holding that “[t]he nature of a place, ‘the pattern of its normal activities, dictate the kinds of regulations of time, place and manner that are reasonable.’ * * * The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time.”).

A complete exemption in section 300.64(b) that allows Federal officeholders and candidates to attend and speak at State party fundraising events without restriction or regulation avoids these significant concerns. A number of commenters noted the potential impact of these concerns if the Commission did not retain current 11 CFR 300.64(b). For example, one commenter “strongly urge[d] the Commission not to adopt a ‘speak but don’t solicit’ rule. As noted in the NPRM itself, such a rule would ‘require candidates to tease out’ appropriate words from inappropriate ones.” This commenter further stated that he “also

fear[s] the outcome if a ‘middle ground’ is adopted, wherein federal officeholders and candidates could attend fundraisers but not use words that might be deemed solicitation for money. This would, first and foremost, open up a whole new battleground in politics, as every statement made by a Congressman at his party’s Jefferson/Jackson day (or Lincoln Day) dinner will be scrutinized to see if it complies with requirements.” Another commenter noted that current 11 CFR 300.64 “applies only to the speeches that a Federal officeholder or candidate may give at a State or local party event. It reflects the practical realities of these events. As a featured speaker, an officeholder is expected to thank the attendees for their past and continued support of the party. Without the current exemption, this common courtesy might well be treated as a violation of the ban on the solicitation of non-Federal funds. The Commission would then be placed in the position of determining whether a normal and expected expression of gratitude or request for support crosses some indeterminate line and violates the law.” Another commenter urged the Commission to retain the current regulation so that Federal officeholders and candidates would not be exposed to “legal jeopardy” because the proposed alternative rule would leave “too much opportunity for someone to second guess and misinterpret a speech made at this type of event.” The same commenter stated that the Commission is faced with the question of whether or not to adopt a rule “that allows candidates and officeholders to be placed at the mercy of those who would misinterpret or mischaracterize the speech they give.”

At the hearing, the Commission explored a number of scenarios involving a Federal officeholder or candidate speaking at a party fundraising event. The discussion illustrates the difficulty for not only the Commission, but also Federal officeholders and candidates, in parsing speech under the alternative proposed rule. For example, when asked whether statements like “I’m glad you’re here to support the party,” and “thank you for your continuing support of the party,” constitute solicitation, the commenters who favor the alternative proposed rule could not give definitive answers. They acknowledged that the word “support” may be construed as a solicitation when spoken at a fundraising event but not when spoken at other types of events. Likewise, commenters who favored the current rule expressed uncertainty as to

whether these phrases would be construed as solicitations when spoken at a fundraising event.

The commenters disagreed as to whether a Federal officeholder or candidate delivering a speech under a banner hung by the State party reading “Support the 2005 State Democratic ticket tonight” would be construed as impermissible solicitation unless explicit disclaimers were included in the speech. Some commenters noted that even a “pure policy” speech, otherwise permissible at a non-fundraising event, could constitute an impermissible solicitation in the context of a State party fundraising event. Finally, many commenters could not provide a clear answer as to whether a policy speech that included a statement of support for the “important work” of the State party chairman on a particular issue (such as military base closures in the state) could be construed as an impermissible solicitation. In each of these examples the commenters stated that an analysis of the particular facts and circumstances surrounding the speech would be required in order to determine whether a speech would be solicitation. However, the commenters analyzed the facts and circumstances differently, and when presented with the same facts and circumstances, they could not come to agreement on whether the speech was a solicitation.

The inability of the commenters to provide clear answers to these scenarios demonstrates how parsing speech at a State party fundraising event is more difficult than in other contexts and why it would be especially intrusive for the Commission to enforce the alternative proposed rule. As illustrated during the discussion at the hearing and observed by one of the commenters, whether a particular message is a solicitation may depend on the person hearing the message—what one person interprets as polite words of acknowledgement may be construed as a solicitation by another person. The likelihood of this misinterpretation occurring increases at a State party fundraising event because of the Federal officeholders’ and candidates’ unique relationship to, and special identification with, their State parties.

The Commission believes that the alternative rule would, as a practical matter, make the statutory exception at 2 U.S.C. 441i(e)(3) for appearances at State and local party fundraising events a hollow one. Given that the Federal officeholder’s appearance would be, by definition, at a fundraising event, it would be exceedingly easy for opposing partisans to file a facially plausible complaint that the candidate or Federal

officeholder's words or actions at the event constituted a "solicitation." In such circumstances, the Commission believes that Federal officeholders and candidates would be reluctant to appear at State party fundraising events, as doing so would risk complaints, intrusive investigations, and possible violations based on general words of support for the party.

Some commenters argued that Federal officeholders and candidates should be able to distinguish between permissible speech and an impermissible solicitation under the alternative rule because Federal employees are already required to make such judgments when involved in political activity pursuant to the Hatch Act. See 5 U.S.C. 7323; 5 CFR 734.208(b). Under the Hatch Act and its implementing regulations, a Federal employee "may give a speech or keynote address at a political fundraiser * * * as long as the employee does not solicit political contributions." See 5 CFR 734.208, Example 2. However, there are significant differences between the requirements of the Hatch Act and the Commission's regulations which make it much easier for Federal employees to know which words are words of solicitation under the Hatch Act scheme, than under the alternative proposed rule.

Although the Hatch Act restriction appears similar to the proposed alternative rule banning Federal officeholders and candidates from soliciting money when speaking at State party fundraising events, the Hatch Act is a narrower standard that provides clear guidance to speakers to distinguish permissible speech. First, the implementing regulations for the Hatch Act contain a narrow definition of "solicit" meaning "to request expressly" that another person contribute something. See 5 CFR 734.101. Thus, for example, the Hatch Act regulations explain that an employee may serve as an officer or chairperson of a political fundraising organization so long as they do not personally solicit contributions, see 5 CFR 734.208, Example 7, while Federal officeholders and candidates may not serve in such capacity under 2 U.S.C. 441i(e) and 11 CFR 300.64. Moreover, in order to violate the Hatch Act, a Federal employee must "knowingly" solicit contributions—a higher standard than that employed in FECA and Commission regulations. Thus, a Federal employee would not be penalized for unintentionally crossing the line into "solicitation" under the Hatch Act, whereas the alternative proposed rule would reach situations where the Federal officeholder or candidate speech could be construed as

an impermissible solicitation, regardless of the speaker's knowledge or intent.

A commenter cited the Senate Ethics Manual explaining Rule 35 of the Senate Code of Official Conduct, arguing that Federal officeholders and candidates know how to ask for money and avoid asking for money. The Senate rule targets solicitation of gifts from registered lobbyists and foreign agents and applies to situations not analogous to State party fundraising events. Rule 35 prohibits Senators and their staff from soliciting charitable donations from registered lobbyists and foreign agents but makes an exception, among others, for a fundraising event attended by fifty or more people. Thus, at a fundraising event attended by fifty or more people, including registered lobbyists and foreign agents, senators do not need to be concerned that their speech soliciting charitable donations is an impermissible solicitation of a gift under Rule 35.

Many commenters stressed the need for Federal officeholders and candidates to have clear notice regarding what speech would be allowable at these State party fundraising events, as the unwary could unintentionally run afoul of a more restrictive rule. A complete exemption in section 300.64(b) that allows Federal officeholders and candidates, in these limited circumstances, to attend and speak at State party committee fundraising events without restriction or regulation, including solicitation of non-Federal or Levin funds, avoids these concerns and the practical enforcement problems they entail. The exemption provides a straightforward, clear rule that Federal officeholders and candidates may easily comprehend and that the Commission may practically administer. It also fully complies with the plain meaning of BCRA.

Furthermore, as noted above, current 11 CFR 300.64 is carefully circumscribed and only extends to what Federal candidates and officeholders say at the State party fundraising events themselves. The regulation tracks the statutory language by explicitly allowing Federal candidates and officeholders to attend fundraising events and in no way applies to what Federal candidates and officeholders do outside of State party fundraising events. Specifically, the regulation does not affect the prohibition on Federal candidates and officeholders from soliciting non-Federal funds for State parties in fundraising letters, telephone calls, or any other fundraising appeal made before or after the fundraising event. Unlike oral remarks that a Federal candidate or officeholder may

deliver at a State party fundraising event, when a Federal candidate or officeholder signs a fundraising letter or makes any other written appeal for non-Federal funds, there is no question that a solicitation has taken place that is restricted by 2 U.S.C. 441i(e)(1). Moreover, it is equally clear that such a solicitation is not within the statutory safe harbor at 2 U.S.C. 441i(e)(3) that Congress established for Federal candidates and officeholders to attend and speak at State party fundraising events.

Finally, there does not appear to be evidence of corruption or abuse under the current rule that dictates a change in Commission regulations. Commenters both favoring and opposed to the regulation in its current form agreed that there is no evidence that the operation of this exemption in the past election cycle in any way undermined the success of BCRA cited by its Congressional sponsors. Congress specifically allowed Federal candidates and officeholders to attend and speak at State party fundraising events. The statute permits attendance where non-Federal funds are being raised, and policing what may be said in both private and public conversations with donors at such events does little to alleviate actual or apparent corruption. One commenter pointed out that most of these fundraising events require a contribution to the State party as the cost of admission, and do not present a significant danger of corruption from solicitation at the event itself by speakers. As one commenter noted, "it is difficult to identify any regulatory benefit to be derived by additional restrictions on what a candidate might say to an audience that already has chosen to attend and contribute [when] without any overt solicitation, the candidate's appearance at the event already makes clear the importance that she attaches to the party's overall campaign efforts." The Commission agrees with the commenters that additional restrictions on what a candidate may say once at the fundraising event provides little, if any, anti-circumvention protection since, as one commenter noted in oral testimony, "the ask has already been made * * * The people are already there. They are motivated to be there" and the funds have already been received by the party committee before the Federal candidate and officeholder speaks at the fundraising event. A commenter observed, "most political events I am familiar with involve the raising of funds as a condition of admission as opposed to a solicitation at an event."

Another commenter stated that “in most instances the money for the event has already been raised. Therefore, the candidate or officeholder’s appearance and speech [are] not a solicitation.”

Another commenter noted that most of these fundraising events are small-dollar events targeted at grass roots volunteers where donations are usually less than \$100, and do not include corporations or single-interest groups. An additional commenter stated that “Congress knew that state and local party committees request officeholders speak at party events to increase attendance and the party’s yield from the event. It was also aware that speeches at these events are unlikely of themselves to foster the quid pro quo contributions that the law seeks to curb.” Thus, many of these events already comply with amount limitations and source prohibitions for solicitation under section 441i(e)(1)(B). In contrast, other commenters asserted that there was a potential for abuse if Federal candidates and officeholders make phone calls from the event asking donors for non-Federal funds, or gather together a group of wealthy donors and label it a “State party fundraising event” in order to benefit from the exemption in section 300.64. However, in response to Commission questioning at the hearing, no commenter could point to any reports of such activity in the past election cycle. If the Commission detects evidence of abuse in the future, the Commission has the authority to revisit the regulation and take action as appropriate, including an approach targeted to the specific types of problems that are actually found to occur.

Additional Issues

1. Other Fundraising Events

In the NPRM, the Commission sought public comment regarding certain advisory opinions issued by the Commission permitting attendance and participation by Federal officeholders and candidates at events where non-Federal funds would be raised for State and local candidates or organizations, subject to various restrictions and disclaimer requirements. See NPRM at 9015; Advisory Opinions 2003–03, 2003–05, and 2003–36. Some commenters stated that the analysis in those advisory opinions was correct and consistent with BCRA’s exceptions permitting Federal officeholders and candidates to raise money for State and local elections within Federal limits and prohibitions under section 441i(e)(1)(B). One commenter noted that these advisory opinions were based on the

Commission’s regulation at 11 CFR 300.62, which was not challenged in the *Shays* litigation and need not be reexamined here. Another commenter urged the Commission to incorporate the holdings of these advisory opinions into its regulations so that Federal officeholders and candidates could continue to rely on them. One commenter also suggested that any additional restrictions beyond the disclaimers required in these advisory opinions would raise constitutional concerns. In contrast, other commenters asserted that these advisory opinions were incorrect and that the Commission should supersede them with a regulation that completely bars attendance at soft money fundraising events that are not hosted by a State party. The Commission does not believe it is necessary to initiate a rulemaking to address the issues in Advisory Opinions 2003–03, 2003–05, and 2003–36 at this time.

2. Levin Funds

The Commission also sought comment on how it should interpret 2 U.S.C. 441i(b)(2), (e)(1), and (e)(3) in light of language from *Shays* stating that Levin funds are “funds ‘subject to [FECA’s] limitations, prohibitions, and reporting requirements.’” See NPRM at 9016. Most comments regarding this inquiry opposed any interpretation of these provisions that would allow Federal officeholders and candidates to solicit Levin funds without restriction, with some commenters noting that the Commission has consistently referred to Levin funds as non-Federal funds, including in recent final rules published in 2005. However, one commenter stated that Federal officeholders and candidates should be allowed to raise Levin funds. This issue of interpretation was relevant only to the alternative approach proposed in the NPRM. Because the Commission has decided to retain its rule in section 300.64 with a revised Explanation and Justification, the Commission need not further address this question of statutory interpretation.

Dated: June 23, 2005.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 05–12863 Filed 6–29–05; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE230, Special Condition 23–170–SC]

Special Conditions; Raytheon Model King Air H–90 (T–44A) Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to ARINC Inc., 1632 S. Murray Blvd., Colorado Springs, CO 80916 for a Supplemental Type Certificate for the Raytheon Model King Air H–90 (T–44A) airplane. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. The novel and unusual design features include the installation of the Rockwell Collins Pro Line 21 Avionics System. This system includes Electronic Flight Instrument Systems (EFIS), electronic displays, digital Air Data Computers (ADC), and supporting equipment. The applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is June 22, 2005.

Comments must be received on or before August 1, 2005.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE230, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE230. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE230." The postcard will be date stamped and returned to the commenter.

Background

On June 7, 2005, ARINC Inc. 1632 S. Murray Blvd., Colorado Springs, CO 80916, notified the Denver ACO of a Designated Alteration Station (DAS) project for a new Supplemental Type Certificate for the Raytheon Model H90 (T-44A) airplanes. The Raytheon Models of concern are approved under TC No. 3A20. The proposed modification incorporates a novel or unusual design features, including a dual EFIS system, digital air data computers, and other equipment associated with the Rockwell Collins Pro Line 21 Avionics System. These systems may be vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, ARINC, Inc. must show that the Raytheon Model H90 (T-44A)

airplanes meet the following provisions, or the applicable regulations in effect on the date of application for the STC: For those areas modified or impacted by the installation, ARINC will use 14 CFR part 23 Amendments 23-1 through 23-55. This includes applying the concepts of 23.1301, 23.1302, 23.1309, 23.1311, 23.1321, 23.1322, 23.1331, 23.1335, 23.1351, 23.1357, 23.1359, 23.1361, 23.1365, 23.1367, 23.1381, 23.1431, 23.1529, 23.1541, 23.1543, 23.1581 at amendment 55, and the special conditions adopted by this rulemaking action. For systems that are not modified or impacted by the installation, the original certification basis listed on TC No. 3A20 are still applicable.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the models for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

ARINC, Inc. plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include the addition of a digital Air Data computer, which may be susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid-state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced

electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

| Frequency | Field Strength (volts per meter) | |
|-----------------|-------------------------------------|---------|
| | Peak | Average |
| 10 kHz–100 kHz | 50 | 50 |
| 100 kHz–500 kHz | 50 | 50 |
| 500 kHz–2 MHz | 50 | 50 |
| 2 MHz–30 MHz | 100 | 100 |
| 30 MHz–70 MHz | 50 | 50 |

| Frequency | Field Strength (volts per meter) | |
|--------------------------|-------------------------------------|---------|
| | Peak | Average |
| 70 MHz–100 MHz | 50 | 50 |
| 100 MHz–200 MHz | 100 | 100 |
| 200 MHz–400 MHz | 100 | 100 |
| 400 MHz–700 MHz | 700 | 50 |
| 700 MHz–1 GHz | 700 | 100 |
| 1 GHz–2 GHz ... | 2000 | 200 |
| 2 GHz–4 GHz ... | 3000 | 200 |
| 4 GHz–6 GHz ... | 3000 | 200 |
| 6 GHz–8 GHz ... | 1000 | 200 |
| 8 GHz–12 GHz | 3000 | 300 |
| 12 GHz–18 GHz | 2000 | 200 |
| 18 GHz–40 GHz | 600 | 200 |

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term "critical" means those functions, whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to Raytheon Model H90 (T-44A) airplanes. Should ARINC, Inc. apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

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

PART 23—[AMENDED]

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Raytheon Model 90 (T-44A) airplanes modified by ARINC, Inc. to add the Rockwell Collins Pro Line 21 Avionics System.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF)*. Each system

that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

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

Issued in Kansas City, Missouri, on June 22, 2005.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-12879 Filed 6-29-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 228, Special Condition 23-167-SC]

Special Conditions; Diamond Aircraft Industries, EFIS and Full Authority Digital Engine Control (FADEC) on the Diamond DA-42; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Diamond Aircraft Industries GmbH, N.A. Otto-Strasse 5, A-2700 Wiener Neustadt, Austria; telephone: 43 2622 26 700; facsimile: 43 2622 26 780, as part of the FAA Type Validation of the Diamond Aircraft Industries Model DA-42. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of a Garmin Model G-1000 electronic flight instrument system (EFIS) display, and digital engine controls. The applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety

equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is June 22, 2005. Comments must be received on or before August 1, 2005.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 228, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. 228. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329-4127.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 228." The postcard will be

date stamped and returned to the commenter.

Background

Diamond Aircraft Industries (DAI) made application through European Aviation Safety Agency (EASA) for U.S. Type Certification for the Diamond Aircraft Model DA-42 on August 2, 2004. The Diamond DA-42 aircraft is a new fully composite, four place, twin-engine airplane with retractable gear, cantilever low wing and T-tail. The airplane was certified by EASA and listed on Type Certificate No. A005 dated May 13, 2004. Certification work was delegated to the Austrian Civil Authority as the JAA/Primary Certification Authority. The airplane is powered by two Thielert Aircraft Engines GmbH (Thielert) TAE 125-01 aircraft diesel engines (ADE). They are listed on U.S. engine TC No. E00069EN and incorporate two MT-propeller, MTV-6-A-C-F/CF187-129, U.S. TC No. P19NE. The fuel to be used for the Thielert TAE 125-01 aircraft diesel engine in USA is Jet A only. The Type Certification sought is for Day VFR/IFR operations.

As part of the FAA validation process for issuance of a Type Certificate in the United States for foreign applicants, the FAA is issuing these special conditions to address Certification Review Items (CRI) for novel and unusual features of the Diamond DA-42. The proposed type design incorporates novel or unusual design features, including the Garmin G1000 EFIS system, and digital engine controls that are vulnerable to HIRF external to the airplane.

Type Certification Basis

Based on the provisions of 14 CFR 21.17(c), 21.29 and the Austria-US BAA, and the FAA Order 8100.14, Interim Procedures for Working with the European Community on Airworthiness Certification and Continued Airworthiness and the Type Validation principles, the following airworthiness requirements are applicable to this project, and will remain active for three years from the date of application: The certification basis is based on the EASA/ACG certification basis as presented in CRI A-01, Issue 4, Joint Certification Basis and is harmonized at JAA JAR 23 Amendment 1, which is harmonized at 14 CFR part 23 Amendment 51. The FAA identified FAR/EASA Significant Standards Differences (SSDs), documented in our CRIs for the validation.

The Garmin G1000 was originally approved at part 23 Amendment 49 for § 23.1301, § 23.1309, § 23.1311, § 23.1322, and other applicable rules for

electronic displays, but is approved at Amendment 51 for this installation. The digital engine control was certified under part 33 and Amendment 20 with the engine, but is approved at part 23 Amendment 51 with the rest of the DA-42 for § 23.1309 and other applicable regulations for this installation. The certification basis also includes any applicable exemptions, equivalent levels of safety, and the terms of these special conditions.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101 (b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Diamond Aircraft, Inc. plans to incorporate certain novel and unusual design features into the Diamond DA-42 airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include the G1000 EFIS and two digital engine controls, which are susceptible to the HIRF environment and were not envisaged by the existing regulations for this type of airplane. Though the digital engine control systems were initially certificated to 14 CFR part 33, the regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems, are contained in § 23.1309.

When § 23.1309 was developed, the use of electronic control systems for engines was not envisioned. The § 23.1309 requirements were originally not applied to systems certificated as part of an approved engine (§ 23.1309(f)(1)). Also, § 23.1309(f)(1) implies evaluation of the engine system's effects is not required. However, the installation specifics of the electronic engine control systems on

the DA-42 requires evaluation due to the possible effects on or by other airplane systems (e.g., radio interference with other airplane electronic systems, shared engine and airplane power sources) using § 23.1309. The integral nature of these systems makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system. Also, electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems (e.g., automated cockpit powerplant controls such as mixture setting). Therefore, special conditions are proposed to provide HIRF protection for the EFIS and digital engine controls and to evaluate the installation for compliance with the requirements of § 23.1309(a) through (e) at Amendment 23-51 for the Diamond DA-42.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid-state advanced

components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of

exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(2) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

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

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,
 (2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for

approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term “critical” means those functions, whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary

electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure

to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to the Diamond DA-42 airplane. Should Diamond Aircraft, Inc. apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

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

PART 23—[AMENDED]

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator,

the following special conditions are issued as part of the type validation basis for the Diamond DA-42 airplane with a Garmin G1000 EFIS and digital engine control systems.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. *Electronic Engine Control System.* The installation of the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23-51. The intent of this requirement is not to re-evaluate the inherent hardware reliability of the control itself, but rather determine the effects, including environmental effects addressed in § 23.1309(e), on the airplane systems and engine control system when installing the control on the airplane. When appropriate, engine certification data may be used when showing compliance with this requirement.

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

Issued in Kansas City, Missouri on June 22, 2005.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-12882 Filed 6-29-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-20355; Directorate Identifier 2004-NM-198-AD; Amendment 39-14177; AD 2005-13-40]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 727 Airplanes, Equipped With an Auxiliary Fuel Tank Having a Fuel Pump Installed

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Boeing Model 727 airplanes equipped with an auxiliary fuel tank having a fuel pump installed. This AD requires revising the airplane flight manual to include limitations on operating the fuel pumps for the auxiliary fuel tank. This AD is prompted by a design review of the fuel pump installation, which revealed a potential unsafe condition related to the auxiliary fuel tank(s). We are issuing this AD to prevent dry operation of the fuel pumps for the auxiliary fuel tank, which could create a potential ignition source inside the auxiliary fuel tank that could result in a fire or explosion of the auxiliary fuel tank.

DATES: This AD becomes effective August 4, 2005.

ADDRESSES: You may examine the 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., Nassif Building, Room PL-401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6501; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket 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 street address stated in the **ADDRESSES** section. This docket number is FAA-2005-20355; the directorate identifier for this docket is 2004-NM-198-AD.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to Boeing Model 727 airplanes equipped with an auxiliary fuel tank having a fuel pump installed. That NPRM was published in the **Federal Register** on February 15, 2005 (70 FR 7695). That NPRM proposed to require revising the airplane flight manual (AFM) to include limitations on operating the fuel pumps for the auxiliary fuel tank.

Comments

We provided the public the opportunity to participate in the

development of this AD. We have considered the comments that have been submitted on the proposed AD.

Support for the Proposed AD

One commenter supports the proposed AD.

Request To Withdraw Proposed AD

One commenter notes that Revision 47 to the Boeing 727 AFM, dated May 17, 2004, includes procedural changes that are similar to the information that the proposed AD would require be inserted into the Limitations section of the AFM. The commenter feels that the requirements of the proposed AD are adequately addressed by incorporating Revision 47 to the AFM and that it would be more appropriate for the new information to be placed in the Normal Procedures section of the AFM rather than the Limitations section.

We do not agree. The wording in paragraph (f) of this AD is not identical to that in Revision 47 to the Boeing 727 AFM. Revision 47 contains a note that would allow the auxiliary tank pump(s) to remain "on" in certain situations. We find that the auxiliary tank pumps must be switched off immediately when the respective auxiliary tank fuel pump low pressure light illuminates. Thus, to ensure that the unsafe condition is adequately addressed, we find it necessary to require that the information specified in paragraph (f) of this AD be included in the Limitations section of the AFM, as proposed. Further, the limitation section of the AFM is the only section that is mandatory for operators. The unsafe condition which this AD is intended to correct is of such significance to necessitate mandating the procedure. We have not changed the final rule in this regard.

Request to Clarify Wording of AFM Revision

The same commenter requests that we revise paragraph (f) to be consistent with similar wording in Revision 47 to the Boeing 727 AFM. The commenter notes that paragraph (f) of the proposed AD states "Auxiliary tank fuel pump switches must not be positioned 'ON* * *,'" and "Auxiliary tank(s) fuel pumps must not be 'ON* * *.'" The commenter points out that the wording for the same instructions in Revision 47 of the AFM states that the "pumps must be off."

We agree. We find that the wording referenced by the commenter is clearer, though the meaning is the same. We have revised paragraph (f) of this AD accordingly.

Request To Clarify Intent of Proposed AD

The same commenter states that is unclear if the intent of the proposed AD is to delete Note [1] in Revision 47 of the AFM, which states:

"If an auxiliary tank fuel pump LOW PRESSURE light illuminates during takeoff or climb, the auxiliary tank pump(s) may remain on until the climb attitude is reduced and the light(s) extinguishes or workload allows for pump(s) to be positioned 'OFF.'"

The commenter notes that this statement qualifies the preceding statement in Revision 47 of the AFM: "Each auxiliary tank fuel pump switch must be positioned 'OFF' without delay when the respective auxiliary tank fuel pump low pressure light illuminates." The commenter opines that this note should be retained as it does have value in certain situations. The commenter recommends that, if the FAA intends to delete the note, the proposed wording should be revised to clearly state this intent.

We agree with the commenter's request to clarify our intent. Our intent was that this qualifying note should not be included in the AFM revision required by paragraph (f) of this AD. As stated previously, we do not agree with the note in Revision 47 to which the commenter refers because we have determined that, to prevent dry operation of the fuel pumps for the auxiliary fuel tank, the affected auxiliary tank pumps must be switched off without delay when the auxiliary tank fuel pump low pressure light illuminates. We have revised paragraph (f) of this AD to clarify that we intend no exceptions to the requirement to switch off each auxiliary tank fuel pump as soon as the applicable low pressure light illuminates.

Explanation of Additional Editorial Change

We have revised the second paragraph of the AFM revision specified in paragraph (f) of this AD to read, "When established in a level attitude at cruise, if the auxiliary tank(s) contain usable fuel and the auxiliary tank(s) pump switches are 'OFF,' the auxiliary tank(s) pump switches should be positioned 'ON' again." The word "pump" was inadvertently omitted in this statement in the proposed AD.

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD with the changes described previously.

We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 300 airplanes of the affected design in the worldwide fleet. This AD will affect about 200 airplanes of U.S. registry. The AFM revision 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 \$13,000, 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, 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):

2005-13-40 Boeing: Amendment 39-14177.
Docket No. FAA-2005-20355;
Directorate Identifier 2004-NM-198-AD.

Effective Date

(a) This AD becomes effective August 4, 2005.

Affected ADs

(b) None.

Applicability: (c) This AD applies to Boeing Model 727, 727C, 727-100, 727-100C, 727-200, and 727-200F series airplanes; certificated in any category; equipped with an auxiliary fuel tank having a fuel pump installed.

Unsafe Condition

(d) This AD was prompted by a design review of the fuel pump installation, which revealed a potential unsafe condition related to the auxiliary fuel tank(s). We are issuing this AD to prevent dry operation of the fuel pumps for the auxiliary fuel tank, which could create a potential ignition source inside the auxiliary fuel tank that could result in a fire or explosion of the auxiliary fuel tank.

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

Airplane Flight Manual (AFM) Revision

(f) Within 30 days after the effective date of this AD, revise the Limitations section of the Boeing 727 AFM to contain the following information. This may be done by inserting a copy of this AD in the AFM.

“Auxiliary Tank Fuel Pumps

Auxiliary tank fuel pump switches must be positioned ‘OFF’ unless the auxiliary tank(s) contain fuel. Auxiliary tank(s) fuel pumps must be ‘OFF’ unless personnel are available in the flight deck to monitor low pressure lights.

When established in a level attitude at cruise, if the auxiliary tank(s) contain usable fuel and the auxiliary tank(s) pump switches are ‘OFF,’ the auxiliary tank(s) pump switches should be positioned ‘ON’ again.

Each auxiliary tank fuel pump switch must be positioned ‘OFF’ without delay, for all conditions including takeoff and climb, when the respective auxiliary tank fuel pump low pressure light illuminates.”

Note 1: When text identical to that in paragraph (f) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Alternative Methods of Compliance (AMOCs)

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

Material Incorporated by Reference

(h) None.

Issued in Renton, Washington, on June 21, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-12844 Filed 6-29-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****18 CFR Part 35**

[Docket No. RM02-1-006; Order No. 2003-C]

Standardization of Generator Interconnection Agreements and Procedures

Issued June 16, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) affirms, with certain clarifications, the fundamental determinations in Order No. 2003-B.

EFFECTIVE DATE: July 18, 2005.

FOR FURTHER INFORMATION CONTACT:

Patrick Rooney (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6205.

Roland Wentworth (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8262.

Michael G. Henry (Legal Information), Office of the General Counsel, Federal

Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8532.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Sudeen G. Kelly.

I. Introduction and Summary

1. In this order, we affirm, with certain clarifications, Order No. 2003-B,¹ which, together with Order Nos. 2003 and 2003-A, governs interconnection of large generators to the transmission grid. The *pro forma* Large Generator Interconnection Procedures (LGIP) and Large Generator Interconnection Agreement (LGIA) required in those orders help prevent undue discrimination, preserve the reliability of the nation’s transmission system, and lower prices for customers by allowing a variety of generation resources to compete in wholesale electricity markets. At its core, the Commission’s orders ensure that *all* Generating Facilities that will make sales for resale of electric energy in interstate commerce are offered Interconnection Service on comparable terms. These orders benefit customers by establishing the just and reasonable terms and conditions for interconnecting to the transmission grid, while ensuring that reliability is protected.

2. This order on rehearing reaffirms or clarifies the Commission’s policies on the recovery of Network Upgrade costs and non-pricing policies. For example, it reaffirms the 20-year reimbursement policy for Network Upgrade costs and clarifies the Commission’s policy regarding credits for Network Upgrades as it applies to Affected System Operators and jointly owned transmission facilities. The order also clarifies the Commission’s jurisdiction under the Federal Power Act² to apply this Final Rule and further explains the Transmission Provider’s payment obligation for reactive power supplied by an Interconnection Customer.

3. This order takes effect 30 days after issuance by the Commission. As with the Order No. 2003 compliance process, the Commission will deem the open access transmission tariff (OATT) of each non-independent Transmission

¹ Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 FR 49845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh’g*, Order No. 2003-A, 69 FR 15932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004) (Order No. 2003-A), *order on reh’g*, Order No. 2003-B, 70 FR 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2005) (Order No. 2003-B). See also Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004).

² 16 U.S.C. 791a-825r (2000).

Provider to be amended to adopt the clarifications to the *pro forma* LGIP and LGIA contained herein 30 days after issuance of this order by the Commission. And as with the Order No. 2003-B compliance process, each non-independent Transmission Provider will be required to amend its OATT to include the LGIP and LGIA clarifications contained herein within 60 days after issuance of this order by the Commission. Also, within 60 days after issuance of this order, each independent Transmission Provider must submit revised tariff sheets incorporating its clarifications to its OATT or an explanation under the independent entity variation standard as to why it is not proposing to adopt each clarification described in this order.

4. The Commission received 12 timely requests for rehearing or for clarification of Order No. 2003-B.³ Under section 313(a) of the Federal Power Act (FPA),⁴ requests for rehearing of a Commission order were due within thirty days after issuance of Order No. 2003-A, *i.e.*, no later than January 19, 2005. The Commission also received one answer from the North Carolina Electric Membership Corp. (NCEMC), which the Commission treats as yet another request for rehearing. Because this answer was submitted after the statutory 30-day rehearing deadline, it is rejected. However, the Commission will treat this late-filed request for rehearing as a request for reconsideration.

5. For a background discussion, please consult the prior orders in this proceeding.⁵

II. Discussion

A. Pricing and Cost Recovery Provisions

1. Requirement for Full Reimbursement After 20 Years

6. In Order No. 2003, the Commission continued to require the Transmission Provider and any Affected System Operator to reimburse the Interconnection Customer for its upfront payments for Network Upgrades by means of credits against the Interconnection Customer's transmission bills. We stated that the Interconnection Customer,

Transmission Provider, and Affected System Operator were permitted to adopt any alternative payment schedule that is mutually agreeable as long as all such amounts are refunded, with interest, within five years of the Commercial Operation Date of the Generating Facility. In Order No. 2003-A, we retained this general policy but removed the obligation to make a balloon payment for any unrefunded amounts after five years. In Order No. 2003-B, the Commission revised *pro forma* LGIA article 11.4.1 to state that, other credit and refund provisions of Order No. 2003-A notwithstanding, full reimbursement by the Transmission Provider shall not extend beyond 20 years from the Commercial Operation Date;⁶ in other words, a balloon payment is required at 20 years.

a. Rehearing Requests

7. Some petitioners argue that the Transmission Provider should not be required to reimburse the Interconnection Customer in full after 20 years if the Interconnection Customer has not earned enough credits (by taking delivery service) to reimburse it for the Network Upgrades.⁷ For example, Entergy states that this requirement is unfair to native load customers, arbitrary, and inconsistent with the Commission's previous policies. Entergy argues that the mandatory repayment provision converts the Interconnection Customer's upfront payment for Network Upgrade costs that are directly caused by an Interconnection Request from an investment, where the Interconnection Customer is at risk, to a loan. Southern Company claims that the Commission's previous policy of not requiring a balloon payment and allowing transmission credits only as delivery service was taken from a particular generating facility, was arguably consistent with the Commission's policy of allowing Transmission Providers to charge the "higher of" incremental or embedded costs. However, Southern Company claims that, if a full refund is always required within 20 years, this policy would be violated.

8. Conversely, other petitioners argue that 20 years is too long to wait for full reimbursement of upfront payments.⁸ Reliant states that the Commission erred by failing to return to the balanced crediting approach in Order No. 2003, which required the Transmission Provider to refund the balance of the Interconnection Customer's upfront

payment within five years. Reliant argues that the 20-year reimbursement requirement does not provide incentives for proper siting decisions, and actually raises costs for the very customers the Commission is seeking to protect. This is because the additional financing costs of a 20-year refund period raise the cost of new generators who wish to enter the market. In Reliant's view, this creates a barrier to entry that harms competition, and thereby harms native load and other Transmission Customers.

b. Commission Conclusion

9. In response to those petitioners that object to any requirement for full reimbursement on a date certain, as well as those that believe 20 years is too long to wait for reimbursement, we note that we have responded at length to many of these arguments in our previous orders. We therefore simply reiterate here our conclusion in Order No. 2003-B that our crediting and refund policy, including the 20-year reimbursement requirement, provides a reasonable balance between the objectives of promoting competition and infrastructure development, protecting the interests of Interconnection Customers, and protecting native load and other Transmission Customers.⁹

2. Reimbursement of Upfront Payment for Network Upgrades and Affected Systems

a. Rehearing Requests

10. Several petitioners ask the Commission to clarify whether an Affected System Operator has an obligation to reimburse the Interconnection Customer by means of a

⁹ We remind petitioners that we continue to view the Interconnection Customer's upfront payment for Network Upgrades as essentially a loan from the Interconnection Customer to the Transmission Provider or Affected System Operator. Although the appropriate length of the repayment period for such a loan is not a number that can be determined with great precision, we note that 20 years reflects the approximate minimum life of facilities that typically constitute Network Upgrades that generally would be needed to accommodate an Interconnection Customer's generator interconnection. Also, the courts have recognized that the Commission sometimes must adopt a value within a range, as long as the chosen value is related to the problem being addressed. *E.g.*, *ExxonMobil Gas Marketing Co. v. FERC*, 297 F.3d 1071, 1085 (D.C. Cir. 2002) ("We are generally unwilling to review line-drawing performed by the Commission unless a petitioner can demonstrate that lines drawn * * * are patently unreasonable, having no relationship to the underlying regulatory problem." (quotes and citation omitted)); *see also Prometheus Radio Project v. FCC*, 373 F.3d 372, 410 (D.C. Cir. 2004) ("Deference to the Commission's judgment is highest when assessing the rationality of the agency's line-drawing endeavors."); *Sinclair Broad. Group, Inc. v. FCC*, 284 F.3d 148, 159 (D.C. Cir. 2002) (granting deference to an agency's line-drawing efforts within its expertise).

³ Requests were filed by Calpine Corporation (Calpine), Edison Electric Institute (EII), Entergy Services, Inc. (Entergy), Georgia Transmission Corp. (Georgia Transmission), MEAG Power, National Rural Electric Cooperative Association (NRECA), PacifiCorp, PSEG Companies (PSEG), Public Service Company of New Mexico (PNM), Reliant Resources, Inc. (Reliant), Southern California Edison Company (SoCal Edison), and Southern Company Services, Inc. (Southern Company).

⁴ 16 U.S.C. 8251(a) (2000).

⁵ Order No. 2003 at P 5-17; Order No. 2003-B at P 5-11.

⁶ Order No. 2003-B at P 34-41.

⁷ Entergy, Southern Company and PacifiCorp.

⁸ *See* Reliant, Calpine and PSEG.

balloon payment 20 years after the Commercial Operation Date.¹⁰ For example, NRECA asks the Commission to clarify that if credits provided by an Affected System Operator have not fully reimbursed the Interconnection Customer's upfront payment within 20 years, the Affected System Operator is not required to make a balloon payment, but instead may continue to provide the Interconnection Customer with credits for transmission service on the Affected System until the Interconnection Customer's entire upfront payment has been reimbursed.

11. On a related matter, NRECA also asks the Commission to clarify that, the Transmission Provider or Affected System Operator has no further obligation to reimburse the Interconnection Customer for its upfront payment if the Generating Facility ceases Commercial Operation before the Interconnection Customer has been completely reimbursed.

12. Finally, NCEMC asks the Commission to clarify the Interconnection Customer's right to receive a refund of its upfront payment for Network Upgrades on an Affected System when the Interconnection Customer is also a Network Customer of the Affected System. NCEMC states that it intends to construct a generating facility and designate it as a network resource on the Transmission Provider's Transmission System, where NCEMC is a network customer. Although NCEMC is also a Network Customer of the Affected System, it says that the transmission service revenues that the Affected System receives from NCEMC do not vary according to what resources are designated as Network Resources on the Affected System, but rather with NCEMC's load. NCEMC argues that a rule that would tie credits from the Affected System to incremental charges associated with transmission service taken from the Affected System with respect to the Generating Facility is inappropriate for an Interconnection Customer that is also a Network Customer on the Affected System.

b. Commission Conclusion

13. In response to NRECA, we clarify that both the Transmission Provider and an Affected System Operator need provide credits for transmission service only when the Interconnection Customer takes transmission service with the Large Generating Facility identified as the primary point of receipt of that service. We clarify that both the Transmission Provider and an Affected System Operator must provide

the 20-year lump sum reimbursement to refund any remaining balance, even if no transmission service was taken. Although Order No. 2003-B could be read to suggest that the Affected System need only provide reimbursement for transmission service taken,¹¹ this was not our intent. Indeed, the revised language in article 11.4.1 in Order No. 2003-B clearly subjects an Affected System Operator to the 20-year lump sum requirement.¹² This is consistent with the Commission's policy of treating a non-independent Affected System Operator the same as a non-independent Transmission Provider because both have the same incentive to frustrate the development of new, competitive generation.¹³

14. In response to NRECA's second point, we clarify that the Affected System Operator, like the Transmission Provider, must reimburse the Interconnection Customer for its upfront payment even if the Generating Facility ceases Commercial Operation before the Interconnection Customer is completely reimbursed as long as the Interconnection Agreement between the Interconnection Customer and the Transmission Provider remains in full force and effect.¹⁴

15. In response to NCEMC, we note that, because the circumstances that NCEMC describes are highly fact-specific, and we do not know all the relevant facts, they are not appropriately addressed in a rulemaking. Therefore, we will not attempt to answer NCEMC's request for clarification in this order on rehearing, and will address the issue if it arises in a specific proceeding.

3. Reimbursement Obligation of the Operator of a Jointly-Owned System

16. In Order No. 2003-B, the Commission stated that, in the case of an Affected System that is jointly owned by public and non-public utilities, it is the responsibility of the Affected System Operator to provide the credits and to seek reimbursement for any amounts that it believes it is owed by the other owners.¹⁵ If a Transmission Provider provides transmission service on a Transmission System that is jointly owned, that Transmission Provider must follow a similar procedure.

a. Rehearing Requests

17. Several petitioners ask the Commission to clarify the crediting and

refund responsibilities of an operator of an Affected System that is jointly owned.¹⁶ For example, EEL asks the Commission to clarify that the public utility Transmission Provider's obligation to provide transmission credits is limited to the amount of upfront payments made for Network Upgrades owned by the Transmission Provider. EEL argues that the policy in Order No. 2003-B may work when the cost recovery for jointly owned facilities is provided for under a single tariff, but it presents problems when the various joint owners each provide transmission service independently under their own separate tariffs. In addition, Georgia Transmission Corporation asks the Commission to clarify that Order No. 2003-B does not require a non-jurisdictional owner of a jointly owned transmission system to reimburse the Affected System Operator or Transmission Provider. Georgia Transmission states that such clarification would be consistent with the Commission's statements in Order Nos. 2003 and 2003-A that "if an Affected System is a non-public utility, Order No. 2003 does not require that it provide refunds to the Interconnection Customer to satisfy the reciprocity condition."

b. Commission Conclusion

18. The Commission clarifies that it is not requiring every operator of a jointly owned system, whether it is a Transmission Provider or an Affected System Operator, to reimburse the Interconnection Customer for upfront payments for Network Upgrades received by the non-public utility owners of the system. The discussion in P 42 of Order No. 2003-B applies only to a situation where the operator is a public utility and has tariff administration responsibilities on behalf of the other owners. We clarify that the operator's responsibility for flowing through credits and reimbursing the Interconnection Customer for its upfront payment does not extend beyond its normal duties as the tariff administrator. Each owner of a jointly-owned system has the financial responsibility under its own Commission-regulated tariff to provide transmission credits and final reimbursement to the Interconnection Customer for the upfront payments that the owner has received. This responsibility does not extend to a non-public utility transmission owner or operator, of course.¹⁷

¹¹ Order No. 2003-B at P 41, 42.

¹² This obligation does not apply if the Affected System is a non-jurisdictional entity.

¹³ See Order No. 2003-A at P 636; see also Order No. 2003 at P 738.

¹⁴ See Order No. 2003-A at P 619.

¹⁵ Order No. 2003-B at P 42.

¹⁶ See EEL, Georgia Transmission, MEAG Power, PNM, SoCal Edison, and Southern Company.

¹⁷ See, e.g., Order No. 2003 at P 843.

¹⁰ See EEL, NRECA, PNM and NCEMC.

4. Credits for Transmission Service When the Generating Facility Is Not the Source

19. In Order No. 2003-B, the Commission stated that, if the Interconnection Customer or other Transmission Customer is taking firm Point-to-Point Transmission Service under the OATT with the Generating Facility as the source of the power transmitted, the customer continues to have all of the rights given by the OATT to change temporarily Points of Receipt or Delivery, if capacity is available, and is entitled to continue to receive credits toward the cost of the transmission service while doing so.¹⁸

a. Rehearing Requests

20. EEI asks the Commission to clarify that, while a Transmission Customer may temporarily change its point of receipt, it will not receive credits for transmission service that does not involve power generated from the Generating Facility. The Commission should also clarify what is meant by a "temporary" change to ensure that the Transmission Customer cannot use this provision to game the system and impose unwarranted costs on native load customers and other users of the system. In addition, PNM asks the Commission to clarify that sham designations of transactions through a non-operating Generating Facility are not a permitted means of obtaining transmission credits.

21. Southern Company argues that, contrary to the claims of some commenters, denying credits for transmission service when the Generating Facility is not the source of the power transmitted does not restrict any rights that the Interconnection Customer has under Order No. 888. Southern Company states that before Order No. 2003-B, Interconnection Customers were free to change points of receipt and delivery subject only to the requirements of Order No. 888. It argues that nothing in Order No. 2003 or Order No. 2003-A restricts this right. Providing Interconnection Customers with credits for redirected service does nothing to increase their ability to change delivery and receipt points. Instead, Southern Company argues, providing credits for redirected service will circumvent the native load protections adopted in Order No. 2003-A.

b. Commission Conclusion

22. The Commission is not persuaded to change the policy under which the Transmission Provider must provide

transmission credits during periods when the Interconnection Customer is using, in accordance with the terms of its transmission service, a secondary receipt point rather than the Generating Facility. As long as the Interconnection Customer or another entity is taking transmission service that identifies the Generating Facility as the point of receipt for that service in the original firm point-to-point transmission service request, the Interconnection Customer is entitled to a credit toward the cost of that service. The possibility that this could lead to abuse is greatly overstated. A transmission customer that elects to use a secondary point of receipt or delivery under the OATT must take such service only on a non-firm basis and at the lowest priority level. The Commission does not believe that access to this non-firm service option is sufficient to lead to abuse. Furthermore, in response to PNM, the Commission clarifies that a sham designation of a transaction through a non-operating Generating Facility is not a permitted means of obtaining transmission credits.

23. The Commission clarifies that its use of the word "temporarily" is intended to distinguish a request to use secondary receipt point on a non-firm basis as permitted under the tariff from a request to change the point of receipt on a firm basis.

5. Implementing the "Higher Of" Policy

24. In Order No. 2003-B, we stated that our interconnection pricing policy continues to allow the Transmission Provider to charge the Interconnection Customer a transmission rate that is the higher of the incremental cost rate for Network Upgrades required to interconnect the Generating Facility and an embedded cost rate for the entire Transmission System (including the cost of the Network Upgrades). We further stated that, if a Transmission Provider (or any other interested party) believes that, for an actual interconnection, it faces circumstances where native load and other customers are not held harmless, it should make that demonstration in an actual transmission rate filing.¹⁹

a. Rehearing Requests

25. With reference to the Commission's second statement cited above, Southern Company claims that the Administrative Procedure Act requires that agency action be supported by substantial evidence²⁰ and that the Commission's attempt to "pass the buck" by requiring a Transmission

Provider to demonstrate the negative does not meet that standard.

26. In response to our statement that we are willing to look on a case-by-case basis at proposals to protect native load and other existing customers, PacifiCorp argues that administrative efficiency favors a generic rule that addresses the need to fully protect native load. In PacifiCorp's view, it would be costly, burdensome, and inefficient to require a Transmission Provider to file a request to protect its native load every time a merchant generator signs an interconnection agreement without having executed a service agreement for transmission delivery service of sufficient duration to cover the cost of Network Upgrades.

b. Commission Conclusion

27. The Commission reiterates that the appropriate ratemaking approach to ensure that native load and other customers are held harmless depends on the particular set of facts that result in native load and other customers allegedly not being held harmless. For example, it may depend on the particular circumstances of the Interconnection Customer, its Generating Facility and location, and transmission interconnection service that is requested (Energy Resource Interconnection Service or Network Resource Interconnection Service), the tariff status of the power buyer (point-to-point or Network Integration Transmission Service), and the relationship if any of the Interconnection Customer to the transmission tariff service customer. This is a ratemaking question that does not lend itself to a generic solution. Furthermore, supporting an agency action by substantial evidence requires facts in some cases, so that case-specific, fact-based determinations are sometimes necessary instead of generic theoretical solutions.

B. Other Issues

1. Scoping Meeting

28. In Order No. 2003-B, the Commission rejected Southern's argument that the LGIP section 3.4 requirement to keep the identity of the Interconnection Customer confidential conflicts with the Transmission Provider's obligation in LGIP section 3.3.4 to reveal in a notice any meeting the Transmission Provider conducts with an affiliated Interconnection Customer. The Commission explained that the requirement to disclose Affiliate meetings resulted from the Commission's attempt to balance the need to treat affiliated and nonaffiliated

¹⁸ Order No. 2003-B at P 38.

¹⁹ Order No. 2003-B at P 54-57.

²⁰ 5 U.S.C. 706(2)(E) (2000).

Interconnection Customers alike with the need to make Order No. 2003 conform to the established Code of Conduct and Standards of Conduct requirements.²¹

a. Request for Rehearing

29. On rehearing, Southern again argues that Order No. 2003–B discriminates against affiliates of a Transmission Provider because requiring disclosure of their identities and confidential information will benefit competitors. Southern argues that while the Commission attempts to justify this disparate treatment by claiming that affiliated and non-affiliated generators are not similarly situated, they are similarly situated in that for both of them, revealing the identity of the Interconnection Customer would put that customer “at a competitive disadvantage and its project at risk.”²² Southern then cites Federal court precedent saying that the Commission cannot treat similarly situated customers in a non-comparable manner.²³

b. Commission Conclusion

30. Contrary to Southern’s argument, the Commission concludes that the disparate treatment here is justified because of concerns about affiliate abuse. As explained in Order Nos. 2003–A and 2003–B,²⁴ this measure allows Transmission Providers and their affiliates to share confidential information, but with safeguards that provide the public with notice of any meetings with affiliated Interconnection Customers and the opportunity to review a transcript. The affiliate relationship is a factual difference that justifies the different treatment here.²⁵ Additional safeguards are needed to ensure against affiliate abuse.²⁶ The Commission reaffirms its conclusion that revealing the affiliate relationship

between the Interconnection Customer and Transmission Provider results in less harm than if there were no safeguards at all.

2. Generator Balancing

31. In Order No. 2003–B, the Commission reaffirmed the decision in Order No. 2003–A to eliminate from the *pro forma* LGIA a provision requiring the Interconnection Customer to make generator balancing service arrangements (before submitting a schedule for delivery service) that identify the Interconnection Customer’s Generating Facility as the Point of Receipt for the scheduled delivery. Order No. 2003–B at P 74–75. We removed the requirement because generator balancing is an ancillary service that is part of delivery service, not interconnection service. Recognizing that some Transmission Providers may prefer to include a balancing provision in an interconnection agreement rather than in a separate agreement, the Commission explained that the Transmission Provider may do so in individual interconnection agreements tailored to the Parties’ specific circumstances and subject to Commission approval.

a. Request for Rehearing

32. Southern seeks clarification that nothing in Order No. 2003–B precludes Southern’s approach in its in Docket No. ER04–1161–000, which is to include a provision in its LGIA that refers to the requirement that a generator enter into an operating agreement that outlines options for remedying imbalances, but does not prescribe specific generator balancing service or rates.

b. Commission Conclusion

33. The Commission has issued an order in Docket No. ER04–1161–000 that addressed Southern’s request for clarification and rejected Southern’s proposal to include in the LGIA a reference to a balancing service agreement.²⁷ There the Commission stated that a Transmission Provider may either adopt a stand-alone generator balancing service agreement or request the inclusion of a generator balancing service provision tailored to the Parties’ specific standards and circumstances in an individual interconnection agreement. The Commission does not include a standardized balancing provision in the LGIA, even one as limited in scope as Southern proposes,

because as explained in Order No. 2003–A balancing service is more closely related to transmission delivery service than interconnection service. For the same reasons, we follow that decision here.

3. Reactive Power Payments to Generator

34. Order No. 2003–B reaffirmed Order No. 2003–A’s modification to LGIA article 9.6.3 to require the Transmission Provider to pay the Interconnection Customer for reactive power the Interconnection Customer provides or absorbs only when the Transmission Provider asks the Interconnection Customer to operate its Generating Facility *outside* a specified power factor range (or dead band). However, if the Transmission Provider pays its own or affiliated generators for reactive power service *within* the specified range, it must also pay the Interconnection Customer for providing reactive power within the specified range.²⁸ The Commission stated that although “the Transmission Provider is not ‘paying’ its own or affiliated generators directly for providing reactive power within the specified range, the owner of the generator is nonetheless being compensated for that service when the Transmission Provider includes reactive power related costs in its transmission revenue requirement.”²⁹

a. Requests for Rehearing

35. Southern and PNM take issue with the Commission’s statement in Order No. 2003–B that when a Transmission Provider is required to provide Reactive Power under Schedule 2 of its OATT, and charges for that service, it is thereby paying its own generators for reactive power within the established range, thus triggering a responsibility to pay the Interconnection Customer in the same manner.

36. Southern argues that this is incorrect because Schedule 2 only allows the Transmission Provider to be paid for reactive power from “generation sources.” The revenue requirements associated with such generation are not recovered in a transmission revenue requirement (hence the need for a Schedule 2 charge separate from the OATT transmission delivery charges). Furthermore, even if this statement is clarified to be a reference to a Transmission Provider receiving compensation for its generator-supplied reactive power costs

²¹ Order No. 2003–B at P 137.

²² See Order No. 2003 at P 114.

²³ *Town of Norwood v. FERC*, 202 F.3d 392, 402 (1st Cir. 2000).

²⁴ See Order No. 2003 A at P 107; Order No. 2003–B at P 136.

²⁵ See *Public Service Co. of Indiana v. FERC*, 575 F.2d 1204, 1212 (7th Cir. 1978); *Cities of Bethany v. FERC*, 727 F.2d 1131, 1140 (D.C. Cir. 1984).

²⁶ See, e.g., *Entergy Services, Inc.*, 111 FERC ¶ 61,145 at P 10 (2005) (initiating hearing to examine the “credible concerns” regarding transmission market power, by failing to provide interconnections or blocking alternative generation sources); *Southern Companies Energy marketing, Inc.*, 111 FERC ¶ 61,144 at P 16 (initiating hearing to examine the “credible concerns” regarding unduly preferential treatment afforded affiliates in access generation sites) (2005); see also *Entergy Services, Inc.*, 103 FERC ¶ 61,256 at P 44–53 (initiating a hearing to examine concerns regarding affiliate dealing in a bidding process for power purchase agreements).

²⁷ *Southern Company Services, Inc.*, 111 FERC ¶ 61,004 at P 16 (2005), *reh’g on other grounds pending*.

²⁸ Order No. 2003–A at P 416; Order No. 2003–B at P 114.

²⁹ Order No. 2003–B at P 119.

in its Schedule 2 charge, Southern continues, that would be incorrect as well. It would be wrong because, at least in the case of the Southern Companies, the dollars received for Schedule 2 service do not go to the generators or to the Transmission Provider, but instead are treated as revenue credits to reduce the costs that retail customers would otherwise have to pay. As a result, the beneficiaries of Schedule 2 revenues are retail customers, not the Transmission Provider or its generators. Paying Interconnection Customers for providing this service would give them an unfair advantage over Transmission Providers in the form of additional revenue.

37. PNM agrees that if a Transmission Provider must pay Interconnection Customers for reactive power within the deadband, it will need to recover that cost as part of its Schedule 2 revenue requirement. The result will be an unwarranted windfall to Interconnection Customers, higher costs for Transmission Customers, and increased filing burdens for public utility Transmission Providers.

38. PNM and Southern also argue that a service obligation distinguishes the Transmission Provider from the Interconnection Customer. They note that a Transmission Provider must plan, construct, and operate its generation at all times to meet the system's localized power and voltage requirements. Unlike the Transmission Provider, an Interconnection Customer constructs its generation in the location best meeting its own needs. Southern argues that an Interconnection Customer's generator is simply not "comparable" to a Transmission Provider's generator for purposes of supplying reactive power.

39. Southern notes that Order Nos. 888-A and 888-B explained that a generator must have to be available and under the Transmission Provider's control (so that it reduces the Transmission Provider's reactive power investment requirements) in order to be entitled to compensation. Since the Interconnection Customer's generators are not under the Transmission Provider's control, the Transmission Provider cannot rely on those generators to reduce its investment in reactive power facilities necessary to satisfy its system's needs (as it can for its own generators).

40. Alternatively, PNM requests that the Commission clarify procedures by which Transmission Providers can pass through as part of their Schedule 2 revenue requirement any amounts that they are required to pay Interconnection Customers for reactive power within the specified power range.

41. PNM also requests that the Commission explain what it means when it states that nothing in LGIA Article 9.6.3 "disturbs any present arrangements for reactive power compensation." Order No. 2003-B at P 121. PNM supports applying the policy to new interconnection agreements and grandfathering existing agreements.

b. Commission Conclusion

42. We disagree with Southern's and PNM's argument that the Commission should base its decision on what the Transmission Provider does with the revenues from providing reactive power within the established range. The Commission is less concerned with the flow of these revenues than with the unduly discriminatory treatment of non-affiliated Interconnection Customers that provide this important system service. We therefore reiterate that if the Transmission Provider's affiliate receives a payment for providing this service within the specified range, then payments must be made to non-affiliated Interconnection Customers for providing the service. Because the non-affiliates are providing an important service, we disagree with PNM that such payments would result in a windfall to them.

43. Although the Transmission Provider's or its affiliate's generators may be required to operate when others are not, this distinction in availability is not so significant as to eliminate the need to compensate other generators. With respect to Southern's assertion that the Interconnection Customer's generators are not under the Transmission Provider's control, Order No. 2003-B clarified³⁰ that while the Transmission Provider cannot demand that the Interconnection Customer operate its Generating Facility solely to provide reactive power, it may require the Interconnection Customer to provide reactive power from time to time when its Generating facility is in operation. The requirement to pay exists only as long as the Generating Facility follows the Transmission Provider's reactive power instructions. This is a sufficient level of control to warrant compensation for providing reactive power as described in Order Nos. 888-A and 888-B.

44. In response to PNM's requests for clarification, although we do not agree that selecting the best sources of reactive power from available generators should necessarily increase reactive power costs—indeed, it may lower such costs—a Transmission Provider may propose to incorporate in its rates any

such increase in Schedule 2 amounts. At that time the Commission will consider alternatives for recovery of these charges.³¹

45. Finally, Order No. 2003 does not abrogate existing agreements,³² and we reiterate that existing agreements for reactive power compensation need not be amended to incorporate our policy on reactive power payments for newly interconnecting generators.

4. Interest Rate Applied to Non-jurisdictional Entities

46. LGIA Article 11.4.1 requires that the repayment for Network Upgrades shall include interest calculated in accordance with the Commission's regulations. Order No. 2003-B clarified that the interest rate is in 18 CFR § 35.19a(a)(2)(iii).

a. Request for Rehearing

47. NRECA argues that that interest rate is not appropriate for non-jurisdictional utilities that are "subject to" the Interconnection Rule due to the Commission's reciprocity condition. The Commission's interest rate bears no relationship to a non-jurisdictional utility's cost of borrowing, NRECA explains, and it provides a windfall to the Interconnection Customer at the expense of a non-jurisdictional utility's consumers.

b. Commission Conclusion

48. We clarify that a non-jurisdictional entity subject to the reciprocity condition need not adhere to the crediting policy for Transmission Providers in Order No. 2003, including the payment of interest,³³ unless it applies this same crediting policy to its own generation. Order No. 2003-A clarified that for rate matters, the reciprocity condition only requires comparability.³⁴ Therefore, interest (at the Commission's or some other interest rate) would be payable only if it is payable (at the same interest rate) to the non-jurisdictional entity's own or affiliated generators, if any.

5. Jurisdiction

49. Order No. 2003-B corrected a misstatement in Order No. 2003-A and reiterated that if an Interconnection Customer seeks to interconnect with a

³¹ Commission staff has begun a general inquiry into reactive power pricing reform; see *Principles for Efficient and Reliable Reactive Power Supply and Consumption*, Docket No. AD05-1-000 (February 4, 2005) and the discussion at the Commission meeting on December 15, 2004.

³² See Order No. 2003 at P 911.

³³ In its request for rehearing, NRECA refers to an interest rate that the Commission corrected in Order No. 2003-B.

³⁴ Order No. 2003-A at 777.

³⁰ Order No. 2003-B at P 118.

dual use facility (*i.e.*, a facility that is used for both wholesale and retail sales) to make a wholesale sale, then Order No. 2003 applies because that facility is subject to an OATT.³⁵

Request for Rehearing

50. SoCal Edison argues that the Commission must exercise jurisdiction over all wholesale generator interconnections, including those to “local distribution” facilities never previously used by wholesale customers. SoCal Edison says that the Commission incorrectly asserts that there are three categories of facilities (transmission, “local distribution,” and dual use) when only two actually exist (transmission and “local distribution”). SoCal Edison says that a D.C. Circuit opinion finds that only two categories exist, and wholesale service over “local distribution” facilities is Commission-jurisdictional.³⁶ SoCal Edison concludes that because all interconnections to distribution facilities are to “local distribution” facilities, all such interconnections should be treated the same for jurisdictional purposes, and jurisdiction should depend solely on whether the generator makes sales at wholesale. SoCal Edison therefore requests that the Commission rule that it has jurisdiction over all interconnections to “local distribution” facilities for the purpose of making wholesale sales.

Commission Conclusion

51. We disagree with SoCal Edison that we should assert jurisdiction over all interconnections that could be used for wholesale sales, including the situation in which the Interconnection Customer seeks to interconnect to a “local distribution” facility being used exclusively for retail sales and thus is not available for service under an OATT at the time the Interconnection Request is made. In Order No. 2003, the Commission explained that the rule applies to interconnections to the facilities of a public utility’s Transmission System that, at the time the interconnection is requested, may be used either to transmit electric energy in interstate commerce or to sell electric energy at wholesale in interstate commerce pursuant to a Commission

filed OATT.³⁷ Thus, our assertion of jurisdiction over interconnections rested on two grounds: first, and primarily, our FPA jurisdiction over “transmission” facilities, which may be used for wholesale sales or unbundled retail sales and which are subject to an OATT; and, second, our FPA jurisdiction over wholesale sales which require the use of “local distribution” facilities and thus such facilities become subject to an OATT for purposes of the wholesale sales. We concluded that applying our interconnection rules to facilities already subject to an OATT would properly respect the jurisdictional bounds recognized by the courts in upholding Order No. 888 and subsequent cases.³⁸ To adopt SoCal Edison’s position and interpret our authority more broadly, however, would allow a potential wholesale seller to cause the involuntary conversion of a facility previously used exclusively for state-jurisdictional interconnections and delivery, and subject to the exclusive jurisdiction of the state, into a facility also subject to the Commission’s interconnection jurisdiction—a result that we believe crosses the jurisdictional line established by Congress in the FPA.

52. FPA section 201(b)(1) gives the Commission the authority to regulate “all facilities” used for transmission and for the wholesale sale of electric energy in interstate commerce.³⁹ The same FPA section denies the Commission jurisdiction “over facilities used in local distribution” except as specifically provided in Parts II and III of the FPA.⁴⁰ The Court of Appeals for the D.C. Circuit recently explained this provision as meaning that, if a wholesale sale of electric energy in interstate commerce is

occurring, the Commission has jurisdiction over the transaction or service, even if the transaction occurs over a “local distribution” facility.⁴¹

53. When a “local distribution” facility is used to transmit energy sold at wholesale as well as energy sold at retail, we previously have called this a “dual use” facility because it is used both for sales subject to Commission jurisdiction and for sales subject to state jurisdiction.⁴² Under Order No. 2003, if such a facility is subject to wholesale open access under an OATT at the time the Interconnection Request is made, and the interconnection will connect a generator to a facility that would be used to facilitate a wholesale sale, Order No. 2003 applies and the interconnection must be subject to Commission-approved terms and conditions. Because the Commission’s authority to regulate in this circumstance is limited to the wholesale transaction, we conclude that we do not have the authority to directly regulate the facility that is used to transmit the energy being sold at wholesale. In other words, while the Commission may regulate the entire transmission component (rates, terms and conditions) of the wholesale transaction—whether the facilities used to transmit are labeled “transmission” or “local distribution”—it may not regulate the “local distribution” facility itself, which remains state-jurisdictional. We believe this properly respects the boundaries drawn in the FPA.

6. Wind Power Exemption

54. Order No. 2003–A exempted wind generators from the power factor design criteria requirement in article 9.6.1, because as nonsynchronous generators, it would be difficult for these generators

³⁷ Order No. 2003 at P 804. Pursuant to Order No. 888, as upheld by the courts, facilities subject to an OATT are “transmission” facilities and facilities used for wholesale sales, whether labeled “transmission,” “distribution,” or “local distribution.” Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 at 31,969, 31,980 (1996), *order on reh’g*, Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh’g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000) (*TAPS v. FERC*), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002); *see TAPS v. FERC*, 225 F.3d at 696 (noting that the Commission’s “assertion of jurisdiction over all wholesale transmissions, regardless of the nature of the facility, is clearly within the scope of its statutory authority”).

³⁸ *See Detroit Edison Co. v. FERC*, 334 F.3d 48 (D.C. Cir. 2003); *DTE Energy Co. v. FERC*, 394 F.3d 954 (D.C. Cir. 2005).

³⁹ 16 U.S.C. 824a(b)(1) (2000).

⁴⁰ *Id.*

⁴¹ *Detroit Edison Co. v. FERC*, 334 F.3d 48, 51 (D.C. Cir. 2003); *accord Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 696 (D.C. Cir. 2000) (*TAPS*) (noting that “FERC’s assertion of jurisdiction over all wholesale transmissions, regardless of the nature of the facility, is clearly within the scope of its statutory authority,” and that the statute and case law support the proposition that the Commission has the authority to regulate “all aspects” of wholesale transactions).

⁴² We note that the DTE court rejected DTE’s attempt to use the dual use facility or dual function rationale. *DTE Energy Co. v. FERC*, 394 F.3d 954, 962–63 (D.C. Cir. 2005). The court, however, did not address “dual use” as it applies to the Commission’s authority to regulate wholesale sales. Also, when a “dual use” facility is involved in a wholesale sale, we do not claim jurisdiction over the facility itself, just the wholesale sale transaction occurring over that facility. *See Detroit Edison Co. v. FERC*, 334 F.3d 48, 51 (D.C. Cir. 2003) (explaining that the Commission has jurisdiction “over all wholesale service,” including wholesale transactions that occur over “local distribution” facilities).

³⁵ Order No. 2003–B at P14.

³⁶ SoCal Edison cites *Detroit Edison Co. v. FERC*, 334 F.3d 48, 51 (D.C. Cir. 2003) (“[W]hen a local distribution facility is used in a wholesale transaction, FERC has jurisdiction over that transaction pursuant to its wholesale jurisdiction under FPA § 201(b)(1).”) and *DTE Energy Co. v. FERC*, 394 F.3d 954 (D.C. Cir. 2005) (applying a two category analysis).

to maintain the required power factor.⁴³ On rehearing, in response to SoCal Edison's argument that wind generators should not be exempt, the Commission in Order No. 2003-B explained that it was examining the issue as part of an ongoing proceeding on technical requirements applicable to wind. The Commission stated that until the other proceeding was resolved, it would continue the exemption for wind generators.

Request for Rehearing

55. SoCal Edison again asks that the Commission not exempt wind generators from the power factor requirement citing reliability and safety consequences. It also asks that the Commission not await the resolution of the issue in the wind rulemaking and instead adopt an interim standard that removes the exemption.

Commission Conclusion

56. We note that after SoCal Edison submitted its rehearing request, the Commission issued the Final Rule on Interconnection for Wind Energy and Other Alternative Technologies, which requires large wind plants to provide reactive power, if needed, under the same technical criteria applicable to conventional large generating facilities.⁴⁴ Therefore, SoCal Edison's request is moot.

7. "At or Beyond" Rule

a. Request for Rehearing

57. Southern argues although Order No. 2003-B did not specifically refer to the "at or beyond" rule, it reaffirmed the primary holdings of Order Nos. 2003 and 2003-A, which did. It argues that in Order No. 2003-B, the Commission failed to note that its "at or beyond" rule had recently been vacated by the D.C. Circuit in *Entergy Services, Inc. v. FERC*, 391 F.3d 1240 (D.C. Cir. 2004).

Accordingly, Southern concludes, the "at or beyond" rule in this proceeding is a legal nullity, and the Commission's continued adherence to that policy in this proceeding is inappropriate.

b. Commission Conclusion

58. We note that the court in *Entergy Services* did not question the Commission's authority to apply an "at or beyond" rule; it simply sought an explanation that harmonized the "at or beyond" rule with Commission precedent. Moreover, the Commission has issued an order on remand explaining that facilities at the point of interconnection are network facilities.⁴⁵ Therefore, Southern's argument is moot.

III. Ministerial Changes to the Pro Forma LGIP and LGIA

59. Since Order No. 2003-B was issued, we have identified certain sections of the LGIP and articles of the LGIA that require modification. Because of the ministerial nature of these changes, no further discussion is needed. The changes are included in Appendix A.

IV. Compliance

60. This order takes effect 30 days after issuance by the Commission. As with the Order No. 2003 compliance process, the Commission will deem the OATT of each non-independent Transmission Provider to be amended to adopt the clarifications to the *pro forma* LGIP and LGIA contained in Appendix A herein on the effective date of this order. A non-independent Transmission Provider should submit revised tariff sheets incorporating the clarifications in Appendix A within 60 days after the issuance of this order. Within the same time frame, each RTO or ISO also must submit either revised tariff sheets incorporating the clarifications in Appendix A, or an explanation under the independent entity variation

standard as to why it does not propose to adopt each change.

V. 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 obtain this document from the 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. The full text of this document is also available electronically from the Commission's eLibrary system (formerly called FERRIS) in PDF and Microsoft Word format for viewing, printing, and downloading. eLibrary may be accessed through the Commission's Home Page (<http://www.ferc.gov>). To access this document in eLibrary, type "RM02-1-" in the docket number field and specify a date range that includes this document's issuance date.

62. User assistance is available for eLibrary and the Commission's website during normal business hours from our Help line at 202-502-8222 or the Public Reference Room at 202-502-8371 Press 0, TTY 202-502-8659. e-mail the Public Reference Room at public.referenceroom@ferc.gov.

VI. Effective Date

63. Changes to Order Nos. 2003, 2003-A and 2003-B made in this order on rehearing will become effective 30 days after issuance by the Commission.

List of Subjects 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission, Commissioner Brownell dissenting in part with a separate statement attached.

Linda Mitry,
Deputy Secretary.

The Appendices will not be published in the *Code of Federal Regulations*.

⁴³ Order No. 2003-A at P 407 n.85.

⁴⁴ Interconnection for Wind Energy, Order No. 661, 111 FERC ¶ 61,353 (2005).

⁴⁵ *Nevada Power Co.*, 111 FERC ¶ 61,161 at P 16 (2005).

Appendix A

Changes to the Pro Forma LGIP and LGIA

Large Generator Interconnection Procedures (LGIP)

| | |
|----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Large Generator Interconnection Procedures (LGIP) | |
| Section 11.2 | Since it may not have been clear from the correction that appeared in Order No. 2003-B, the fifth sentence should end as follows: ". . . pursuant to Section 13.5 within sixty (60) Calendar Days of tender of draft LGIA, it shall be deemed to have withdrawn its Interconnection Request." |

Large Generator Interconnection Agreement (LGIA)

| | |
|---------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
| Large Generator Interconnection Agreement (LGIA) | |
| Page 1, paragraph above the recitals | In the first sentence, insert a space between "Generator" and "Interconnection". |
| Article 5.3 | In the third paragraph, last sentence, item number 3, change "interconnection Customer" to "Interconnection Customer." |
| Article 12.4 | In the last sentence, the reference to 18 CFR § 35.19a(a)(2)(ii) should be changed to 18 CFR § 35.19a(a)(2)(iii) |
| Article 18.3.6 | In the first sentence, change ". . . policy had been issues to each . . ." to ". . . policy had been issued to each . . ." |
| Article 19.1 | Second sentence, change ". . . exercise of the secured Party's . . ." to ". . . exercise of the secured party's . . ." |
| Article 24.2 | In the last sentence, item number 2, delete extraneous quotation mark. |

Nora Mead BROWNELL, Commissioner
dissenting in part:

For the reasons I articulated in my partial dissent to Order No. 2003-B, I would have granted rehearing and reinstated the original provision in Order No. 2003 that ensured Interconnection Customers full reimbursement of their up-front funding of Network Upgrades within five years. Therefore, I dissent from this portion of today's order.

Nora Mead Brownell
[FR Doc. 05-12870 Filed 6-29-05; 8:45 am]
BILLING CODE 6717-01-P

**DEPARTMENT OF HOMELAND
SECURITY**

**Bureau of Customs and Border
Protection**

DEPARTMENT OF THE TREASURY

19 CFR Part 181

[CBP Dec. 05-24]

RIN 1505-AB41

**Tariff Treatment Related to
Disassembly Operations Under the
North American Free Trade Agreement**

AGENCY: Customs and Border Protection,
Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, proposed amendments to the Customs and Border Protection ("CBP") Regulations concerning the North American Free Trade Agreement ("the NAFTA"). The regulatory changes interpret the term "production" to include disassembly and clarify that components recovered from the disassembly of used goods in a NAFTA country are entitled to NAFTA originating status when imported into the United States provided that the recovered components satisfy the applicable NAFTA rule of origin requirements.

DATES: Effective August 1, 2005.

FOR FURTHER INFORMATION CONTACT:
Shari Suzuki, International Agreements
Staff, Office of Regulations and Rulings,
(202) 572-8818.

SUPPLEMENTARY INFORMATION:**Background***Statutory and Regulatory Background*

On December 17, 1992, the United States, Canada, and Mexico (the parties) entered into an agreement, the North American Free Trade Agreement (the NAFTA). The provisions of the NAFTA were adopted by the United States with the enactment of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057 (December 8, 1993).

Under NAFTA Article 401(b) and 19 U.S.C. 3332(a)(1)(B)(i), a good originates in the territory of a party where each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification set out in Annex 401 of the NAFTA as a result of production occurring entirely in the territory of one or more of the parties. These change in tariff classification rules are set forth in General Note 12(t) of the Harmonized Tariff Schedule of the United States ("HTSUS") (hereinafter "the Annex 401 rules"). It is therefore understood that unless a change in tariff classification results from an activity that qualifies as "production," the mere fact that there is a prescribed change in tariff classification will not be considered as meeting a rule of origin.

The NAFTA does not explicitly address the question of whether disassembly occurring in a NAFTA country may be considered NAFTA origin-conferring "production" when the recovery of components by the disassembly operation satisfies the applicable rules of origin listed in Annex 401 of the NAFTA.

Publication of Proposed Regulatory Changes

On March 13, 2003, the U.S. Customs Service (now Customs and Border Protection ("CBP")) published in the **Federal Register** (68 FR 12011) a notice of proposed rulemaking ("NPRM") setting forth proposed amendments to Part 181 to add a new § 181.132 to the CBP Regulations (19 CFR 181.132). The proposed rule stated that components which were recovered from the disassembly of used goods in a NAFTA country would be entitled to NAFTA originating status upon importation into the United States, provided that: (1) The recovered components satisfy the applicable NAFTA rule of origin requirements in Annex 401, and (2) if the rule of origin in Annex 401 applicable to the components does not include a regional value content requirement, the components are subject

to further processing in the NAFTA country beyond certain specified minor operations.

The NPRM explained the need for a regulation to address disassembly in order to: (1) Provide an appropriate regulatory basis for the treatment of recycled or remanufactured goods under the NAFTA; (2) provide guidance regarding the meaning of the statutory term "production;" and (3) clarify the relationship between the Annex 401 rules of origin and the disassembly of goods. In addition, the NPRM noted that allowing the disassembly of used goods to confer origin under certain circumstances would promote recycling and re-manufacturing in North America and, therefore, would advance the economic and environmental objectives of the NAFTA.

The NPRM prescribed a 60-day period for the submission of public comments on the proposed regulatory changes. A total of 10 commenters responded. Nine comments focused on the proposed text while one comment concerned CBP's certification under the Regulatory Flexibility Act of 1980.

A majority of the comments received by CBP supported the proposed amendment which would allow components that are recovered from the disassembly of a used good in a NAFTA country to be entitled to NAFTA originating status upon importation into the United States. Most commenters agreed with CBP that interpreting "production" to include disassembly would promote recycling and re-manufacturing in North America.

However, all of the comments suggested changes regarding the approach set forth in the NPRM. Most commenters expressed the opinion that, while the proposed amendment was well intended, it would not completely remedy the situation and, in some cases, would restrict the ability of remanufactured goods to qualify for preferential treatment under NAFTA. Many commenters objected to the addition of a further processing requirement in cases where the applicable rule of origin did not include a regional value content requirement. Several commenters identified practical problems in administering the proposed regulation, including inconsistencies with commercial and accounting practices. Lastly, many commenters maintained that the proposed regulation was too complicated.

Discussion of Comments

Of the 10 commenters who responded to the solicitation of comments on the proposed Part 181 changes, 9 provided one or more specific comments on the

proposed § 181.132 text. The comments are discussed below.

Comment: Four commenters expressed concern with the unilateral approach being pursued by the U.S. Government in regard to the proposed amendment. The commenters stated that the adoption of an amendment solely within the territory of the United States would give rise to uncertainty within the trading community and result in inconsistent application of the rules of origin between the NAFTA parties. These commenters indicated their preference for the development of a trilateral approach.

CBP's Response: A trilateral approach remains under discussion in the NAFTA working group. While there appears to be agreement in principle, the trilateral text is still being developed. In the meantime, this interpretive regulatory guidance is needed to aid U.S. importers in exercising reasonable care.

Comment: Four commenters suggested adopting an approach similar to that taken by the U.S. Administration in several recent free trade agreements. Under this approach, "goods wholly obtained or produced entirely" in the territories of the parties are considered to be originating. "Recovered goods" are specifically included in the definition of "goods wholly obtained or produced entirely" in the territories of the parties. Thus, "recovered goods" are considered to be originating goods. The commenters stated that the same result could be achieved by clarifying the NAFTA definition of "goods wholly obtained or produced" under the NAFTA Uniform Regulations. According to these commenters, this approach recognizes disassembly as conferring origin without the technical and cumbersome requirement of establishing that disassembly operations satisfy the product-specific rules of origin.

Two commenters supported adopting the provision for "recovered goods" in the definition of "goods wholly obtained or produced entirely." One commenter proposed that a new item covering "materials recovered by means of disassembly" be included in the definition of "goods wholly obtained or produced entirely." Another commenter recommended amending the existing provision for waste and scrap, which exists under the definition of "goods wholly obtained or produced entirely," to provide for recovered goods.

CBP's Response: CBP agrees that the approach taken by the United States in several recent free trade agreements is administrable. However, amending the definition of "goods wholly obtained or produced" in NAFTA cannot be achieved merely by amending the

definition found in the regulations. The definition of "goods wholly obtained or produced" is found in Article 401 of the NAFTA and any change would require an amendment to the agreement and implementing legislation.

Comment: One comment emphasized the importance of consistency. This commenter stated that there should be as much consistency as possible among the various agreements to which the United States is a party.

CBP's Response: While agreeing that consistency of rules under various free trade agreements is desirable, CBP's responsibility is to implement agreements as negotiated and implemented in U.S. law.

Comment: Several commenters maintained that the fundamental basis on which the Annex 401 rules were negotiated presumed the manufacture or assembly of a good from its constituent parts. Thus, the commenters believed that interpreting the term "production" to include disassembly is not sustainable when interpreted in context and in light of the objectives and purpose of the agreement.

CBP's Response: As indicated in the NPRM, CBP finds no evidence showing that the NAFTA intended not to treat "disassembly" as a production process. The term "production" includes a broad range of economic activity. Moreover, the goals of the NAFTA include elimination of barriers to trade, facilitation of cross-border movement of goods, promotion of economic activity in North America, and protection of the environment. Thus, it is consistent with the free trade purposes of NAFTA to treat the recovery of goods by disassembly as "production" under the NAFTA rules of origin.

Comment: Two commenters expressed a desire for an approach that would confer originating status on goods recovered from disassembly operations in a manner that applies equally to all manufacturers across industry sectors. These commenters note that differences in the structure of the Harmonized System may result in lack of uniformity of application across industry sectors.

CBP's Response: CBP notes that any lack of uniformity in the treatment of recovered components will parallel the effect of the applicable NAFTA rules of origin on other types of "production." Application of Annex 401 does result in lack of uniformity of application across industry sectors. The results depend on both the structure of the Harmonized System and the product-specific rules in Annex 401 which were negotiated in the context of trade policy goals, which may differ between sectors. There is no

uniform level of processing across sectors in the rules.

CBP notes that in many cases where a heading change rule cannot be met, an alternative rule of origin allows a change within the heading provided a regional value content requirement is met. CBP also notes that Article 401(d) provides a special rule for goods and parts that are classified in the same heading or subheading where there can be no change in tariff classification. CBP believes that the fact that some recovered goods will meet a tariff shift requirement while others will not is an insufficient reason to abandon the proposed regulation altogether (as this result will comport with the NAFTA rules of origin themselves).

Comment: Six commenters were opposed to the imposition of additional processing requirements for recovered components that meet the tariff shift rule under Annex 401. The proposed regulation specified that recovered components that met a tariff shift rule, but were not subject to a regional value content (RVC) requirement, had to be further processed beyond certain minor operations.

The commenters argued that the effect of this requirement is that recovered components that would otherwise qualify for the NAFTA preference would not qualify unless they had been subjected to additional processing. Additionally, these commenters stated that this "advanced-in-value" requirement effectively makes the origin requirements applicable to goods derived from disassembly operations stricter than those applicable to other goods, which need only satisfy the Annex 401 requirements. They believe that requiring goods derived from disassembly operations to satisfy both the Annex 401 rule of origin and the additional processing requirements imposes a double burden on remanufacturers that undermines the goals of the rule.

Two commenters stated that the additional processing requirement is unnecessary because the Annex 401 rules of origin, which were negotiated and agreed to by all three countries, already define the degree of production that will confer origin on non-originating materials. In some cases, that degree of production would involve a tariff shift, in others a regional value content requirement, and in still others a combination of both. However, the commenters argued that, in all cases, the degree of production established by the Annex 401 rules of origin would be sufficient to address when disassembly results in an originating good.

One commenter believed that disassembly is merely the inverse of assembly. Therefore, if the applicable Annex 401 rule of origin provides that origin is conferred by a simple tariff shift that may be achieved through assembly, achieving that same tariff shift through disassembly should also confer origin.

Another commenter argued that while the assembly process is predictable and quantifiable because every part entering the production line is the same, each disassembly is unique due to the condition of the used good, and that disassembly may be far more difficult than simple assembly with clean new parts. Thus, the proposed rule does not recognize the complexity and difficulty of disassembly and ignores the substantial effort necessary to recover parts from used equipment.

Several commenters objected to the proposed rule because some recovered components are not subject to operations other than those enumerated as minor operations in the proposed rule. Two commenters stated that there is little in the remanufacturing process that cannot be categorized within the list of minor operations. One commenter stated that the remanufacturing process consists of all the listed processes linked together. Thus, the commenters believed that the additional requirements would preclude the remanufacturing process from conferring originating status on recovered components.

One commenter believed that the additional processing requirement would increase the complexity of NAFTA compliance systems because it may be necessary to record the processing performed on individual recovered components. The commenter stated that this would create a de facto direct identification requirement which may be impractical or impossible to implement and very difficult to audit.

CBP's Response: CBP agrees that the Annex 401 rules define the degree of production required for conferring origin and has deleted the additional processing requirements.

Comment: Several commenters objected to the application of the Annex 401 rules of origin. They claimed that subjecting recovered components and remanufactured goods to the same NAFTA rules as items produced entirely from new components makes it extremely difficult to qualify remanufactured goods as originating goods under the NAFTA.

The commenters argued that, in many cases, NAFTA certificates are not available for recovered components and, therefore, they must be deemed non-

originating. Furthermore, when applying the Annex 401 rules to the remanufactured good, the recovered component often fails to satisfy the required tariff shift because it is generally classified in the same tariff provision as the remanufactured good. These commenters also contended that if the remanufactured good is subject to an RVC rule, the good will fail to meet the rule because the recovered component often represents the majority of the value or net cost of the remanufactured good. In this situation, the RVC cannot be met because the recovered component is deemed to be non-originating.

CBP's Response: The situation the commenters describe is one of the reasons that more recent free trade agreements take a different approach to recycled and recovered goods, but the issue here is how to interpret NAFTA, and solutions are limited by the NAFTA text. The feasibility of determining the cost or value of a recovered component will be discussed later in this document.

Comment: Four commenters expressed the view that the proposed rule should be a simple rule that treats all materials yielded from disassembly in a NAFTA country as originating materials. These commenters stated that the removal of a worn component should be an origin-conferring process. This would ensure that the value of the recovered component, including the very substantial content resulting from the labor involved in the removal, will be included in the value of originating materials when determining whether the remanufactured good qualifies as an originating good. By considering the removal of worn parts to be origin conferring, the commenters stated that it would be possible to count that valuable operation towards qualifying the remanufactured good as an originating good.

These commenters contended that the above "simple" rule could be administered more easily than CBP's proposed rule which they characterized as highly complex and difficult, if not impossible, to administer. With respect to CBP's concern regarding sufficient processing, the commenters suggested that CBP could condition this rule by providing that goods yielded from a "minor disassembly" would not be treated as NAFTA originating. They suggested that disassembly of an article into five (or ten) or fewer components by processes such as removing screws, bolts, pins or other fasteners could be treated as a "minor disassembly" operation. Moreover, certain minor operations, such as separating a good and its component by disconnecting

cables or by unsnapping could be ruled not to constitute disassembly. Thus, these commenters proposed a rule that treats all components yielded from disassembly as NAFTA originating, subject to a simple disassembly exception. The commenters claimed that their proposal would meet the goals of NAFTA while avoiding administrative problems.

Several remanufacturers expressed dissatisfaction with the proposed regulation for the reason that their recovered parts would never qualify under the proposed rule since the parts would not satisfy the required tariff shift and also would not meet the RVC requirement based only on labor costs. These commenters support a simple disassembly rule under which recovered parts would qualify as originating. If the recovered parts were considered originating, they could meet the RVC requirement associated with the rule for the remanufactured good. This approach would allow the recovered parts to qualify as an originating material but would still require the producer of the remanufactured good to meet the NAFTA Annex 401 rule of origin applicable to the remanufactured good.

CBP's Response: Although CBP understands the appeal of a "simple" disassembly rule, CBP cannot adopt such an approach because it conflicts with the Annex 401 rules of origin. CBP cannot disregard the rules of origin that already exist for specific products; the Annex 401 rules of origin set the minimum threshold that must be met in order to confer originating status to a good.

The commenters would prefer to have a new rule that allows mere disassembly to confer origin without having to meet any tariff shift or regional value content requirements. CBP does not have the authority to change the Annex 401 rules of origin. The only question addressed in this interpretive regulation is whether the NAFTA definition of production can be interpreted to include disassembly. CBP is not adopting a new rule of origin.

Comment: One commenter maintained that all goods which are subject to additional processing should be treated as originating goods without regard to whether the good meets the Annex 401 rules. This commenter stated that if CBP must require that goods be advanced in value or improved in condition, then all goods that satisfy the additional processing requirements should be considered originating, regardless of whether they satisfy the specific rule of origin under Annex 401. The commenter recommended a new rule in which the Annex 401 rules are overridden. A component recovered

from a good disassembled in the territory of a party would be considered to be originating as a result of such disassembly provided that the recovered component is advanced in value or improved in condition by means of additional processing other than certain listed minor processes.

CBP's Response: CBP disagrees. The Annex 401 rules of origin set forth the minimum level of processing required and cannot be disregarded.

Comment: One commenter expressed concern with how CBP will interpret a required change in tariff classification. The commenter provided an example involving a cover from the document feeder portion of a laser printer. The commenter asked whether CBP would focus on the laser printer or the document feeder for the purpose of determining whether the cover met a required change in tariff classification. The cover meets the tariff shift requirement when the laser printer is viewed as the non-originating material. However, the cover does not meet the tariff shift requirement when the document feeder is viewed as the non-originating material.

CBP's Response: CBP assumes that, in the example provided by the commenter, the remanufacturer disassembled the laser printer into various parts, including the document feeder, and then disassembled the document feeder into its constituent parts, including the cover. Under the principles of self-produced materials contained in part II, section 4(8) of the appendix to part 181 of the CBP Regulations (19 CFR part 181, appendix), the producer should be able to designate the laser printer as the non-originating material for the purpose of determining whether the non-originating materials underwent the applicable change in tariff classification.

Comment: One commenter suggested that remanufactured goods should be considered to be originating goods and provided a precise definition of remanufactured goods. In order to qualify as an originating good, the product must: (1) Be dismantled; (2) have all parts cleaned, inspected and returned to sound working condition; and (3) be reconstructed to sound working condition. In addition to this definition, the commenter recommended a rule which requires that the components undergo processing that restores their functionality and fit; the components be re-assembled back into an item that is the equivalent of the item disassembled; all "new" parts used in the remanufacturing process satisfy the traditional specific rules of origin for the finished item; and the originating value

of the recovered parts be some derivation of the core charge value if a core charge applies. The commenter believes that this definition would eliminate the possibility of disassembly operations being used as a method of circumvention because there must be complete reassembly.

This commenter also proposed, with respect to country of origin marking, that all remanufactured parts be labeled "Remanufactured in (named country)," and that the country of origin of the used items imported into a territory and used in the remanufacturing process be the country in which the parts expired, regardless of marking.

CBP's Response: The Annex 401 rules of origin cannot be disregarded. The regulation under consideration addresses the issue of whether goods that are the result of disassembly are considered to have undergone "production" for purposes of determining whether the good qualifies as an originating good under the NAFTA. The regulation does not address country of origin for marking purposes. Country of origin for NAFTA marking purposes is governed by part 102 of the CBP Regulations (19 CFR part 102). CBP notes Headquarters Ruling Letters 561209, dated May 4, 1999, and 561854, dated December 15, 2000, which address the country of origin marking of rebuilt automotive parts.

Comment: One commenter suggested that, if the restrictions on "minor operations" are included in the final regulation, "precision machining" should be defined as "machining performed on a numerically controlled mill, lathe or similar equipment."

CBP's Response: As noted above, CBP has decided to delete the portion of the proposed regulation that refers to minor operations.

Comment: Two commenters stated that it is unlikely that a new non-originating good would be disassembled in one party's territory and shipped to another party where it would be reassembled. According to these commenters, the importer would have to pay duties, fees and brokerage charges on the initial importation into the party where the goods would be disassembled; incur the cost of setting up a disassembly operation; pay the overhead costs and costs to employ workers; pay additional transportation and handling costs; pay broker charges on the subsequent importation into the territory of the other party where the "recovered goods" would be reassembled; and pay all the same costs noted previously for the subsequent reassembly in the territory of the other party. Thus, these commenters believe it

is highly unlikely that the duty savings would be substantial enough to make such operations feasible from a cost/benefit standpoint.

One commenter suggested excluding high duty rate goods from the disassembly rule but acknowledged that most high duty rate goods (textiles, footwear, chemicals, agricultural products, etc.) do not easily lend themselves to disassembly.

Another commenter stated that precluding application of the proposed rule to new products adequately deals with possible abuses of disassembly to confer origin.

CBP's Response: CBP specifically requested comments on the view that an applicable value-content rule or alternative rule would be sufficient to permit the disassembly of new goods to be considered "production." None of the comments received endorsed this view. Accordingly, the final rule continues to reflect the portion of the proposed rule that precludes application of the regulation to new goods.

Article 412 of NAFTA and section 17 of the appendix to 19 CFR part 181 contain a very broad anti-circumvention provision which states that a good will not be considered to be an originating good if the object of the production can be shown by a preponderance of the evidence to have been to circumvent the rules of origin. CBP believes that a change in tariff classification resulting from the disassembly of new, non-originating goods should not make the resulting goods eligible for originating status. Generally, a "new" good is a good which is in the same condition as it was when it was manufactured and which meets the commercial standards for new goods in the relevant industry.

Accordingly, § 181.132(b) in this final rule document provides that the disassembly of new goods will not be considered "production" for the purposes of NAFTA Article 415 and the NAFTA rules of origin. To clarify the meaning of the term "new goods," CBP also has included in § 181.132(b) the definition set forth above for this term.

Comment: One commenter pointed out an error in proposed § 181.132(c). The reference to "Schedule V" should be "Part V." However, the commenter believes that a reference to automotive goods is unnecessary because remanufactured goods are not used as original equipment in the production of motor vehicles. Thus, they do not fall within the definition of "light duty automotive good" or "heavy-duty automotive good" and would not be subject to tracing requirements.

CBP's Response: CBP agrees that the reference in proposed § 181.132(c) should have been to "Part V." CBP takes note of the commenter's statement that remanufactured goods are not used as original equipment in the production of motor vehicles. Upon further reflection, CBP has decided to delete paragraph (c) because it is unnecessary.

Comment: The Office of Advocacy of the U.S. Small Business Administration (SBA) expressed concern that the proposed rule's certification pursuant to the Regulatory Flexibility Act was deficient. CBP certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. However, the SBA is concerned that there is no information on the number of small entities that would be impacted by this rule or the magnitude of the impact. Based on discussions with small entities in the automotive recycling business, the SBA recommended that CBP revisit its certification and at a minimum provide a factual basis for certification. The SBA stated that CBP must show which small entities will be affected and whether those affected constitute a substantial number within the regulatory industry.

CBP's Response: In the NPRM, CBP certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. However, upon reconsideration, CBP believes that the proposed rule should have stated that the Regulatory Flexibility Act is not applicable to this rule because the rule is exempt from notice and comment procedures pursuant to the Administrative Procedure Act (5 U.S.C. 553). First, this is an interpretive rule that is exempt from notice and public procedure pursuant 5 U.S.C. 553(b)(A). Second, this rule involves a foreign affairs function of the United States because it implements an international trade agreement. A notice of proposed rulemaking is not required for such rules pursuant to 5 U.S.C. 553(a)(1). Accordingly, because the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*) applies to a rule only when an agency is required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking, this rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Even if the Regulatory Flexibility Act applied to this rule, CBP would again certify that this final rule does not have a significant economic impact on a substantial number of small entities. The rule has only a positive economic impact on small (or other) entities

regulated by the rule. The rule regulates only U.S. importers of components of used goods that were recycled or remanufactured in Canada or Mexico, and, rather than increasing the economic burdens on these importers, the rule provides these importers with customs duty relief.

Comment: Four commenters expressed opposition to requiring a RVC calculation for recovered components because it is claimed either that there is no clear method for valuing individual components or that their value is not readily ascertainable. Most commenters stated that they did not know how to value the components removed from used goods. They requested that the rules clarify how the value and origin of individual used components are to be established. The commenters claimed that identifying the cost of each individual recovered component from the cost of the used good would not be feasible. While there may be an ascertainable value for the used good, there is not necessarily a purchase price or individualized value for the components included inside it. Additionally, the commenters claimed that it is not clear whether the value of the used component or the used good is to be included in the value of non-originating materials.

CBP's Response: CBP agrees that applying the value-content requirement to the disassembly process raises certain questions. However, the value-content requirement exists as part of the Annex 401 rule and cannot be disregarded.

CBP recognizes that if more than one component is recovered from the used good, the value of the used good should be allocated over the disassembled components. Additionally, the cost of the disassembly would have to be spread over all of the constituent disassembled components and then reallocated and added to the cost of each of those components. CBP notes that it has previously ruled that the scrap value of the parts and components that cannot be reused may be deducted from the value of the non-originating materials. See Headquarters Ruling Letter 547088, dated August 29, 2002. Remanufacturers may have internal bookkeeping records that would aid in valuing such components. CBP acknowledges that trade in remanufactured goods already exists and is inclined to consider reasonable accounting methods that have been used consistently in the trade.

Comment: Many commenters began their analysis by attempting to determine whether the used good was an originating good. They stated that it was highly unlikely that a NAFTA

certificate of origin could be provided for the used good since the good would probably be several years old and pertinent records would no longer be available.

CBP's Response: CBP agrees. It is likely that the used good will be assumed to be non-originating. However, the new regulation allows the component recovered from the used good to qualify as an originating good. If the recovered component meets the Annex 401 rule applicable to that component, the recovered component will be considered to be an originating good (or material).

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, and after further review of this matter, CBP believes that the proposed regulatory amendments regarding disassembly should be adopted as a final rule with the following changes:

1. The additional processing requirements set forth in paragraph (a)(2) of proposed § 181.132 have been deleted for the reasons explained in the analysis of comments.

2. Paragraph (c) of the proposed regulation has been deleted because, as explained further in the analysis of comments, the reference to automotive goods in this provision is unnecessary.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

Because this rule interprets and implements the obligations of the United States under the NAFTA, a notice of proposed rulemaking was not required pursuant to 5 U.S.C. 553(a)(1) and (b)(A). Accordingly, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable to this rule.

Drafting Information

The principal author of this document was Shari Suzuki, Office of Regulations and Ruling, Bureau of Customs and Border Protection. However, personnel from other offices participated in its development.

Signing Authority

This document is being issued by CBP in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)), pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain CBP revenue functions.

List of Subjects in 19 CFR Part 181

Administrative practice and procedure, Canada, Customs duties and inspection, Imports, Mexico, Trade agreements (North American Free Trade Agreement).

Amendments to the Regulations

■ Accordingly, for the reasons stated above, part 181 of the CBP Regulations (19 CFR part 181) is amended as set forth below.

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

■ 1. The authority citation for part 181 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314.

■ 2. Subpart L of part 181 is amended by adding a new § 181.132 to read as follows:

§ 181.132 Disassembly.

(a) *Treated as production.* For purposes of implementing the rules of origin provisions of General Note 12, HTSUS, and Chapter Four of the NAFTA, except as provided in paragraph (b) of this section, disassembly is considered to be production, and a component recovered from a good disassembled in the territory of a Party will be considered to be originating as the result of such disassembly provided that the recovered component satisfies all applicable requirements of Annex 401 and this part.

(b) *Exception; new goods.* Disassembly, as provided in paragraph (a) of this section, will not be considered production in the case of components that are recovered from new goods. For purposes of this paragraph, a "new good" means a good which is in the same condition as it was when it was manufactured and which meets the commercial standards for new goods in the relevant industry.

Robert C. Bonner,

Commissioner of Customs and Border Protection.

Approved: June 27, 2005.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.
[FR Doc. 05-12902 Filed 6-29-05; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF LABOR**Mine Safety and Health Administration****30 CFR Part 57**

RIN 1219-AB29

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.**ACTION:** Final rule; corrections.

SUMMARY: This document contains corrections to the preamble and rule text of the final rule that was published in the **Federal Register** on Monday, June 6, 2005 (70 FR 32868). The rule relates to diesel particulate matter exposure of underground metal and nonmetal miners.

DATES: Effective July 6, 2005.**FOR FURTHER INFORMATION CONTACT:**

Rebecca J. Smith, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209-3939; 202-693-9440 (telephone); or 202-693-9441 (facsimile).

The document is available on the Internet at <http://www.msha.gov/REGSINFO.HTM>.

SUPPLEMENTARY INFORMATION:

As published, the preamble and rule text contain errors which may be misleading and need to be corrected.

Accordingly, the preamble is corrected as follows:

1. On page 32889, in the first column, on the last line of the first paragraph, the **Federal Register** cite should be changed from (66 FR 5765-55767) to (66 FR 5765-5767).

2. On page 32929, in the third column, in the second full paragraph, on the eighteenth line, the word "insure" should be changed to "ensure" so that the sentence reads, "NIOSH's written response to MSHA * * * prior to selection and installation of DPM filter systems to ensure a successful match between filter and application."

3. On page 32935, in the first column, in the first full paragraph, on the seventh line, the measurement "5 dpm" should be replaced by "5 ppm" so that the sentence reads, "Per company policy, whenever an NO₂ monitor (carried by equipment operators) exceeded 5 ppm at the operator's location, that operator was removed to the surface.

■ In addition, the rule text is corrected as follows:

§ 57.5066 [Corrected]

■ 1. On page 32967, in the second column, on the first line, place quotation marks before and after the word "evidence" in § 57.5066, paragraph (b)(1), so that the sentence reads, "The term "evidence" means * * *."

■ 2. On page 32967, in the second column, in the second paragraph, in the second sentence, place quotation marks before and after the word "promptly" in § 57.5066, paragraph (b)(2), so that the sentence reads, "The term "promptly" means * * *."

Dated: June 23, 2005.

David G. Dye,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 05-12817 Filed 6-29-05; 8:45 am]

BILLING CODE 4510-43-P**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 117**

[CGD08-05-001]

RIN 1625-AA09

Drawbridge Operation Regulation; Bayou La Batre, Bayou La Batre, AL**AGENCY:** Coast Guard, DHS.**ACTION:** Final rule.

SUMMARY: The Coast Guard is changing the regulation governing the operation of the State Highway 188 vertical lift span bridge, across Bayou La Batre, mile 2.3, at Bayou La Batre, Alabama. This rule will allow the draw of the bridge to open on the hour during the predominant daylight hours, remain closed except for emergencies at night and remain closed to navigation at specific vehicular peak rush hour periods. This rule will allow for better coordination and facilitate movement of both vehicular and marine traffic at the bridge site due to an increase in commuter traffic Monday thru Friday.

DATES: This rule is effective August 1, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD08-05-001] and are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 501 Magazine Street, New Orleans, Louisiana 70130-3396, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Bridge

Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Herrmann, Bridge Administration Branch, at (504) 589-2965.

SUPPLEMENTARY INFORMATION:**Regulatory History**

On March 1, 2005, we published a notice of proposed rulemaking (NPRM) entitled, "Drawbridge Operation Regulation; Bayou La Batre, Bayou La Batre, AL," in the **Federal Register** (70 FR 3919). No comments were received regarding the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The U.S. Coast Guard, at t)097he request of the Alabama Department of Transportation and supported by the Mayor of the City of Bayou La Batre and the Mobile County Public School System, is changing the times of the existing drawbridge operation regulation. Currently, the bridge opens on signal except that the draw need not be opened from 8 p.m. to 4 a.m. daily, and from 6:30 to 8:30 a.m. and from 2 p.m. to 5 p.m. Monday through Saturday except holidays.

In an effort to assess and accurately determine the needs of the community, traffic counts and bridge tender logs were supplied by Alabama Department of Transportation. A review of the logs of drawbridge openings and traffic counts reveal that adjusting the marine traffic closures to coordinate with vehicular rush hour traffic should not significantly impact the flow of marine traffic. Allowing the bridge to remain closed to marine traffic during times that coincide with the heaviest vehicular traffic counts would help relieve the morning and afternoon rush hour commuter traffic congestion across the bridge while having minimal impact on vessel traffic.

Navigation at the site of the bridge consists primarily of recreational pleasure craft, fishing vessels, crew boats and tugboats with barges. Alternate routes are not available to marine traffic.

Discussion of Comments and Changes

No comments were received in response to the NPRM Public Notice 04-05 dated March 2, 2005.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that

Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This rule allows vessels ample opportunity to transit this waterway with proper notification before and after the peak vehicular traffic periods. According to the vehicle traffic surveys, the public at large is better served by the additional closure times during the noontime lunch periods.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

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

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

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of

compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect

on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. This final rule involves modifying the existing drawbridge operation regulation for a benefit of all modes of transportation. It will not have any impact on the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued

under the authority of Pub. L. 102-587, 106 Stat. 5039.

■ 2. § 117.103 is revised to read as follows:

§ 117.103 Bayou La Batre.

The draw of SR 188 Bridge, mile 2.3, at Bayou La Batre, will open on signal every hour on the hour daily between 4 a.m. and 8 p.m., Monday through Sunday. The bridge need not open for the passage of vessels on the hours of 7 a.m., 3 p.m., and 4 p.m., Monday through Friday. Monday through Friday the draw will open on signal for the passage of vessels at 3:30 p.m. The bridge will remain closed to marine traffic from 8 p.m. to 4 a.m. daily except for emergencies.

Dated: June 22, 2005.

Robert F. Duncan,

Rear Admiral, U. S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 05-12925 Filed 6-29-05; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01-05-058]

Drawbridge Operation Regulations: Newtown Creek, Dutch Kills, English Kills, and Their Tributaries, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Metropolitan Avenue Bridge, mile 3.4, across English Kills at New York City, New York. Under this temporary deviation the bridge may remain in the closed position from July 8, 2005 through July 22, 2005 and from July 25, 2005 through August 31, 2005. This temporary deviation is necessary to facilitate bridge maintenance.

DATES: This deviation is effective from July 8, 2005 through August 31, 2005.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668-7195.

SUPPLEMENTARY INFORMATION: The Metropolitan Avenue Bridge has a vertical clearance in the closed position of 10 feet at mean high water and 15 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.801(e).

The owner of the bridge, New York City Department of Transportation

(NYCDOT), requested a temporary deviation from the drawbridge operation regulations to facilitate rehabilitation repairs at the bridge. The bridge must remain in the closed position to perform these repairs.

Under this temporary deviation the NYCDOT Metropolitan Avenue Bridge may remain in the closed position from July 8, 2005 through July 22, 2005 and from July 25, 2005 through August 31, 2005.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: June 23, 2005.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 05-12931 Filed 6-29-05; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05-05-033]

RIN 1625-AA87

Security Zone; Georgetown Channel, Potomac River, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on the waters of the upper Potomac River. This action is necessary to provide for the security of a large number of visitors to the annual July 4th celebration on the National Mall in Washington, DC. The security zone will allow for control of a designated area of the river and safeguard spectators and high-ranking officials.

DATES: This rule is effective from 12:01 a.m. to 11:59 p.m. local time on July 4, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-05-033 and are available for inspection or copying at Coast Guard Sector Baltimore, Waterways Management Division, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management

Division, at telephone number (410) 576-2674 or (410) 576-2693.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 6, 2005, we published a notice of proposed rulemaking (NPRM) entitled "Security Zone; Georgetown Channel, Potomac River, Washington, DC" in the **Federal Register** (70 FR 23948). We received seven pieces of written correspondence commenting on the proposed rule. Based on these comments we reduced the size of the security zone. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Immediate action is needed to protect the public from waterborne acts of sabotage or terrorism. Any delay in the effective date of this rule is contrary to the public interest.

Background and Purpose

Due to increased awareness that future terrorist attacks are possible, the Coast Guard, as lead Federal agency for maritime homeland security, has determined that the Captain of the Port Baltimore must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. This security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against a large number of spectators and high-ranking officials during the annual July 4th celebration would have on the public interest, the Coast Guard is establishing a security zone that extends 75 yards from the eastern shore upon the waters of the Georgetown Channel of the Potomac River, from the surface to the bottom, between the Long Railroad Bridge (the most eastern bridge of the 5-span, Fourteenth Street Bridge Complex) to the Theodore Roosevelt Memorial Bridge and all waters in between, totally including the waters of the Georgetown Channel Tidal Basin.

This security zone will help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against a large number of spectators and high-ranking officials during the annual

July 4th celebration. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on the National Mall in Washington, DC during the annual July 4th celebration would have on the large number of spectators and high-ranking officials, and the surrounding area and communities, a security zone is prudent for this type of event.

Discussion of Comments and Changes

The Coast Guard received a total of seven pieces of written correspondence in response to the NPRM. No public meeting was requested and none was held. What follows is a review of, and the Coast Guard's response to, the issues and questions that were presented by these commenters concerning the proposed rule.

(1) Seven commenters indicated that the proposed rule would effectively cut off the Potomac River north of the Roosevelt Bridge to all water traffic to recreational boaters.

We have revised the security zone so that it only restricts vessels from transiting within 75 yards of the eastern shore of the Potomac River, traffic will be allowed to move along the west side of the river. Vessels wishing to anchor to watch the fireworks will be allowed to do so in the middle of the river, leaving the west side of the river open for through-traffic.

(2) Two commenters indicated that the proposed rule would unnecessarily affect human powered watercraft, in which persons have viewed the fireworks from on the water in past years, and that such craft pose little risk to the spectators and high-ranking officials on the National Mall.

As mentioned above, we do not intend to restrict these types of watercraft from entering, operating or remaining within areas along the Virginia side or the middle of the Potomac River.

(3) Four commenters indicated that the proposed rule will have a negative economic impact on area marinas directly and indirectly impacted by the rulemaking.

By allowing vessels and other watercraft to safely transit along the Virginia side of the Potomac River, the economic impact on area businesses will be limited.

(4) Two commenters indicated that the proposed rule could have significant safety impacts on boating navigation.

We make every effort to carefully consider the effects such a regulation has on the boating public, while safeguarding large numbers of spectators and high-ranking officials during this extremely publicized event. We believe

vessel congestion will actually be reduced, since vessels and other watercraft not deemed a security threat will be allowed to safely transit along the Virginia side of the Potomac River. Also, in order to maintain a clear channel along the Virginia side of the Potomac River, vessels wishing to anchor will be allowed to do so in the middle of the river.

(5) One commenter indicated that the proposed rule would be achieving the terrorists' goals by restricting the boating public and if such a regulation was imposed and no credible threat existed, political repercussions for the Coast Guard may result.

The revision of the security zone to extend only 75 yards off the eastern shore of the Potomac River allows the boating public to both safely transit the river and view the July 4th Celebration fireworks from the water.

(6) One commenter indicated that the proposed rule would require boaters to contact the Captain of the Port Baltimore, which may not be practical in all cases.

We do not feel that many vessels, if any, will need to enter the revised security zone. Vessels will be required to request permission from the Captain of the Port Baltimore if the operator feels they have a legitimate need to enter the security zone.

No request for additional comments on the revised rule is made since we believe the revised security zone adequately addresses all the above comments.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This security zone will encompass only a small portion of the waterway.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and

governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Potomac River (including the waters of the Georgetown Channel Tidal Basin) from 12:01 a.m. to 11:59 p.m. on July 4, 2005.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for less than 24 hours. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the river to allow mariners to make plans for transiting the affected areas. Because the zone is of limited size, it is expected that there will be minimal disruption to the maritime community.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. However, we received no requests for assistance from any small entities.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such

an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an

explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This regulation establishes a security zone. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under

ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–033 to read as follows:

§ 165.T05–033 Security Zone; Georgetown Channel, Potomac River, Washington, DC.

(a) *Definitions.* (1) For purposes of this section, *Captain of the Port, Baltimore, Maryland* means the Commander, Coast Guard Sector Baltimore, Maryland or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain

of the Port, Baltimore, Maryland to act on his or her behalf.

(b) *Location.* The following area is a security zone: all waters of the Potomac River within 75 yards from the eastern shore, measured perpendicularly to the shore upon the waters of the Georgetown Channel of the Potomac River, from the surface to the bottom, between the Long Railroad Bridge (the most eastern bridge of the 5-span, Fourteenth Street Bridge Complex) to the Theodore Roosevelt Memorial Bridge, and all waters of the Georgetown Channel Tidal Basin.

(c) *Regulations.* (1) The general regulations governing security zones, found in § 165.33, apply to the security zone described in paragraph (b) of this section.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland.

(3) Persons or vessels requiring entry into or passage through the security zone must first request authorization from the Captain of the Port, Baltimore to seek permission to transit the area. The Captain of the Port, Baltimore, Maryland can be contacted at telephone number (410) 576–2693. The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, VHF channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, Baltimore, Maryland and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) *Effective period.* This section will be effective from 12:01 a.m. to 11:59 p.m. local time on July 4, 2005.

Dated: June 14, 2005.

Curtis A. Springer,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 05–12881 Filed 6–29–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13-05-024]

RIN 1625-AA00

Safety Zone Regulations, Freedom Fair Air Show Performance, Commencement Bay, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Commencement Bay, Washington. The Coast Guard is taking this action to safeguard the participants and spectators from the safety hazards associated with the Freedom Fair Air Show. Entry into this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives.

DATES: This rule is effective from 1 p.m. to 7 p.m. Pacific Daylight Time on July 4, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD13-05-024 and are available for inspection or copying at the Waterways Management Division, Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, WA, 98134, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jessica Hagen, Waterways Management Division, Coast Guard Sector Seattle, at (206) 217-6958.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) has not been published for this regulation and good cause exists for making it effective without publication of an NPRM in the *Federal Register*. The air show poses several dangers to the public including excessive noise and objects falling from any accidents. Accordingly, prompt regulatory action is needed in order to provide for the safety of spectators and participants during the event. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event.

Discussion of Rule

The Coast Guard is adopting a temporary safety zone regulation on the waters of Commencement Bay,

Washington, for the Freedom Fair Air Show. The Coast Guard has determined it is necessary to close the area in the vicinity of the air show in order to minimize the dangers that low-flying aircraft present to persons and vessels. These dangers include, but are not limited to excessive noise and the risk of falling objects from any accidents associated with low flying aircraft. In the event that aircraft require emergency assistance, rescuers must have immediate and unencumbered access to the craft. The Coast Guard, through this action, intends to promote the safety of personnel, vessels, and facilities in the area. Entry into this zone will be prohibited unless authorized by the Captain of the Port or his representative. This safety zone will be enforced by Coast Guard personnel. The Captain of the Port may be assisted by other federal, state, or local agencies.

Regulatory Evaluation

This temporary rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by this rule encompasses an area of Commencement Bay not frequented by commercial navigation. The regulation is established for the benefit and safety of the recreational boating public, and any negative recreational boating impact is offset by the benefits of allowing the participating aircraft to fly. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this portion of Commencement Bay during the time this regulation is in effect. The zone will not have a significant economic impact on a substantial number of small entities due to its short duration and small area. The only vessels likely to be impacted will be recreational boaters and small passenger vessel operators. The event is held for the benefit and entertainment of those above categories. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601-612) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This temporary rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

We have analyzed this temporary rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This temporary rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This temporary rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian tribal governments, because it 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule establishes safety zones which have a duration of no more than two hours each. Due to the temporary safety zones being less than one week in duration, an Environmental Checklist and Categorical Exclusion is not required.

List of Subjects in 33 CFR part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 1 p.m. to 7 p.m. on July 4, 2005, a temporary § 165.T13–007 is added to read as follows:

§ 165.T13–007 Safety Zone: Freedom Fair Air Show, Commencement Bay, WA.

(a) *Location.* The following is a safety zone: All waters of Commencement Bay, Washington State, enclosed by the following points: The northwest corner of at 47°17'37.8" N, 122°28'3.4" W; thence to 47°17'03.5" N, 122°27'32.3" W; thence to 47°16'39.6" N, 122°27'57.8" W; thence to 47°17'13.9" N, 122°29'08.9" W; thence northeast back to the point of origin. [Datum: NAD 1983]

(b) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in the zone except for participants in the event, supporting personnel, vessels registered with the event organizer, or other vessels authorized by the Captain of the Port or his designated representatives.

(c) *Applicable dates.* This section applies from 1 p.m. until 7 p.m., Pacific Daylight Time, on July 4, 2005.

Dated: June 23, 2005.

Stephen P. Metruck,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 05–12926 Filed 6–29–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Prince William Sound 05–008]

RIN 1625–AA87

Security Zones; TAPS Terminal, Valdez Narrows, and Tank Vessels in COTP Prince William Sound

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard proposes establishing security zones encompassing the Trans-Alaska Pipeline System (TAPS) Valdez Terminal Complex (Terminal) in Valdez, Alaska, the Valdez Narrows Tanker Optimum Track Line, and waters 200 yards around any tank vessel operating within the COTP Prince William Sound zone. These security zones are necessary to protect the TAPS Terminal and tank vessels from damage or injury from sabotage or other subversive acts. Entry of vessels into these security zones is prohibited unless specifically authorized by the Captain of the Port, Prince William Sound, Alaska.

DATES: This rule is effective from June 13, 2005, to October 11, 2005.

Comments and related material must reach the Coast Guard on or before August 29, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP Prince William Sound 05-008 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Valdez, 105 Clifton Court, Valdez, Alaska 99686 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Daune Lemmon, U.S. Coast Guard Marine Safety Office Valdez, (907) 835-7266.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 533(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. These security zones are necessary on short notice to protect vessels and people from damage or injury from sabotage or other subversive acts. The duration of this temporary final rule is necessary while a rulemaking for a permanent security zone is completed. For these same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Although the Coast Guard has good cause to issue this effective temporary rule without first publishing a proposed rule, you are invited to submit comments and related material regarding this rule on our before August 29, 2005. We may change the temporary final rule based on your comments.

Discussion of Rule

The Coast Guard is establishing security zones within three different areas in the Captain of the Port (COTP), Prince William Sound Zone. The Trans-Alaska Pipeline (TAPS) Valdez Marine Terminal (Terminal) security zone encompasses the waters of Port Valdez between Allison Creek to the east and Sawmill Spit to the west and offshore to marker buoys A and B (approximately 1.5 nautical miles offshore from the TAPS Terminal). The tank vessel in COTP Prince William Sound Zone encompasses the waters within 200 yards of a tank vessel within the COTP, Prince William Sound Zone. The Valdez Narrows security zone encompasses the waters 200 yards either side of the Tanker Optimum Trackline through Valdez Narrows between Entrance

Island and Tongue Point. This Valdez Narrows zone will be activated and subject to enforcement only when a tank vessel is in this security zone.

These security zones are necessary to protect TAPS Terminal and tank vessels from damage or injury from sabotage or other subversive acts. The duration of this temporary final rule is necessary while a rulemaking for a permanent security zone is completed. The Coast Guard has worked closely with local and regional users of Port Valdez and Valdez Narrows waterways to develop these security zones in order to mitigate the impact on commercial and recreational users.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit in a portion of Port Valdez.

These security zones will not have a significant economic impact on a substantial number of small entities for the reason that vessel traffic can pass safely around the security zones.

Assistance for Small Entities

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

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

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to

health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section

2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g). A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under

ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T17-020 is added to read as follows:

§ 165.T17-020 Port Valdez and Valdez Narrows, Valdez, Alaska-security zones.

(a) *Location.* The following areas are security zones—

(1) *Trans-Alaska Pipeline System (TAPS) Valdez Terminal Complex (Terminal), Valdez, Alaska.* All waters enclosed within a line beginning on the southern shoreline of Port Valdez at 61°04.97' N, 146°26.33' W; thence northerly to the yellow buoy at 61°06.50' N, 146°26.33' W; thence east to the yellow buoy at 61°06.50' N, 146°21.23' W; thence south to 61°05.11' N, 146°21.23' W; thence west along the shoreline and including the area 2000 yards inland along the shoreline to the beginning point. This security zone encompasses all waters approximately 1 mile north, east and west of the TAPS Terminal between Allison Creek (61°05.11' N, 146°21.23' W) and Sawmill Spit (61°04.97' N, 146°26.33' W).

(2) *Tank Vessels in COTP Prince William Sound Zone.* All waters within 200 yards of any tank vessel maneuvering to approach, moor, unmoor or depart the TAPS Terminal or transiting, maneuvering, laying to, or anchored within the boundaries of the Captain of the Port, Prince William Sound Zone described in 33 CFR 3.85-20(b).

(3) *Valdez Narrows, Port Valdez, Valdez, Alaska.* All waters within 200 yards of the Valdez Narrows Tanker Optimum Track line, when a tanker is navigating through the narrows.

(i) The Valdez Narrows Tanker Optimum Track line is a line commencing at 61°05.38' N, 146°37.38' W; thence south westerly to 61°04.05' N, 146°40.05' W; thence southerly to 61°04.05' N, 146°41.20' W.

(ii) This security zone encompasses all waters 200 yards either side of the Valdez Narrows Optimum Track line.

(iii) Whenever a tank vessel is navigating on the Valdez Narrows Optimum Track line, the security zone is activated and subject to enforcement. All vessels forward of a TAPS tanker's movement shall vacate the security zone surrounding the Optimum Track line. Vessels may reenter the security zone astern of a moving tanker provided that a 200 yards separation is given, as required in paragraph (a)(2) of this section.

(b) *Regulations.* (1) The general regulations in 33 CFR 165.33 apply to the security zones established in paragraph (a) of this section. No person or vessel may enter these security zones without permission of the Captain of the Port, Prince William Sound.

(2) All persons and vessels granted permission to enter these security zones must comply with the instructions of the Captain of the Port representative or designated on-scene patrol vessel. These personnel are comprised of commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

(3) The Captain of the Port or his representative or the designated on-scene patrol vessel may authorize vessels to enter the security zones in this section.

(c) *Effective period.* This section is effective from June 13, 2005, to October 11, 2005.

Dated: June 10, 2005.

M.S. Gardiner,

Commander, U.S. Coast Guard, Captain of the Port, Prince William Sound.

[FR Doc. 05-12932 Filed 6-29-05; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2005-0119; FRL-7718-3]

Cyprodinil; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes time-limited tolerances for residues of cyprodinil, 4-cyclopropyl-6-methyl-N-phenyl-2-pyrimidinamine in or on onion, dry bulb; onion, green; and strawberry. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These tolerances will expire on December 31, 2007.

DATES: This regulation is effective June 30, 2005. Objections and requests for hearings must be received on or before August 29, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP-2005-0119. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6463; e-mail address: madden.barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.

- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions discussed above. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm>.

II. Background and Statutory Findings

In the **Federal Register** of January 7, 2005 (70 FR 1435) (FRL-7694-3), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E5012) by IR-4, 681 US Highway #1 South, North Brunswick, NJ 08902-3390. The petition requested that 40 CFR 180.532 be amended by extending the time-limited tolerances to December 31, 2007, for residues of the fungicide, cyprodinil, 4-cyclopropyl-6-methyl-N-phenyl-2-pyrimidinamine in or on the raw agricultural commodities onion, dry bulb at 0.60 part per million (ppm); onion, green at 4.0 ppm; and strawberry at 5.0 ppm. This notice included a

summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant. Comments were received from one individual opposing and objecting to the establishment of tolerances for residues of cyprodinil. The individual criticized IR-4's involvement in the pesticide registration as well as EPA's way of conducting pesticide registration. EPA's response to the public comments received is in Unit V. of this document. The tolerances will expire on December 31, 2007.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL-5754-7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for tolerances for residues of cyprodinil on onion, dry bulb at 0.60 ppm; onion, green at 4.0 ppm; and strawberry at 5.0 ppm.

In the **Federal Register** of September 23, 2003 (68 FR 54808, FRL-7326-4) the Agency published a Final rule establishing tolerances for residues of cyprodinil in or on brassica, head and stem, subgroup 5A; brassica, leafy

greens, subgroup 5B; carrot; herb, subgroup 19A, dried; herb, subgroup 19A, fresh; longan; lychee; pulasan; rambutan; Spanish lime; and turnip, greens. When the Agency conducted the risk assessments in support of this tolerance action it assumed that cyprodinil residues would be present on dry bulb onion, green onion and strawberry as well as on all foods covered by the proposed and established tolerances. Residues on dry bulb onion, green onion and strawberry were included because there were existing time-limited tolerances for these commodities. Therefore, re-establishing the dry bulb onion, green onion and strawberry tolerances will not change the most recent estimated aggregate risks resulting from use of cyprodinil, as discussed in the September 19, 2003 **Federal Register** (68 FR 54808, FRL-7326-4). Refer to the September 19, 2003 **Federal Register** document for a detailed discussion of the aggregate risk assessments and

determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action. Below is a brief summary of the estimated aggregate risks from potential exposures to cyprodinil.

Acute dietary risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure. An acute Population Adjusted Dose (aPAD) of 1.5 mg/kg/day has been identified for females 13–49 years.

In conducting the acute dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated

exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: An unrefined, Tier 1 acute dietary exposure assessment (using tolerance-level residues, DEEM™ (version 7.76) default processing factors and assuming 100% crop treated for all proposed commodities) was conducted for the females 13–49 years old population subgroup.

The acute dietary exposure from food to cyprodinil will occupy 2% of the aPAD for the females 13–49 years old. In addition, there is potential for acute dietary exposure to cyprodinil in drinking water. After calculating drinking water levels of comparison (DWLOCs) and comparing them to the estimated environmental concentrations (EECs) for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 1 of this unit:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO CYPRODINIL

| Population Subgroup/ | aPAD (mg/kg) | % aPAD/ (Food) | Surface Water EEC/ (ppb) | Ground Water EEC/ (ppb) | Acute DWLOC/ (ppb) |
|-------------------------|--------------|----------------|--------------------------|-------------------------|--------------------|
| Females 13–49 years old | 1.5 | 2 | 32.9 | 0.16 | 44,000 |

A chronic Population Adjusted Dose (cPAD) of 0.03 mg/kg/day has been identified for all population subgroups. In conducting the chronic dietary risk assessment EPA used DEEM-FCID™, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure

assessment: An unrefined, Tier 1 chronic dietary exposure assessment (using tolerance-level residues, DEEM default processing factors, and assuming 100% crop treated for all proposed commodities) was conducted for the general U.S. population and various population subgroups.

EPA has concluded that exposure to cyprodinil from food will utilize 25% of the cPAD for the U.S. population, 65% of the cPAD for (the most highly exposed population subgroup) children 1–2 years old, 32% of the cPAD for all

infants <1 year old, and 21% of the cPAD for females 13–49 years old. Cyprodinil is not registered for use on any sites that would result in residential exposure. In addition, there is potential for chronic dietary exposure to cyprodinil in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 2:

TABLE 2. AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO CYPRODINIL

| Population/Subgroup | cPAD/mg/kg/day | %cPAD/ (Food) | Surface Water EEC/ (ppb) | Ground/ Water EEC/ (ppb) | Chronic/ DWLOC (ppb) |
|---------------------------|----------------|---------------|--------------------------|--------------------------|----------------------|
| U.S. Population | 0.03 | 25 | 8.1 | 0.16 | 790 |
| All infants < 1 year old | 0.03 | 32 | 8.1 | 0.16 | 200 |
| Children 1 – 2 years old | 0.03 | 65 | 8.1 | 0.16 | 100 |
| Females 13 – 49 years old | 0.03 | 21 | 8.1 | 0.16 | 710 |

Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to cyprodinil residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The results of Multiresidue Method testing of cyprodinil and its metabolite CGA-232449 have been forwarded to the Food and Drug Administration (FDA). Cyprodinil was tested according to the FDA Multiresidue protocols (Protocols C, D, and E), and acceptable recoveries were obtained for cyprodinil fortified in apples at 0.50 ppm using Protocol D. The petitioner is proposing the Method AG-631A as a tolerance enforcement method for residues of cyprodinil in/on the subject crops. The method includes confirmatory procedures using gas chromatography/nitrogen/phosphorus detector (GC/NPD). The method has successfully undergone radiovalidation using ¹⁴C-labeled tomato samples and independent laboratory validation. In addition, the method has been the subject of acceptable Agency petition method validations on stone fruits and almond nutmeat and hulls. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: residuemethods@epa.gov.

B. International Residue Limits

Canada, Codex, and Mexico do not have maximum residue limits (MRLs) for residues of cyprodinil in/on the proposed crops. Therefore, harmonization is not an issue.

V. EPA's Response to Public Comments Received Regarding the Notice of Filing

Comments were received from one individual opposing and objecting to the extension of tolerances for residues of cyprodinil. The individual criticized IR-4's involvement in the pesticide registration as well as EPA's way of conducting pesticide registration. The comments were in response to the notice of filing published in the **Federal Register** of January 7, 2005 (70 FR 1435) (FRL-7694-3). The communication objected to extension of the proposed tolerances for several reasons and mostly involved generalized and unsubstantiated disagreement with EPA's risk assessment methodologies or safety findings. Each comment is listed below, followed by the Agency response.

One comment indicated that IR-4 and Rutgers University are pushing more toxics upon this nation. Agency response: Although the concerns regarding IR-4 and Rutgers University to seek pesticide tolerances and registrations are not germane to EPA's statutory basis for acting on the cyprodinil tolerance petition, and thus technically no response is required to this comment, EPA can provide the following information regarding the Interregional Research Project Number 4 (IR-4). The IR-4 program was created by Congress in 1963 in order to assist minor crop growers in the process of obtaining pesticide registrations. IR-4 National Coordinating Headquarters is located at Rutgers University in New Jersey and receives the majority (90%) of its funding from the USDA. It is the only publicly funded program that conducts research and submits petitions for tolerances. IR-4 operates in collaboration with USDA, the Land Grant University System, the agrochemical industry, commodity associations, and EPA. IR-4 identifies needs, prioritizes accordingly, and conducts research. The majority (over 80%) of IR-4's research is conducted on reduced-risk chemicals. In addition to the work done in pesticide registration, IR-4 develops risk mitigation measures for existing registered products.

Another comment noted that 8.4% of the chronic reference dose (RfD) for children 1 to 2 year old is contemplated and that this was done for profiteering and will harm children. Agency Response: For dietary risk assessment (other than cancer) a chronic RfD represents the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment with an uncertainty factor (UF) applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. For cyprodinil an UF of 100 was used, 10X to account for interspecies differences and 10X for intraspecies differences (RfD = NOAEL/UF). Given the use of a NOAEL and UF to calculate the chronic RfD the Agency feels that estimated exposures less than 100% of the chronic RfD will be protective of the general population, and to infants and children.

An additional comment indicated that the standard for a "reasonable certainty" is simply not a high enough standard. Agency Response: Under the existing legal framework provided by section 408 of the FFDCA, EPA is authorized to establish pesticide tolerances or

exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information."

A final comment stated that this chemical should not be allowed to be sold until the Agency has determined if cyprodinil has a common mechanism of toxicity with other pesticides. Agency response: The comment applied to the use of "available data" concerning the cumulative effects of the pesticide's residues and "other substances that have a common mechanism of toxicity." In this case, EPA did not assume that this chemical has a common mechanism of toxicity with other substances as the chemical does not generate metabolites produced also by other chemicals. For specific information regarding EPA's approach to the use of common mechanism of toxicity to evaluate the cumulative effects of chemicals, please refer to EPA's website at <http://www.epa.gov/pesticides/cumulative/> to see policy statements.

In conclusion, the comments contained no scientific data or other substantive evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to cyprodinil from the re-establishment of these tolerances.

VI. Conclusion

Therefore, these tolerances are re-established for residues of cyprodinil, 4-cyclopropyl-6-methyl-N-phenyl-2-pyrimidinamine, in or on onion, dry bulb at 0.60 ppm, onion, green at 4.0 ppm, and strawberry at 5.0 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the

FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP-2005-0119 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 29, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564-6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is

described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP-2005-0119, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public

Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 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." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure

“meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This rule 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

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 this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 21, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.532 [Amended]

■ 2. In § 180.532, in the table to paragraph (a)(2), amend the entries for “Onion, dry bulb”; “Onion, green”; and

“Strawberry” by revising the expiration date “12/31/04” to read “12/31/07.”

[FR Doc. 05–12921 Filed 6–29–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0153; FRL–7717–1]

Ethyl Maltol; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-ethyl-3-hydroxy-4H-pyran-4-one, also known as ethyl maltol when used as an inert ingredient in or on growing crops, when applied to raw agricultural commodities after harvest, or to animals. Firmenich Incorporated submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of ethyl maltol.

DATES: This regulation is effective June 30, 2005. Objections and requests for hearings must be received on or before August 29, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit XI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0153. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Princess Campbell, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8033; e-mail address: campbell.princess@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

II. Background and Statutory Findings

In the **Federal Register** of December 20, 2000 (65 FR 79834) (FRL–6751–9), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 6E4758) by Firmenich Incorporated, P.O. 5880, Princeton, NJ 08543. The petition requested that 40 CFR 180.1001(c) and (e), re-designated as 40 CFR 180.910 and 40 CFR 180.930, respectively (69 FR 23113, April 28, 2004 (FRL–7335–4)), be

amended by establishing an exemption from the requirement of a tolerance for residues of ethyl maltol (CAS Reg. No. 4940-11-8) when used as an inert ingredient. This notice included a summary of the petition prepared by the petitioner, Firmenich Incorporated. There were no comments received in response to the notice of filing.

In later correspondence with the Agency, the petitioner, Firmenich Incorporated, offered to accept a limitation for ethyl maltol of not more than 0.2% of the formulated product. The tolerance exemption established today includes that limitation.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as

carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by ethyl maltol are discussed in this unit.

A. Toxicity Data

The following table summarizes the toxicological aspects of ethyl maltol. Even though the studies which yielded the data were not conducted in accordance with the Agency guidelines, and lacked some experimental details, the studies appear to be well conducted. Thus, the results of these studies can be used for regulatory purposes. In addition to using the toxicity data, the Agency also conducted a Structure Activity Relationship (SAR) analysis for ethyl maltol. This analysis supports the conclusions suggested by the toxicity data, namely, that ethyl maltol poses a low concern for adverse effects on human health.

TOXICITY DATA FOR ETHYL MALTOL

| Study | Result |
|----------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Acute oral toxicity mice (male) Dose= 5% | Lethal Dose (LD) ₅₀ = 780 milligram/kilogram/day (mg/kg/day) |
| Acute oral toxicity rats (male) Dose = 10% | LD ₅₀ = 1,150 mg/kg/day |
| Acute oral toxicity rats (female) Dose = 10% | LD ₅₀ = 1,200 mg/kg/day |
| 90-Day subchronic oral toxicity (rats) Dose = 0, 250, 500, or 1,000 mg/kg/day | NOAEL = 250 mg/kg/day LOAEL = 500 mg/kg/day |

TOXICITY DATA FOR ETHYL MALTOL—Continued

| Study | Result |
|--------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 90-Day subchronic oral toxicity (dogs) Dose = 0, 125, 250, or 500 mg/kg/day | NOAEL ≥ 500 mg/kg/day (highest dose tested (HDT)) LOAEL = not observed but would be > 500 mg/kg/day |
| 2-year chronic oral toxicity (rats) Dose= 0, 50, 100, or 200 mg/kg/day | NOAEL ≥ 200 mg/kg/day LOAEL = not observed but would be > 200 mg/kg/day |
| 2-year chronic toxicity (dogs) Dose= 0, 50, 100, or 200 mg/kg/day | NOAEL ≥ 200 mg/kg/day LOAEL = not observed but would be > 200 mg/kg/day |
| Reproduction and fertility effects | Parental/Systemic NOAEL ≥ 200 mg/kg/day Parental/Systemic LOAEL = not observed but would be > 200 mg/kg/day No significant treatment related effects on fertility, gestation, parturition, lactation, or fetal development. |
| Carcinogenicity rats | no evidence of carcinogenicity |
| Carcinogenicity mice | no evidence of carcinogenicity |
| Gene Mutation - Ames (5 strains of <i>S. typhimurium</i>) | non-mutagenic |
| Gene Mutation-Drosophila | no increase in sex linked recessive lethal mutations |
| Gene Mutation-mouse micronucleus | no increase in polynucleated cells |
| Metabolism and pharmacokinetics | 64% of the 10 mg/kg total dose excreted within 24 hours |

B. Structure Activity Relationship

Toxicity for ethyl maltol was assessed, in part, by a process called SAR. In this process, the chemical's structural similarity to other chemicals (for which data are available) is used to determine toxicity. For human health, this process, can be used to assess

absorption and metabolism, mutagenicity, carcinogenicity, developmental and reproductive effects, neurotoxicity, systemic effects, immunotoxicity, and sensitization and irritation. This is a qualitative assessment using terms such as good, not likely, poor, moderate, or high.

Ethyl maltol is not absorbed from the skin if it is not in solution, and moderately absorbed from the skin if it is in solution based on physio-chemical properties (pchem). It is absorbed from the lung and GI tract based on data from surrogate chemicals. There is an uncertain concern for mutagenicity. Overall, health concern is rated as low.

C. Regulatory Characterizations of Toxicity by Other Governmental Organizations

The Food and Drug Administration has classified ethyl maltol as GRAS (generally recognized as safe) for use as a direct food additive as a flavoring agent (21 CFR 172.515-Synthetic Flavoring Substances and Adjuvants). In 1970, the Joint Food and Agricultural Organization of the United Nations/World Health Organization (FAO/WHO) Expert Committee on Food Additives established a group ADI (Acceptable Daily Intake) of 0-2mg/kg-bodyweight (bw) for ethyl maltol (<http://www.inchem.org/documents/jecfa/jecmono/v048aje01.htm>)

D. Conclusions

Ethyl maltol is a member of a class of chemicals known as flavor enhancers. It is almost completely absorbed from the gut and appears in the urine as gluconamide or sulfate within two hours. The toxicity data in the previous Table was used to assess the toxicity of ethyl maltol. The acute oral LD₅₀ values which ranged from 780 mg/kg and 1,270 mg/kg place ethyl maltol in Toxicity Category III. EPA categorizes acute toxicity as I, II, III, or IV, with Category IV being the Agency's lowest level of acute toxicity. Also, there were no effects observed on the skin of rabbits when ethyl maltol was used at a dose of 5,000 mg/kg.

The report from the structure activity team (SAT) cites an uncertain concern for mutagenicity. This uncertainty was based on positive dose-related activity against only one *Salmonella* strain (TA 100), but the mutagenic effects were not reproducible. Given the lack of reproducibility, ethyl maltol was classified as non-mutagenic in the Ames test.

The SAR assessment did not indicate any concerns for carcinogenicity, developmental or reproductive concerns. The available repeated dose

toxicity studies have NOAELs that are equal to or greater than 200 mg/kg/day.

V. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food.* Ethyl maltol has been used in foodstuffs as a flavoring agent since the 1950's. Ethyl maltol is estimated to have a per capita daily intake of 0.0045 mg/kg from use as a food additive (<http://www.inchem.org/documents/jecfa/jecmono/v048aje01.htm>). Using a 60 kg person the daily intake becomes 0.27 mg/day, based on ethyl maltol's use as a food additive. The use of ethyl maltol as an inert ingredient in a pesticide product, especially considering the limitation of no more than 0.2% of the formulated product, should not significantly increase this estimate.

2. *Drinking water exposure.* The SAT report states that migration of ethyl maltol to ground water is moderate to rapid. Ethyl maltol has an estimated water solubility of 1.5 to 24 grams/Liter (g/L), a volatilization half-life of 81 hours in rivers and 41 days in lakes, and biodegrades rapidly. Based on biodegradation models and on the SAT's professional judgement, ethyl maltol undergoes primary (partial) aerobic biodegradation in days to weeks, and is completely biodegraded in weeks. The biodegradability estimate and Henry's Law Constant suggest that the residence time of ethyl maltol in surface waters is controlled by the biodegradation rate and not the rate of volatilization. Ethyl maltol has the potential to be mobile in soil, but if released to aerobic soils its migration would be mitigated by biodegradation. If it enters anaerobic soils (as in a landfill leachate scenario) biodegradation would be expected to be somewhat slower but still relatively rapid. Therefore, significant concentrations of ethyl maltol are very unlikely in sources of drinking water.

B. Other Non-Occupational Exposure

Ethyl maltol is used as a flavor enhancer for cigarettes, antiseptics, and perfumes. Because use as a flavoring substance generally constitutes such a low percentage of the formulation exposure is likely to be minimal.

VI. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to the above chemical substances and any other substances. Ethyl maltol does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that this chemical substance has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at <http://www.epa.gov/pesticides/cumulative/>.

VII. Safety Factor for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data unless EPA concludes that a different margin of safety will be safe for infants and children. For ethyl maltol, based on the expected minimal oral toxicity, as demonstrated by toxicity studies with NOAELs greater than 200 mg/kg/day, the available toxicity data which indicates no significant treatment related effects on fertility, gestation, parturition, lactation, or fetal development, EPA has not used a safety factor analysis to assess the risk. For the same reasons a tenfold safety factor is unnecessary.

VIII. Determination of Safety for U.S. Population

Based on its review and evaluation of the available data on toxicity and exposure, and considering the 0.2% limitation in the formulation offered by the petitioner, EPA finds that exempting ethyl maltol (CAS Reg. No. 4940-11-8)

from the requirement of a tolerance will be safe for the general population including infants and children.

IX. Other Considerations

A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect. EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing ethyl maltol for endocrine effects may be required.

B. Analytical Method

An analytical method is not required for tolerance enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance.

C. Existing Tolerances

There are no existing tolerance exemptions for ethyl maltol.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for ethyl maltol nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusions

Therefore, EPA is establishing a tolerance exemption for ethyl maltol (CAS Reg. No. 4940-11-8) with a limitation in the pesticide formulation of not more than 0.2%.

XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new

section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP-2005-0153 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 29, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564-6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit XI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP-2005-0153, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by

courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045,

entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 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.” This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal

Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This rule 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XIII. Congressional Review Act

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 this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 20, 2005.

Lois Rossi,
Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910 the table is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemption from the requirement of a tolerance.

* * *

| Inert ingredients | Limits | Uses |
|--------------------------------------|--------------------------------------------------|--------------------|
| * * * * | * | * * |
| Ethyl maltol (CAS Reg. No.4940-11-8) | Not more than 0.2 % of the pesticide formulation | Odor masking agent |
| * * * * | * | * * |

■ 3. In § 180.930 the table is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.930 Inert ingredients applied to animals; exemption from the requirement of a tolerance.

* * *

| Inert ingredients | Limits | Uses |
|--------------------------------------|--------------------------------------------------|--------------------|
| * * * * | * | * * |
| Ethyl maltol (CAS Reg. No.4940-11-8) | Not more than 0.2 % of the pesticide formulation | Odor masking agent |
| * * * * | * | * * |

[FR Doc. 05-12920 Filed 6-29-05; 8:45 am]
BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2005-0143; FRL-7722-3]

Extension of Tolerances for Emergency Exemptions (Multiple Chemicals)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for the pesticides listed in Unit II. of the **SUPPLEMENTARY INFORMATION**. These actions are in response to EPA’s granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish

a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

DATES: This regulation is effective June 30, 2005. Objections and requests for hearings must be received on or before August 29, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket ID

number OPP-2005-0143. 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 Public Information and Records Integrity Branch (PIRIB), Rm.

119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: See the table in this unit for the name of a specific contact person. The following information applies to all contact persons: Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

| Pesticide/CFR cite | Contact person |
|-----------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| Terbacil; 180.209 Eucalyptus oil; 180.1241; Thymol; 180.1240 | Barbara Madden Sec-18-Mailbox@epamail.epa.gov (703) 305-6463 |
| N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide; 180.527 | Andrew Ertman Sec-18-Mailbox@epamail.epa.gov (703) 308-9367 |
| Pyriproxyfen; 180.510 | Andrea Conrath Sec-18-Mailbox@epamail.epa.gov (703) 308-9356 |
| Maneb; 180.110, Bifenthrin; 180.442, Myclobutanil; 180.443, Tebuconazole; 180.474, | Libby Pemberton Sec-18-Mailbox@epamail.epa.gov (703) 308-9364 |

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

II. Background and Statutory Findings

EPA published final rules in the **Federal Register** for each chemical/commodity listed. The initial issuance of these final rules announced that EPA, on its own initiative, under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104-170) was establishing time-limited tolerances.

EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under

an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or time for public comment.

EPA received requests to extend the use of these chemicals for this year's growing season. After having reviewed these submissions, EPA concurs that emergency conditions exist. EPA assessed the potential risks presented by residues for each chemical/commodity. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18.

The data and other relevant material have been evaluated and discussed in the final rule originally published to support these uses. Based on that data and information considered, the Agency reaffirms that extension of these time-limited tolerances will continue to meet the requirements of section 408(l)(6) of the FFDCA. Therefore, the time-limited tolerances are extended until the date listed. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although

these tolerances will expire and are revoked on the date listed, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on the commodity after that date will not be unlawful, provided the residue is present as a result of an application or use of a pesticide at a time and in a manner that was lawful under FIFRA, the tolerance was in place at the time of the application, and the residue does not exceed the level that was authorized by the tolerance. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Tolerances for the use of the following pesticide chemicals on specific commodities are being extended:

Bifenthrin. EPA has authorized under FIFRA section 18 the use of bifenthrin on sweet potatoes for control of beetles complex in North Carolina. This regulation extends a time-limited tolerance for residues of the insecticide bifenthrin ((2-methyl [1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropane carboxylate) in or on sweet potato, roots at 0.05 parts per million (ppm) for an additional three-year period. This tolerance will expire and is revoked on December 31, 2008. A time-limited tolerance was originally published in the **Federal Register** of September 27, 2001 (66 FR 49308) (FRL-6801-5), subsequently corrected by a technical amendment published in the **Federal Register** of September 3, 2003 (68 FR 52353) (FRL-7323-9).

Eucalyptus oil. EPA has authorized under FIFRA section 18 the use of eucalyptus oil in beehives for control of varroa mites in Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Iowa, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, Minnesota, Mississippi, North Carolina, Nebraska, New Jersey, New York, Oregon, Pennsylvania, Tennessee, Texas, Utah, Vermont, and Washington. This regulation extends a time-limited exemption from the requirement of a tolerance for residues of the biopesticide eucalyptus oil in or on honey and honeycomb for an additional 2-year period. This exemption from the requirement of a tolerance will expire and is revoked on June 30, 2007. A time-limited exemption from the requirement of a tolerance was originally published in the **Federal Register** of June 6, 2003 (68 FR 33882) (FRL-7308-1).

N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-

2-yl]oxy]acetamide. EPA has authorized under FIFRA section 18 the use of N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide on wheat and triticale for control of ryegrass in Idaho and Oregon. This regulation extends a time-limited tolerance for combined residues of the herbicide N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-N-methylethyl benzenamine moiety in or on wheat grain at 1 part per million (ppm), wheat forage at 10 ppm, wheat hay at 2 ppm, wheat straw at 0.5 ppm, meat and fat of cattle, goats, horses, hogs, and sheep at 0.05 ppm, meat byproducts (other than kidney) of cattle, goats, horses, hogs, and sheep at 0.10 ppm and kidney of cattle, goats, horses, hogs, and sheep at 0.50 ppm for an additional two-year period. These tolerances will expire and are revoked on June 30, 2007. Time-limited tolerances were originally published in the **Federal Register** of August 6, 1999 (64 FR 42839) (FRL-6091-9).

Maneb. EPA has authorized under FIFRA section 18 the use of maneb on walnuts for control of bacterial blight in California. This regulation extends a time-limited tolerance for combined residues of the fungicide maneb (manganous ethylenebisdithiocarbamate) calculated as zinc ethylenebisdithiocarbamate, and its metabolite ethylenethiourea in or on walnuts at 0.05 ppm for an additional two-year period. This tolerance will expire and is revoked on December 31, 2007. A time-limited tolerance was originally published in the **Federal Register** of March 17, 1999 (64 FR 13097) (FRL-6067-9).

Myclobutanil. EPA has authorized under FIFRA section 18 the use of myclobutanil on peppers for control of powdery mildew in California. This regulation extends a time-limited tolerance for combined of the fungicide myclobutanil alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile and its alcohol metabolite (alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound) in or on pepper at 1.0 ppm for an additional 3-year period. This tolerance will expire and is revoked on June 30, 2008. A time-limited tolerance was originally published in the **Federal Register** of September 16, 1998 (63 FR 49472) (FRL-6025-1).

Pyriproxyfen. EPA has authorized under FIFRA section 18 the use of pyriproxyfen on succulent beans for control of whitefly in Florida and Georgia. This regulation extends a time-

limited tolerance for combined of the insect grown regulator, pyriproxyfen 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine in or on bean, succulent at 0.1 ppm for an additional 3-year period. This tolerance will expire and is revoked on June 30, 2008. A time-limited tolerance was originally published in the **Federal Register** of September 5, 2001 (66 FR 46390) (FRL-6798-6).

Tebuconazole. EPA has authorized under FIFRA section 18 the use of tebuconazole on barley and/or wheat for control of Fusarium head blight in Kentucky, Illinois, Montana, and South Dakota. This regulation extends time-limited tolerances for residues of the fungicide tebuconazole (alpha-[2-(4-chlorophenyl)-ethyl]-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol) in or on barley grain at 2.0 ppm, barley hay at 20.0 ppm, and barley straw at 20.0 ppm; wheat hay at 15.0 ppm and wheat straw at 2.0 ppm for an additional 3-year period. These tolerances will expire and are revoked on June 30, 2008. Time-limited tolerances were originally published in the **Federal Register** on June 20, 1997 (62 FR 33550) (FRL-5725-7).

Terbacil. EPA has authorized under FIFRA section 18 the use of terbacil on watermelon for control of broadleaf weeds in Delaware and Virginia. This regulation extends a time-limited tolerance for combined residues of the herbicide terbacil (3-tert-butyl-5-chloro-6-methyluracil and its three metabolites 3-tert-butyl-5-chloro-6-hydroxymethyluracil, 6-chloro-2,3-dihydro-7-hydroxymethyl 3,3-dimethyl-5H-oxazolo (3,2-a) pyrimidin-5-one, and 6-chloro-2,3-dihydro-3,3,7-trimethyl-5H-oxazolo (3,2-a) pyrimidin-5-one), calculated as terbacil in or on watermelon at 0.4 ppm for an additional 2-year period. This tolerance will expire and is revoked on June 30, 2007. A time-limited tolerance was originally published in the **Federal Register** of June 20, 1997 (62 FR 33557) (FRL-5718-7).

Thymol. EPA has authorized under FIFRA section 18 the use of thymol in beehives for control of varroa mites in Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Iowa, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, Minnesota, Mississippi, North Carolina, Nebraska, New Jersey, New York, Oregon, Pennsylvania, Tennessee, Texas, Utah, Vermont, and Washington. This regulation extends a time-limited exemption from the requirement of a tolerance for residues of the biopesticide thymol in or on honey and honeycomb

for an additional 2-year period. This exemption from the requirement of a tolerance will expire and is revoked on June 30, 2007. A time-limited exemption from the requirement of a tolerance was originally published in the **Federal Register** of June 6, 2003 (68 FR 33882) (FRL-7308-1).

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP-2005-0143 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 1, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the

public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564-6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP-2005-0143, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Statutory and Executive Order Reviews

This final rule establishes time-limited tolerances under section 408 of the FFDCA. The Office of Management

and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established under section 408(l)(6) of the FFDCA in response to an exemption under FIFRA section 18, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 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.” This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This rule 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Congressional Review Act

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 this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: June 21, 2005.

Losi Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—Tolerances and exemptions from tolerances for pesticide chemicals in food

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

Subpart C—[Amended]

§ 180.110 [Amended]

■ 2. In § 180.110, in the table to paragraph (b), amend the entry for walnut by revising the expiration date “12/31/05” to read “12/31/07.”

§ 180.209 [Amended]

■ 3. In § 180.209, in the table to paragraph (b), amend the entry for watermelon by revising the expiration date “6/30/05” to read “6/30/07.”

§ 180.442 [Amended]

■ 4. In § 180.442, in the table to paragraph (b), amend the entry for sweet potato, roots by revising the expiration date “12/31/05” to read “12/31/08.”

§ 180.443 [Amended]

■ 5. In § 180.443, in the table to paragraph (b), amend the entry for pepper by revising the expiration date “6/30/05” to read “6/30/08.”

§ 180.474 [Amended]

■ 6. In § 180.474, in the table to paragraph (b), amend the entries for barley, grain; barley, hay; barley, straw; wheat, hay; and wheat, straw by revising the expiration date “06/30/05” to read “6/30/08.”

§ 180.510 [Amended]

■ 7. In § 180.510, in the table to paragraph (b), amend the entry for bean, succulent by revising the expiration date “6/30/05” to read “6/30/08.”

§ 180.527 [Amended]

■ 8. In § 180.527, in the table to paragraph (b), for all the entries, revise the expiration date “6/30/05” to read “6/30/07.”

Subpart D—[Amended]

■ 9. Section 180.1240 is revised to read as follows:

§ 180.1240 Thymol; exemption from the requirement of a tolerance.

Time-limited exemptions from the requirement of a tolerance are established for residues of thymol on honey and honeycomb in connection with use of the pesticide under section 18 emergency exemptions granted by the EPA. These time-limited exemptions from the requirement of a tolerance for residues of thymol will expire and are revoked on June 30, 2007.

■ 10. Section 180.1241 is revised to read as follows:

§ 180.1241 Eucalyptus oil; exemption from the requirement of a tolerance.

Time-limited exemptions from the requirement of a tolerance are established for residues of eucalyptus oil on honey and honeycomb in connection with use of the pesticide under section 18 emergency exemptions granted by the EPA. These time-limited exemptions from the requirement of a tolerance for residues of eucalyptus oil will expire and are revoked on June 30, 2007.

[FR Doc. 05–12919 Filed 6–29–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–7930–7]

Ocean Dumping; De-Designation of Ocean Dredged Material Disposal Sites and Designation of New Sites; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: In the **Federal Register** on March 15, 2005 (70 FR 12632), the Environmental Protection Agency (EPA) proposed to correct a final rule that appeared in the **Federal Register** of March 2, 2005 (70 FR 10041). The document de-designated certain ocean dredged material disposal sites and designated new sites located off the mouth of the Columbia River near the states of Oregon and Washington. The coordinates for one of those sites, the Shallow Water site, contained a typographical error in the Overall Site Coordinates. In today’s final rule, EPA finalizes the correction of the coordinates for the Shallow Water site.

DATES: This final rule is effective June 30, 2005.

ADDRESSES: EPA has established a docket for this action which is available

for inspection at the EPA Region 10 Seattle Office. For access to the docket, contact John Malek, Ocean Dumping Coordinator, U.S. Environmental Protection Agency, Region 10 (EPTA-083), 1200 Sixth Avenue, Seattle, WA 98101-1128, telephone at (206) 553-1286, e-mail: malek.john@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

In the **Federal Register** of Tuesday, March 15, 2005 (70 FR 12632), EPA proposed to correct a typographical error in the coordinates for the Shallow Water site, designated as an ocean dredged material disposal site by EPA on Wednesday, March 2, 2005 (70 FR 10041)—EPA's final rule to de-designate and to designate ocean dredged material disposal sites off the mouth of the Columbia River near the states of Oregon and Washington. The typographical error was printed in the Overall Site Coordinates for the Shallow Water site as published on page 10055 in **Federal Register**. EPA did not receive any comments on the proposed correction. Today, EPA finalizes the correction of the typographical error.

II. Statutory and Executive Order Reviews

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "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 entitlements, 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.

It has been determined that this final rule, which is a technical correction, is not a "significant regulatory action" under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

2. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and recordkeeping requirements affecting ten or more non-Federal respondents be approved by OPM. Since the final rule does not establish or modify any information or recordkeeping requirements, it is not subject to the provisions of the Paperwork Reduction Act.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires Federal agencies 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 rule on small entities, small entity is defined as: (1) A small business, as codified in the Small Business Size Regulations at 13 CFR part 121; (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 which is independently owned and operated and is not dominant in its field. EPA has determined that this final rule, a technical correction, will not have a significant impact on small entities. After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104-4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, 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 to State, local and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires 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 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 the alternative was not adopted. Before 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. This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal government or the private sector. EPA has also determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this rule.

5. Congressional Review Act

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 action 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 action in the **Federal Register**. A major rule

cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective immediately upon publication in the **Federal Register**.

6. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (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 various levels of government." This final rule, a technical correction, does not have federalism implications. It 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 various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

7. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. The final rule is a technical correction and does not establish any regulatory policy with tribal implications. Thus, Executive Order 13175 does not apply to this rule.

8. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

Executive Order 13045 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 Agency 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. This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this final action, a technical correction, present a disproportionate risk to children.

9. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a "significant regulatory action" as defined under Executive Order 12866.

10. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272) 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, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rule is a technical correction and does not involve technical standards.

11. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. Because this final

rule is a technical correction with no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: June 22, 2005.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

■ For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as set forth below:

PART 228—[AMENDED]

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

■ 2. Section 228.15 is amended by revising paragraph (n)(8)(i) as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *
(n) * * *
(8) * * *

(i) Location: Overall Site Coordinates:
46°15'31.64" N, 124°05'09.72" W;
46°14'17.66" N, 124°07'14.54" W;
46°15'02.87" N, 124°08'11.47" W;
46°15'52.77" N, 124°05'42.92" W. Drop
Zone: 46°15'35.36" N, 124°05'15.55" W;
46°14'31.07" N, 124°07'03.25" W;
46°14'58.83" N, 124°07'36.89" W;
46°15'42.38" N, 124°05'26.65" W (All
NAD 83)

* * * * *

[FR Doc. 05-12941 Filed 6-29-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[TRI-2005-0027; FRL-7532-5]

Deletion of Methyl Ethyl Ketone; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today amending its regulations to delete methyl ethyl ketone (MEK) from the list of chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). This action is being taken to comply with a DC Circuit decision and order

requiring the Agency to delete MEK. Because this action is being taken to conform the regulations to the court's order, notice and comment are unnecessary, and this rule is effective immediately. Upon promulgation of this rule, facilities will no longer be required under EPCRA section 313 to report releases of and other waste management information on MEK, including those that occurred during the 2004 reporting year.

DATES: This final rule is effective on June 30, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. TRI-2005-0027. 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 OEI 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 OEI Docket is 202-566-1752.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Toxics Release Inventory Program Division, Office of Information Analysis and Access (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone

number: 202-566-0743; fax number: 202-566-0741; e-mail: bushman.daniel@epamail.epa.gov, for specific information on this proposed rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Toll free: 1-800-424-9346, in Virginia and Alaska: 703-412-9810 or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Final Rule Apply to Me?

You may be potentially affected by this proposed rule if you manufacture, process, or otherwise use methyl ethyl ketone. Potentially affected categories and entities may include, but are not limited to:

| Category | Examples of potentially affected entities |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Industry | SIC major group codes 10 (except 1011, 1081, and 1094); 12 (except 1241); or 20 through 39; or industry codes 4911 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4931 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 <i>et seq.</i>); or 5169; or 5171; or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis). |
| Federal Government | Federal facilities. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background and Rationale for Action

In the **Federal Register** of March 30, 1998 (63 FR 15195), EPA issued a Denial of Petition entitled "Methyl Ethyl Ketone; Toxic Chemical Release Reporting; Community Right-to-Know." The denial was in response to a petition from the Ketones Panel of the Chemical Manufacturers Association (CMA) that requested the deletion of methyl ethyl ketone from the list of chemicals reportable under EPCRA section 313 and PPA section 6607.

The American Chemistry Council (formerly CMA) filed suit challenging

EPA's decision in the United States District Court for the District of Columbia. Subsequently, the court granted summary judgment in favor of EPA. See *American Chemistry Council v. Whitman*, 309 F.Supp. 2d 111 (D.D.C. 2004). On appeal, the Court of Appeals for the District of Columbia Circuit reversed the lower court's decision, vacating the lower court's decision, and directing the district court to issue an order to "direct EPA to delete MEK from the TRI." 406 F.3d 738, 742 (D.C. Cir. 2005). The Circuit Court issued its mandate on June 13, 2005 (Ref. 1).

Accordingly, EPA is issuing this final rule revising the EPCRA section 313 list of reportable chemicals in 40 CFR 372.65 to delete methyl ethyl ketone. Under 5 U.S.C. 553(b)(3)(A), the notice-and-comment requirements of the Federal Administrative Procedure Act (5 U.S.C. 551-706) do not apply where the Agency "for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Because this action is being taken merely to comply with the court's direction and because the court's order left EPA no discretion in implementing that order EPA hereby

finds that notice and comment on this action are unnecessary.

This action is effective immediately upon publication in the **Federal Register**. Under 5 U.S.C. 553(d)(3), 30-day advance notice of a rule is not required where the Agency provides otherwise for good cause. EPA finds that good cause for an immediate effective date exists in this case, because as explained below, there would be no purpose in requiring facilities to file reports for a chemical that does not satisfy any of the criteria of EPCRA section 313(d)(2)(A)-(C).

This action becomes effective June 30, 2005. Since the court order removing MEK from the TRI was issued before July 1, 2005 the last year in which facilities had to file a TRI report for MEK was 2004, covering releases and other activities that occurred in 2003. EPCRA section 313(d)(4) provides that "[a]ny revision" to the section 313 list of toxic chemicals shall take effect on a delayed basis. EPA interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list. For deletions, EPA may, in its discretion, make such actions immediately effective. An immediate effective date is authorized,

in these circumstances, under 5 U.S.C. 553(d)(1) because a deletion from the section 313 list relieves a regulatory restriction. EPA believes that where a chemical does not satisfy any of the criteria of section 313(d)(2)(A)(C), no purpose is served by requiring facilities to collect data or file TRI reports for that chemical, or, therefore, by leaving that chemical on the section 313 list for any additional period of time. This construction of section 313(d)(4) is consistent with previous rules deleting chemicals from the section 313 list. For further discussion of the rationale for immediate effective dates for EPCRA section 313 delistings, see 59 FR 33205 (June 28, 1994).

III. References

1. *American Chemistry Council v. Johnson*, No. 04–5189, (DC Cir. June 13, 2005).

IV. Statutory and Executive Order Reviews

This rule is not a significant regulatory action, as defined under EO 12866, and therefore does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). It also does not meet the requirements for review under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4), Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), Executive Order 13175, entitled Consultation and Coordination With Indian Tribal Governments (65 FR 67249, November 9, 2000), Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001), or Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). In addition, this rule does not impose any impact on small entities and thus does not require preparation of a regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

The deletion of methyl ethyl ketone from the EPCRA section 313 list will reduce the overall reporting and recordkeeping burden estimate provided for EPCRA section 313, but this action does not require any review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et*

seq. until EPA decides to subtract the total burden eliminated by today's action from the EPCRA section 313 overall burden approved by OMB. At some point in the future, EPA will determine the total EPCRA section 313 burden associated with the deletion of methyl ethyl ketone, and will complete the required Information Collection Worksheet to adjust the total EPCRA section 313 estimate. The reporting and recordkeeping burdens associated with EPCRA section 313 are approved by OMB under OMB No. 2070–0093 (EPCRA section 313 base program and Form R, EPA ICR No. 1363) and under OMB No. 2070–0145 (Form A, EPA ICR No. 1704). The current public reporting burden for EPCRA section 313 is estimated to be 34.2 hours for a Form R submitter and 20.6 hours for a Form A submitter. These estimates include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. For reporting year 2003 there were 1,515 Form Rs submitted for methyl ethyl ketone and 108 Form As submitted.

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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**. However, section 808 of that Act provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of June 30, 2005. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 372

Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 24, 2005.

Stephen L. Johnson,
Administrator.

■ Therefore, 40 CFR part 372 is amended to read as follows:

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

■ 2. Section 372.65 is amended by removing the entry for methyl ethyl ketone under paragraph (a), and removing the entire CAS No. entry for 78–93–3 under paragraph (b).

[FR Doc. 05–12928 Filed 6–29–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 401 and 405

[CMS–4064–IFC2]

RIN–0938–AM73

Medicare Program; Changes to the Medicare Claims Appeal Procedures: Correcting Amendment to an Interim Final Rule

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

ACTION: Correcting amendment to an interim final rule.

SUMMARY: This amendment corrects technical errors in the interim final rule with comment period that appeared in the **Federal Register**, entitled “Medicare Program: Changes to the Medicare Claims Appeal Procedures.”

EFFECTIVE DATE: This correcting amendment is effective July 1, 2005.

FOR FURTHER INFORMATION CONTACT: Arrah Tabe-Bedward, (410) 786–7129.

SUPPLEMENTARY INFORMATION:

I. Background

We have identified technical errors and omissions that appeared in the interim final rule with comment period entitled “Medicare Program: Changes to the Medicare Claims Appeal Procedures.” (FR Doc. 05–4062) (*See* 70 FR 11420, March 8, 2005.) In this correcting amendment, we are correcting these technical errors and omissions.

II. Correction of Errors

A. Summary of Technical Corrections to the Preamble

On page 11436 of the preamble, we identified decisions regarding the timely submission of claims as not being initial determinations. We attempted to convey that this was true whether a provider or supplier failed to submit a timely claim for its own purposes or at the request of a beneficiary or the beneficiary's

subrogee. However, we inadvertently omitted the word “timely” from our discussion of the submission of a claim by a provider or supplier for its own purposes.

On pages 11456 through 11457, we discussed the requirement that administrative law judge (ALJ) hearings be conducted by videoteleconferencing (VTC) (if the technology is available and there are no special or extraordinary circumstances that would make a VTC hearing inappropriate). We also indicated, however, that a party could request an in-person hearing that the ALJ, with the concurrence of the Managing Field Office ALJ, would grant upon a finding of good cause.

The interim final rule generally requires that an ALJ conduct a hearing and render a decision within 90 days from the date the request for hearing is received. However, if the ALJ grants a party an in-person hearing upon a finding of good cause, then that 90-day time frame requirement is waived.

In the interim final rule, we inadvertently stated that the request by a party for an in-person hearing would result in a waiver of the 90-day hearing and decision making time frame requirement. Therefore, we clarify that a request by a party for an in-person hearing does not relieve the ALJ of the 90-day hearing and decision making time frame requirement. Rather, waiver of the 90-day hearing and decision making time frame requirement results only when an ALJ grants the request for an in-person hearing. In addition, we clarify that any party, not just the appellant, can object to the type of hearing scheduled by an ALJ and request an in-person hearing.

In § 405.1012(a), we provide that CMS or its contractor, including a qualified independent contractor (QIC), may be a party to an ALJ hearing. On page 11461 of the preamble, we say that it is appropriate “to permit discovery when an ALJ hearing is adversarial (that is, whenever CMS or its contractor is a party to an ALJ hearing).” Later, in the same response on pages 11461 through 11462, in the second column, when discussing how and when the discovery provisions apply, we refer only to CMS electing to participate as a party. To correct the inconsistency in the discussion of this issue, we clarify here our intention to permit limited discovery not only when CMS elects to participate as a party to a hearing, but also when a CMS contractor elects to participate as a party to an ALJ hearing. We also make a similar correction to the text of the regulations at § 405.1016(d) and § 405.1037(a)(1).

B. Correction of Errors in the Preamble

1. On page 11436, in the first column, line 17, in the first full paragraph, we inserted the word “timely” after the phrase “submit a claim”.

2. In the third column of page 11456, in line 2 of the first full response, the word “appellant” is replaced with the word “party”.

3. On page 11457, in the first column, on line 1, the word “granted” is inserted before “request”.

4. On page 11461, in the second column, on line 35, in the first full response, the words “or its contractor” are inserted after “CMS”.

5. On page 11461, in the third column, in lines 25, 30, 57, 61, 66, and 68 the words “or its contractor” are inserted after “CMS”.

6. On page 11462, in the first column, in lines 3, 4, 47, and 53 the words “or its contractor” are inserted after “CMS”.

C. Summary of Technical Corrections to the Regulations Text

In the interim final rule, we made technical omissions in § 405.926, § 405.980, § 405.990, § 405.1020, and § 405.1102. We also made typographical and editing errors in § 405.980, § 405.986, § 405.990, § 405.1016, § 405.1018, § 405.1020, § 405.1037, § 405.1042, § 405.1052, § 405.1104, § 405.1112, and § 405.1136. We are reflecting these corrections in section D of this correcting amendment.

Section 405.912 contains the new provisions regarding assignment of appeal rights. In § 405.912(g) and § 405.912(g)(1), we incorrectly referred to the “assignee” as the “assignor” and vice versa. We are reflecting these corrections in section D of this correcting amendment.

As we indicated in section A of this correcting amendment, we inadvertently omitted the word “timely” when we stated that determinations regarding whether a provider or supplier submitted a claim timely either for its own purposes or at the request of a beneficiary or the beneficiary’s subrogee are not initial determinations. The corresponding correction to the regulation text at § 405.926(n) is made in section D of this correcting amendment.

In the interim final rule, we state that submitting evidence after an appeal is filed may result in a 14-day extension of the decision-making time frame. Although this 14-day extension applies automatically, adjudicators are not required to extend the decision-making time frame by the full 14 days. In the regulation text, we intended to convey this point in § 405.946(b), § 405.950 and

§ 405.970 by stating that the decision-making time frame is extended “by up to 14 days” each time evidence is submitted after an appeal is filed. At § 405.946(b) and § 405.950(b)(3), however, we inadvertently left out the words “up to”. We have corrected this omission in section D of this correcting amendment.

Paragraph (a) of § 405.970 states that the QIC will transmit to the parties a written notice of “(1) The reconsideration; (2) Its inability to complete its review within 60 days in accordance with paragraphs (c) through (e) of this section; or (3) Dismissal.” Paragraph (c)(2), however, states that notice of the QIC’s inability to complete review is mailed only to the appellant. For reasons of consistency and to decrease ambiguity, we correct this error in section D of the correcting amendment.

On page 11450 of the preamble, we stated the general rule that a remedial action taken by an appeals adjudicator to change a final determination or decision is a reopening “even though the determination or decision may have been correct based upon the evidence of record.” In the corresponding regulation text at § 405.980(a)(1), our use of the word “was”, rather than the phrase “may have been” seems to contradict the preamble language. To ensure that the preamble and regulation text are consistent, this error is corrected in section D of this correcting amendment.

In paragraph (a)(4) of § 405.980, we inadvertently stated that adjudicators are prohibited from reopening a claim at issue until all appeal rights are exhausted. We meant to state that adjudicators are prohibited from reopening issues within a claim, if those issues are on appeal. We correct this statement in section D of this correcting amendment.

Also in § 405.980, in paragraphs (d)(2) and (e)(2), we indicated that only an ALJ can reopen an ALJ decision. These provisions, as they appear in the interim final rule, seem to contradict the policy established earlier at § 405.980(a)(iv), which states that the MAC may reopen its decision, as well as any hearing decision issued by an ALJ. This inconsistency is corrected in section D of this rule.

The good cause standard for reopening initial determinations is defined in § 405.986. As a result of an editing error, we included paragraph (d), a provision that identifies a type of determination that is not a reopening. This provision is actually part of paragraph (a)(6) of § 405.980. This editing error is corrected in section D by

deleting paragraph (d) from § 405.986 and inserting it into § 405.980(a)(6).

In § 405.1014(b)(2), we stated that the proper filing location for ALJ hearing requests is with the entity specified in the qualified independent contractor's reconsideration. However, in § 405.1046(d), we incorrectly referred to the ALJ hearing office as the proper filing location for ALJ hearing requests. Additionally, in § 405.1106, we incorrectly identified two filing locations for appeals to the Medicare Appeals Council (MAC). We are correcting these errors in section D of this correcting amendment.

In the interim final rule, appellants are permitted to request extensions to the filing deadlines. We intended to state that adjudicators could grant these extensions if appellants provided good cause for extending the deadline. To clarify this policy, we are revising § 405.1014(c)(4) and § 405.1016(b) to state that an "ALJ" rather than an "ALJ hearing office" may grant a request to extend the filing deadline.

ALJs are required to provide notice of a hearing to a number of entities, including all parties to the reconsideration. This is the policy we intended to convey in § 405.1020(c)(1), but the language we used in the interim final rule (that is, "participated in any of the determinations in paragraphs (c) through (i) of this section") is not sufficiently clear. Therefore, we are revising this section to clarify any ambiguities regarding this requirement and to ensure that hearing notices are issued to the appropriate entities.

Section 405.1028 discusses the pre-hearing review process for evidence submitted to the administrative law judge (ALJ). Although the heading for this section reads "Prehearing case review of evidence submitted to the ALJ by the appellant", this section discusses evidence submitted by certain other parties. To ensure that the heading properly reflects the content of the section, we are correcting this error in section D of this correcting amendment.

In drafting the interim final rule, we made many revisions to the regulation text, including renumbering certain provisions. When we renumbered sections of the regulation, our intent was to also update any corresponding cross-references to reflect the new numbering scheme. In § 405.1052(a)(4) and § 405.1052(a)(5), however, we inadvertently failed to update the cross-references to reflect the new numbering scheme. Therefore, we are correcting these errors in section D of this correcting amendment.

The binding authority of national coverage determinations (NCDs) is

described in § 405.1060. Here, we stated that NCDs are "binding on all Medicare contractors, including QIOs, QICs, Medicare Advantage Organizations, Prescription Drug Plans and their sponsors, HMOs, CMPs, HCPPs, ALJs, and the MAC." We failed to note, however, that fiscal intermediaries and carriers are also bound by NCDs and further, that some of the entities listed are not subject to all NCDs. We correct this statement in section D of this correcting amendment by revising paragraph (a)(4) to make NCDs binding on fiscal intermediaries, carriers, QIOs, QICs, ALJs, and the MAC.

In the interim final rule, we stated a longstanding policy regarding the calculation of the receipt date of appeal notices; that is, receipt is presumed to be 5 days after the date of the notice, unless there is evidence to the contrary. In this same section, we also established the related policy that an appeal is considered filed on the date that it is received by the appropriate entity. Our intention was to restate these policies in each section where we established the filing deadlines. However, we inadvertently omitted some or all of this information from § 405.974(b), § 405.1002(a), § 405.1004(a), and § 405.1102(a). We are correcting these omissions in Section D of this correcting amendment.

In the interim final rule, we also made a single revision to part 401 regarding the applicability of CMS Rulings. In our revision, we inadvertently failed to encompass the effect of CMS Rulings on matters other than Medicare Part A and Part B. To correct this error, we have removed the specific references to Medicare Part A and Medicare Part B.

D. Correction of Regulation Text Errors

■ Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendments to parts 401 and 405:

PART 401—[CORRECTED]

■ 1. The authority citation for part 401 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh). Subpart F is also issued under the authority of the Federal Claims Collection Act (31 U.S.C. 3711).

§ 401.108 [Corrected]

■ 2. In § 401.108, paragraph (c) is corrected by removing the phrase "pertaining to Medicare Part A and Medicare Part B".

PART 405—[CORRECTED]

■ 3. The authority citation for part 405 continues to read as follows:

Authority: Secs. 205(a), 1102, 1861, 1862(a), 1869, 1871, 1874, 1881, and 1886(k) of the Social Security Act (42 U.S.C. 405(a), 1302, 1395x, 1395y(a), 1395ff, 1395hh, 1395kk, 1395rr and 1395ww(k)) and Sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

§ 405.912 [Corrected]

■ 4. Section 405.912 is amended as follows—

■ A. In paragraph (g) introductory text, the word "assignee" is corrected to "assignor".

■ B. In paragraph (g)(1), the word "assignor", which precedes "and", is corrected to "assignee".

§ 405.926 [Corrected]

■ 5. Section 405.926 is amended by—

■ A. Revising paragraph (j).

■ B. Revising paragraph (m).

■ The revisions read as follows:

§ 405.926 Actions that are not initial determinations.

* * * * *

(j) Determinations for a finding regarding the general applicability of the Medicare Secondary Payer provisions (as opposed to the application of these provisions to a particular claim or claims for Medicare payment for benefits);

* * * * *

(n) Determinations that a provider or supplier failed to submit a claim timely or failed to submit a timely claim despite being requested to do so by the beneficiary or the beneficiary's subrogee;

* * * * *

§ 405.946 [Corrected]

■ 6. In § 405.946, paragraph (b), the words "up to" are inserted between "for" and "14".

§ 405.950 [Corrected]

■ 7. In § 405.950, paragraph (b)(3), the words "up to" are inserted between "for" and "14".

§ 405.970 [Corrected]

■ 8. Section 405.970 is amended by revising paragraph (c)(2) to read as follows:

§ 405.970 Timeframe for making a reconsideration.

* * * * *

(c) * * *

(1) * * *

(2) Notify the parties that it cannot complete the reconsideration by the

deadline specified in paragraph (b) of this section and offer the appellant the opportunity to escalate the appeal to an ALJ. The QIC continues to process the reconsideration unless it receives a written request from the appellant to escalate the case to an ALJ after the adjudication period has expired.

§ 405.974 [Corrected]

■ 9. Section 405.974 is amended by adding paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

§ 405.974 Reconsideration.

- (b) * * *
- (1) * * *

(i) For purposes of this section, the date of receipt of the contractor's notice of dismissal is presumed to be 5 days after the date of the notice of dismissal, unless there is evidence to the contrary.

(ii) For purposes of meeting the 60-day filing deadline, the request is considered as filed on the date it is received by the QIC indicated on the notice of dismissal.

§ 405.980 [Corrected]

- 10. Section 405.980 is amended by—
- A. Revising introductory text of paragraph (a)(1).
- B. Revising paragraph (a)(3) introductory text.
- D. Revising paragraph (a)(4).
- C. Revising paragraph (a)(6).
- D. Revising paragraph (d)(2).
- E. Revising paragraph (e)(2).
- The revisions read as follows:

§ 405.980 Reopenings of initial determinations, redeterminations, and reconsiderations, hearings and reviews.

(a) *General rules.* (1) A reopening is a remedial action taken to change a final determination or decision that resulted in either an overpayment or underpayment, even though the final determination or decision may have been correct at the time it was made based on the evidence of record. That action may be taken by—

- (2) * * *

(3) Notwithstanding paragraph (a)(4) of this section, a contractor must process clerical errors (which includes minor errors and omissions) as reopenings, instead of as redeterminations as specified in § 405.940. If the contractor receives a request for reopening and disagrees that the issue is a clerical error, the contractor must dismiss the reopening request and advise the party of any appeal rights, provided the timeframe to

request an appeal on the original denial has not expired. For purposes of this section, clerical error includes human or mechanical errors on the part of the party or the contractor such as—

(4) When a party has filed a valid request for an appeal of an initial determination, redetermination, reconsideration, hearing, or MAC review, no adjudicator has jurisdiction to reopen an issue on a claim that is under appeal until all appeal rights for that issue are exhausted. Once the appeal rights for the issue have been exhausted, the contractor, QIC, ALJ, or MAC may reopen as set forth in this section.

(6) A determination under the Medicare secondary payer provisions of section 1862(b) of the Act that Medicare has an MSP recovery claim for services or items that were already reimbursed by the Medicare program is not a reopening, except where the recovery claim is based upon a provider's or supplier's failure to demonstrate that it filed a proper claim as defined in part 411 of this chapter.

- (d) * * *
- (1) * * *

(2) An ALJ or the MAC may reopen a hearing decision on its own motion within 180 days from the date of the decision for good cause in accordance with § 405.986. If the hearing decision was procured by fraud or similar fault, then the ALJ or the MAC may reopen at any time.

- (e) * * *
- (1) * * *

(2) A party to a hearing may request that an ALJ or the MAC reopen a hearing decision within 180 days from the date of the hearing decision for good cause in accordance with § 405.986.

§ 405.986 [Corrected]

■ 11. In § 405.986, remove paragraph (d).

§ 405.990 [Corrected]

■ 12. Section 405.990 is amended by revising paragraph (b)(1)(i)(A) to read as follows:

§ 405.990 Expedited access to judicial review.

- (b) * * *
- (1) * * *
- (i) * * *

(A) An ALJ hearing in accordance with § 405.1002 and a final decision of the ALJ has not been issued;

§ 405.1002 [Corrected]

- 13. Section 405.1002 is amended by—
- A. Revising paragraph (a)(1).
- B. Adding paragraphs (a)(3) and (a)(4).
- The revision and additions read as follows:

§ 405.1002 Right to an ALJ hearing.

- (a) * * *

(1) The party files a written request for an ALJ hearing within 60 days after receipt of the notice of the QIC's reconsideration.

- (2) * * *

(3) For purposes of this section, the date of receipt of the reconsideration is presumed to be 5 days after the date of the reconsideration, unless there is evidence to the contrary.

(4) For purposes of meeting the 60-day filing deadline, the request is considered as filed on the date it is received by the entity specified in the QIC's reconsideration.

§ 405.1004 [Corrected]

- 14. Section 405.1004 is amended by—
- A. Revising paragraph (a)(1).
- B. Adding paragraphs (a)(3) and (a)(4).
- The revision and additions read as follows:

§ 405.1004 Right to ALJ review of QIC notice of dismissal.

- (a) * * *

(1) The party files a written request for an ALJ review within 60 days after receipt of the notice of the QIC's dismissal.

- (2) * * *

(3) For purposes of this section, the date of receipt of the QIC's dismissal is presumed to be 5 days after the date of the dismissal notice, unless there is evidence to the contrary.

(4) For purposes of meeting the 60-day filing deadline, the request is considered as filed on the date it is received by the entity specified in the QIC's dismissal.

§ 405.1014 [Corrected]

■ 15. In § 405.1014, the phrase "hearing office" is removed from paragraph (c)(4).

§ 405.1016 [Corrected]

■ 16. Section 405.1016 is amended by revising paragraphs (b) and (d) to read as follows:

§ 405.1016 Time frames for deciding an appeal before an ALJ.

- * * * * *

(b) The adjudication period specified in paragraph (a) of this section begins on the date that a timely filed request for hearing is received by the entity

specified in the QIC's reconsideration, or, if it is not timely filed, the date that the ALJ grants any extension to the filing deadline.

* * * * *

(d) When CMS or its contractor is a party to an ALJ hearing and a party requests discovery under § 405.1037 against another party to the hearing, the adjudication periods discussed in paragraphs (a) and (c) of this section are tolled.

§ 405.1018 [Corrected]

■ 17. In § 405.1018, in paragraph (c), the phrase "must be accompanied by a statement explaining why the evidence is not previously submitted" is corrected to "must be accompanied by a statement explaining why the evidence was not previously submitted."

§ 405.1020 [Corrected]

- 18. Section 405.1020 is amended by—
■ A. Revising paragraph (c)(1).
■ B. Revising the introductory heading for paragraph (i).
■ C. Revising paragraph (i)(4).
The revisions read as follows:

§ 405.1020 Time frames for deciding an appeal before an ALJ.

* * * * *

(c) * * *

(1) The ALJ sends a notice of hearing to all parties that filed an appeal or participated in the reconsideration, any party who was found liable for the services at issue subsequent to the initial determination, the contractor that issued the initial determination, and the QIC that issued the reconsideration, advising them of the proposed time and place of the hearing.

* * * * *

(i) A party's request for an in-person hearing.

* * * * *

- (1) * * *
(2) * * *
(3) * * *

(4) When a party's request for an in-person hearing is granted, the party is deemed to have waived the 90-day time frame specified in § 405.1016.

§ 405.1028 [Corrected]

■ 19. The title of § 405.1028 is corrected to "Prehearing case review of evidence submitted to the ALJ".

§ 405.1037 [Corrected]

- 20. Amend 405.1037 as follows:
■ A. In paragraph (a)(1), the words "or its contractor" are inserted after "CMS".
■ B. In paragraph (c)(1), the word "hearing" at the end of the paragraph is removed.

■ C. In paragraph (e)(2)(iv), the phrase "where the MAC grants a request for review made by a party other than CMS of a ruling" is corrected to "where the MAC grants a request, made by a party other than CMS, to review a discovery ruling."

§ 405.1042 [Corrected]

■ 21. In § 405.1042, paragraph (a)(3), the phrase "[t]he appellant" is corrected to "[a] party".

§ 405.1046 [Corrected]

■ 22. In § 405.1046, paragraph (d), the phrase "when the request for hearing is received in the ALJ hearing office" is corrected to "when the request for hearing is received by the entity specified in the QIC's reconsideration."

§ 405.1052 [Corrected]

- 23. Amend § 405.1052 as follows:
A. In paragraph (a)(4), the cross-reference to "§ 405.1014(d)" is corrected to "§ 405.1014(c)".
B. In paragraph (a)(5)(iii), the cross-reference to "§ 405.1020" is corrected to "§ 405.1014".

§ 405.1060 [Corrected]

24. Section 405.1060 is amended by revising paragraph (a)(4) to read as follows:

§ 405.1060 Applicability of national coverage determinations (NCDs).

- (a) * * *
(4) An NCD is binding on fiscal intermediaries, carriers, QIOs, QICs, ALJs, and the MAC.

* * * * *

§ 405.1102 [Corrected]

- 25. Section 405.1102 is amended by:
■ A. Revising paragraph (a).
■ B. Redesignating paragraph (b) as paragraph (c).
■ C. Redesignating paragraph (c) as paragraph (d).
■ D. Adding a new paragraph (b).
The revisions read as follows:

§ 405.1102 Request for MAC review when ALJ issues decision or dismissal.

(a)(1) A party to the ALJ hearing may request a MAC review if the party files a written request for a MAC review within 60 days after receipt of the ALJ's decision or dismissal.

(2) For purposes of this section, the date of receipt of the ALJ's decision or dismissal is presumed to be 5 days after the date of the notice of the decision or dismissal, unless there is evidence to the contrary.

(3) The request is considered as filed on the date it is received by the entity specified in the notice of the ALJ's action.

(b) A party requesting a review may ask that the time for filing a request for MAC review be extended if—

(1) The request for an extension of time is in writing;

(2) It is filed with the MAC; and

(3) It explains why the request for review was not filed within the stated time period. If the MAC finds that there is good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, the MAC uses the standards outlined at § 405.942(b)(2) and § 405.942(b)(3).

* * * * *

§ 405.1104 [Corrected]

- 26. Amend § 405.1104 as follows:
■ A. The word "latter" is corrected to "later" in paragraph (a)(2).
■ B. In paragraph (c), the phrase "and the appellant does not request escalation to the MAC" is removed.

§ 405.1106 [Corrected]

■ 27. Section 405.1106 is amended by revising paragraph (a) to read as follows:

§ 405.1106 Where a request for review or escalation may be filed.

(a) When a request for a MAC review is filed after an ALJ has issued a decision or dismissal, the request for review must be filed with the entity specified in the notice of the ALJ's action. The appellant must also send a copy of the request for review to the other parties to the ALJ decision or dismissal. Failure to copy the other parties tolls the MAC's adjudication deadline set forth in § 405.1100 until all parties to the hearing receive notice of the request for MAC review. If the request for review is timely filed with an entity other than the entity specified in the notice of the ALJ's action, the MAC's adjudication period to conduct a review begins on the date the request for review is received by the entity specified in the notice of the ALJ's action. Upon receipt of a request for review from an entity other than the entity specified in the notice of the ALJ's action, the MAC sends written notice to the appellant of the date of receipt of the request and commencement of the adjudication time frame.

* * * * *

§ 405.1112 [Corrected]

■ 28. In § 405.1112, paragraph (a), the phrase "must be made on a standard form" is corrected to "may be made on a standard form".

§ 405.1136 [Corrected]

■ 29. In § 405.1136, paragraph (d)(1), in the first sentence, the words “is filed” are removed.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect. However, we can waive this procedure if we find good cause for doing so, and incorporate a statement of this finding and the reasons for it into the rule. A finding that a notice and comment period is impracticable, unnecessary, or contrary to the public interest constitutes good cause for waiving this procedure. We also can waive the 30-day delay in effective date under the Administrative Procedure Act (5 U.S.C. 553(d)) when there is good cause to do so and we publish in the rule an explanation of our good cause.

Many of the corrections included in this rule are corrections of typographical errors and editorial mistakes. For example, the word “mirror” has been corrected to “minor” in § 405.980(a)(3). The rest of the corrections are made to correct inadvertent omissions and clarify inconsistencies in the preamble and regulation text. At § 405.1046(d), for example, consistent with the provision at § 405.1014(b)(2), which states that the proper filing location for ALJ hearing requests is the entity specified in the QIC’s reconsideration, the regulation text has been revised to reflect the proper filing location for ALJ hearing requests.

We believe that it is unnecessary to seek public comment on the correction of typographical and editorial errors. Further, it is in the public’s interest to correct inadvertent omissions and clarify apparent inconsistencies in the preamble and regulation text. These revisions help ensure that the rules governing the Medicare administrative appeals process are more understandable and less ambiguous and protect the rights of all parties to pursue Medicare claims appeals under these procedures. Therefore, we find that undertaking notice and comment rulemaking to incorporate these corrections into the interim final rule is unnecessary and contrary to the public interest.

For the same reasons, we believe that delaying the effective date of these corrections beyond July 1, 2005 would be contrary to the public interest. As a matter of good public policy, the regulations governing the Medicare claims appeals process should be as accurate and clear as possible. Thus, it

would be contrary to the public interest to delay implementation of these corrections to provide for a 30-day delay in effective date. Therefore, we also find good cause to waive the 30-day delay in effective date.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 27, 2005.

Ann Agnew,

Executive Secretary to the Department.

[FR Doc. 05–12982 Filed 6–28–05; 12:44 pm]

BILLING CODE 4120-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 64**

[CG Docket No. 02–278, FCC 05–132]

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule; delay of effective date.

SUMMARY: In this document, the Commission delays until January 9, 2006, the effective date of the rule requiring the sender of a facsimile advertisement to obtain the recipient’s express permission in writing.

DATES: The effective date of the rule amending 47 CFR Part 64, § 64.1200(a)(3)(i) published at 68 FR 44144, July 25, 2003, is delayed until January 9, 2006.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erica H. McMahon at 202–418–2512, Consumer & Governmental Affairs Bureau, Federal Communications Commission.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s *Order* in CG Docket No. 02–278, FCC 05–132, adopted on June 27, 2005 and released on June 27, 2005. The full text of this document is available at the Commission’s Web site <http://www.fcc.gov> on the Electronic Comment Filing System and for public inspection and copying during regular business hours in the FCC Reference Information Center, Room CY–A257,

445 12th Street, SW., Washington, DC 20554. The complete text of the decision may be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc. (BCPA), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. at its Web site:

<http://www.bcpweb.com> or call 1–800–378–3160. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). The *Order* can also be downloaded in Word and Portable Document Format (PDF) at <http://www.fcc.gov/cgb>.

Synopsis

On July 3, 2003, the Commission revised the unsolicited facsimile advertising requirements under the Telephone Consumer Protection Act of 1991 (TCPA). On August 18, 2003, the Commission issued an *Order on Reconsideration* (68 FR 50978, August 25, 2003) that delayed until January 1, 2005, the effective date of these amended requirements. On September 15, 2004, the Commission adopted an *Order* (69 FR 62816, October 28, 2004) further extending the stay of the effective date of the requirements through June 30, 2005. On April 15, 2005, the Fax Ban Coalition (Coalition) filed a petition urging the Commission to further delay the effective date of the revised rules governing unsolicited facsimile advertisements through December 31, 2005. The Coalition maintains that a further delay is warranted to avoid irreparable injury to the members of the Coalition and negative impact on the economy. The Coalition also argues that delay is important while Congress considers legislation to amend the TCPA and the Commission considers petitions for reconsideration and requests for clarification.

We now further delay, until January 9, 2006, the effective date of the determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements, as well as the amended unsolicited facsimile provisions at 47 CFR 64.1200(a)(3)(i). Section 64.1200(a)(3)(i), as amended, requires the sender of a facsimile advertisement to first obtain from the recipient a signed, written statement that includes the facsimile number to which any

advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the sender. In light of the on-going developments in Congress and pending resolution of the petitions for reconsideration and clarification of the Commission's facsimile advertising rules, we believe the public interest would best be served by delaying the effective date of the written consent requirement. This delay will provide the Commission requisite time to address the petitions for reconsideration filed on these issues. For these same reasons, until January 9, 2006, the 18-month limitation on the duration of the established business relationship based on purchases and transactions and the three-month limitation on applications and inquiries will not apply to the transmission of facsimile advertisements.

Ordering Clauses

Pursuant to Sections 1–4, 227, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 227, and 303(r), the *Order* in CG Docket No. 02–278 is adopted and that the *Report and Order*, FCC 03–153, is modified as set forth herein.

The Fax Ban Coalition's Petition for Further Extension of Stay is granted to the extent discussed herein.

The effective date for: (1) The Commission's determination that an established business relationship will no longer be sufficient to show that an individual or business has given their express permission to receive unsolicited facsimile advertisements; (2) the 18-month and three month limitations on the duration of the established business relationship as applied to the sending of facsimile advertisements as described above; and (3) the requirement that the sender of a facsimile advertisement first obtain the recipient's express permission in writing, as codified at 47 CFR 64.1200(a)(3)(i), IS January 9, 2006, and that the *Order* is effective upon publication in the **Federal Register**.

The Commission will not send a copy of the *Order* pursuant to Congressional Review Act, see 5 U.S.C. 801(a)(1)(A) because the adopted rules are rules of particular applicability.

List of Subjects in 47 CFR Part 64

Telephone.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 05–13025 Filed 6–29–05; 8:45 am]

BILLING CODE 6712–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9904

Capitalization of Tangible Assets; Correction

AGENCY: Cost Accounting Standards Board; Office of Federal Procurement Policy, OMB.

ACTION: Correction to final rule.

SUMMARY: This document contains technical corrections to the Illustrations in CAS 9904.404, "Capitalization of Tangible Assets." An amendment to this Standard was published on February 13, 1996 (61 FR 5520). However, while the contractor's minimum cost criteria for capitalization was increased from \$1,500 to \$5,000 in the body of the Standard, this change was not reflected in the Illustrations part of the Standard. This technical correction brings the figures in the relevant Illustrations into line with the \$5,000 minimum cost criteria for capitalization currently incorporated in the body of the Standard.

DATES: This rule is effective June 30, 2005.

FOR FURTHER INFORMATION CONTACT: Rein Abel, Director of Research Cost Accounting Standards Board (telephone 202–395–3254).

SUPPLEMENTARY INFORMATION: When the Standard was amended in February 1996 (61 FR 5520) only the fundamental requirement at 9904–40 (b)(1) was changed to reflect the increase in the capitalization criteria from \$1,500 to \$5,000. However, corresponding changes were not made to the Illustrations in the Standard. This document makes the necessary technical corrections to Illustrations at 9904–60.

List of Subjects in 48 CFR 9904

Government procurement, Cost accounting standards.

■ Accordingly, for the reasons set forth above, it is proposed to correct 48 CFR part 9904 as follows:

PART 9904—COST ACCOUNTING STANDARDS

■ 1. Authority. The authority citation for part 9904 continues to read as follows:

Authority: Public Law 100–679 Stat. 4056, 41 U.S.C. 422.

9904.404–60 [Corrected]

■ 2. In 9904.404–60 (a) (1), first sentence, remove "\$2,000" and insert "\$6,000" in

its place; and in the second sentence remove "\$1,500" and insert "\$5,000" in its place; and in paragraph (a) (1) (i) revise the first sentence to read as follows: "Contractor acquires a tangible capital asset with a life of 18 months at a cost of \$6,500."

David H. Safavian,

Chair, Cost Accounting Standards Board.

[FR Doc. 05–12857 Filed 6–29–05; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–05–21400]

RIN 2127–AI47

Federal Motor Vehicle Safety Standards; Hydraulic and Electric Brake Systems

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

ACTION: Final rule.

SUMMARY: This document amends the Federal motor vehicle safety standard on hydraulic and electric brake systems to extend the current minimum performance requirements and associated test procedures for parking brake systems to all multipurpose passenger vehicles (MPVs), buses and trucks with gross vehicle weight ratings (GVWR) greater than 10,000 pounds (4,536 kilograms) equipped with hydraulic or electric brake systems. Currently, the only vehicles with GVWRs greater than 10,000 pounds to which the standard's parking brake requirements apply are school buses. The agency concludes that it is in the interest of safety to require all MPVs, buses and trucks with GVWRs over 10,000 pounds to have parking brakes that meet the performance requirements currently applicable to heavy school buses.

DATES: This final rule takes effect June 30, 2006, except for the revision of the heading of 49 CFR 571.135, which takes effect June 30, 2005. The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of June 30, 2006.

Any petitions for reconsideration of today's final rule must be received by NHTSA not later than August 15, 2005.

ADDRESSES: Petitions for reconsideration should refer to the docket number for

this action and be submitted to:
Administrator, National Highway
Traffic Safety Administration, 400
Seventh Street, SW., Washington, DC
20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, Mr. Samuel Daniel, Vehicle Dynamics Division, Office of Crash Avoidance Standards (Telephone: 202-366-4921) (Fax: 202-366-7002).

For legal issues, Ms. Dorothy Nakama, Office of the Chief Counsel (Telephone: 202-366-2992) (Fax: 202-366-3820).

Both can be reached by mail at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

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I. Background

Federal Motor Vehicle Safety Standard No. 105, *Hydraulic and electric brake systems*, sets forth minimum performance requirements for a vehicle's service and parking brake systems. Originally, the standard applied exclusively to passenger cars with hydraulic brake systems.¹ Over the years, the agency has published several rulemaking actions on FMVSS No. 105.² Among other actions, on January 16, 1976, the agency extended the standard's service and parking brake requirements to school buses with

hydraulic service brake systems (41 FR 2391). On January 2, 1981 (46 FR 55), NHTSA published a final rule extending Standard No. 105's parking brake requirements to multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kilograms (10,000 pounds) or less. Among other things, the January 2, 1981 final rule required parking brakes on multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kilograms (10,000 pounds) or less to hold the vehicle stationary, in both forward and reverse directions, for five minutes on a 30 percent grade. In response to three petitions for reconsideration, the agency decided to change the gradient requirement for parking brakes on these vehicles from 30 percent to 20 percent (46 FR 61887, Dec. 21, 1981). Later, the agency established FMVSS No. 135, which originally applied to passenger cars only. In a final rule of September 30, 1997 (62 FR 51064), NHTSA extended the applicability of FMVSS No. 135 to multipurpose passenger vehicles, trucks, and buses with gross vehicle weight ratings (GVWR) of 3,500 kilograms (7,716 pounds) or less. These vehicles were previously regulated under FMVSS No. 105.

II. Notice of Proposed Rulemaking

On October 30, 2002 (67 FR 66098), NHTSA published a notice of proposed rulemaking to amend FMVSS No. 105 to extend the current minimum performance requirements and associated test procedures for parking brake systems to all vehicles with gross vehicle weight ratings (GVWR) greater than 4,536 kilograms (10,000 pounds). In the NPRM, NHTSA explained the safety need for the rule, and discussed the costs and safety benefits that would result from the rule.

A. The Safety Need

In explaining the safety need for the rule, the agency stated its belief that parking brakes are an important operational safety feature and tentatively concluded that it is in the interest of safety to require that all vehicles be equipped with parking brakes that comply with Federal requirements. When properly engaged, parking brakes can prevent driverless roll-away events, which can result in collisions, injuries, and fatalities. A review of the agency's Fatality Analysis Reporting System (FARS) database indicated that a total of three to five fatal vehicle roll-away events involving large, hydraulically-braked, non-school bus vehicles occurred between 1991 and 1999. Additionally, during that same period, there were annually about 574

crashes with 82 injured people resulting from roll-away, heavy duty trucks, according to data from the General Estimates System (GES). The GES data are not sufficiently detailed to determine which of the vehicles were hydraulically-braked and which were air-braked, nor could the data be used to determine if the vehicles were parked prior to the roll-away incident. Therefore, these figures likely represented the upper bound of the number of crashes and injuries caused by the rolling away, due to parking brake problems, of parked, heavy duty trucks and buses equipped with hydraulic brakes.

Many of the driverless roll-away events may have been caused by misapplication or non-use of the parking brake. Requiring all heavy vehicles to meet the same parking brake performance requirements would not affect the non-use problem; however, it might increase the likelihood that operators of these vehicles (particularly fleet drivers who must operate a large number of different heavy vehicles) would be better able to engage their vehicle's parking brake fully because the force required to apply the parking brake would be standardized. This might reduce the incidence of parking brake misapplication. In addition, NHTSA stated its belief that requiring that all heavy vehicles remain stationary with the parking brake fully engaged, in both forward and reverse directions, when parked on a 20 percent grade, should prevent the occurrence of driverless roll-away events due to parking brake failure on most roads in the United States because most U.S. roads have less than a 20 percent grade. NHTSA tentatively concluded that requiring all vehicles to which Standard No. 105 applies to have parking brakes meeting the standard's effort limit and gradient requirements should decrease the likelihood of driverless roll-away events and, therefore, lead to modest collision, injury, and fatality reduction benefits.

As explained more fully below, in the section on costs and benefits, NHTSA stated its belief that most, if not all, heavy vehicles are already manufactured with parking brakes designed to meet Standard No. 105's requirements. However, requiring manufacturers to certify the performance of the parking brakes on these heavy vehicles would provide added assurance that they actually meet the standard's requirements. It would also guard against the possibility of a decrease in performance of these parking brakes due to future truck chassis design changes.

¹ The agency extended Standard No. 105 to brake systems on electric vehicles in a final rule published on September 5, 1997 (62 FR 46907).

² A full description of these rulemaking actions is provided in the notice of proposed rulemaking to amend FMVSS No. 105 of October 30, 2002 (67 FR 66098, at 66098).

NHTSA noted that Paragraph S5.2 of the standard currently requires that all heavy school buses be manufactured with a parking brake of a friction type with a solely mechanical means to retain engagement. Such parking brakes are required to meet the standard's effort limit and gradient requirements, found in paragraphs S5.2(b) and S5.2.3, respectively. Paragraph S5.2(b) requires that the parking brake be capable of being engaged fully with a force applied to the control of not more than 150 pounds for a foot-operated system and not more than 125 pounds for a hand-operated system. Paragraph S5.2.3 requires that the parking brake system be capable of holding the vehicle stationary for five minutes, in both forward and reverse directions, on a 20 percent grade.

NHTSA believes that it is reasonable to assume that operators of heavy school buses and other heavy vehicles are of similar size and strength. In addition, the agency stated its belief that heavy school buses and other heavy vehicles are parked in similar environments. Therefore, the agency tentatively concluded that it is appropriate to apply the same effort limit and gradient requirements (and associated test procedures) to these vehicles as are currently applied to heavy school buses.

B. Costs and Benefits

In late 2002, several heavy vehicle manufacturers informed NHTSA that, among other things, parking brake systems for trucks and buses with GVWRs greater than 4,536 kilograms (10,000 pounds) are already designed to meet the FMVSS No. 105 requirements for school buses over 4,536 kilograms. Based on the manufacturer's views, NHTSA estimated that the cost of requiring all manufacturers of non-school buses and trucks with GVWRs greater than 4,536 kilograms (10,000 pounds) to meet the standard's parking brake requirements would be minimal (less than \$10 per vehicle) because few, if any, modifications to the already existing parking brakes would be necessary to bring those brakes into compliance with the standard. NHTSA further stated that the cost of conducting the parking brake compliance test should not be significant when compared to the total cost of FMVSS No. 105 compliance testing. The agency stated its belief that most test facilities already have the 20 percent grade slope that was proposed in the NPRM, and that the proposed test procedure is straightforward and not time consuming. Accordingly, the agency stated that it did not anticipate that the cost of certifying compliance to the

proposed requirements would be large, and solicited comments.

Given the likelihood that most vehicles with a GVWR over 4,536 kilograms (10,000 pounds) are already equipped with a parking brake system that meets the performance requirements of S5.2 and S5.2.3, NHTSA stated that it anticipated only marginal safety benefits from formally extending these requirements. Nevertheless, to the extent that any vehicles with a GVWR over 10,000 pounds do not already comply with these requirements, the agency does expect that the extension of the parking brake effort limit and gradient requirements to such vehicles would reduce the number of collisions, injuries, and fatalities due to driverless roll-away events.

NHTSA stated that while the proposed changes are not likely to have any effect on the non-use problem, the standardization of parking brake effort limit requirements for all heavy vehicles may reduce the incidence of misapplication by making it easier for operators of these vehicles to fully engage the parking brake. In addition, requiring all hydraulically-braked heavy vehicles to have parking brakes that meet the gradient requirement should decrease the likelihood of parking brake failure on most U.S. roads. For these reasons, the agency stated that it anticipated modest collision, injury, and fatality reduction benefits from extending Standard No. 105's parking brake requirements to all hydraulically-braked vehicles with GVWRs greater than 4,536 kilograms (10,000 pounds).

C. Additional Issues

In the NPRM, NHTSA also addressed several other Standard No. 105 issues. NHTSA proposed to change the language in the application paragraph of the standard (S3. *Application*) to reflect the inapplicability of the standard's requirements to hydraulically-braked vehicles with a GVWR of 3,500 kilograms (7,716 pounds) or less. Standard No. 105 used to apply to these vehicles. However, Standard No. 135 now applies instead.

In addition, on June 10, 2002, the agency received a petition for rulemaking from Mr. James E. Stocke of Ann Arbor, Michigan, requesting that NHTSA update a reference to the Society of Automotive Engineers' (SAE) Recommended Practice for Moving Barrier Collision Tests, J972 (SAE J972). A portion of an older (November 1966) version of SAE J972 is referenced in Standard No. 105, paragraph S7.19, as part of the parking brake test procedures for passenger cars and school buses with

a GVWR of 4,536 kilograms (10,000 pounds) or less. Although there are no changes to the description of the rigid moving barrier in the more recent (May 2000) version of the document, the "Barrier" paragraph has been re-designated as paragraph 4.3 instead of paragraph 3.3, its designation in the November 1966 version of the document.

NHTSA noted that the information in the updated reference is substantively identical to the information in the original reference. Accordingly, NHTSA granted Mr. Stocke's petition and proposed to amend paragraph S7.19 to update the reference to the May 2000 version of SAE J972.

III. Public Comments and NHTSA's Response

In response to the NPRM, NHTSA received comments from the following: Advocates for Highway and Auto Safety; ArvinMeritor; Heavy Duty Brake Manufacturers Council (HDBMC); Richard H. Klein, P.E.; National Association of Trailer Manufacturers (NATM); Recreational Vehicle Industry Association (RVIA); and Truck Manufacturers Association (TMA).

While commenters raised a number of issues, those commenting on the basic question of whether FMVSS No. 105's parking brake requirements should be extended to all multipurpose passenger vehicles (MPVs), buses and trucks with gross vehicle weight ratings (GVWR) greater than 10,000 pounds (4,536 kilograms) (equipped with hydraulic or electric brakes), supported the extension. TMA, indicating that it represents all of the major North American manufacturers of medium and heavy duty trucks, stated that, in general, its member companies support the agency's proposal. ArvinMeritor, which manufactures foundation brakes for both heavy and medium duty commercial vehicles, stated that, in general, it supports the proposed rule and that the rule will promote improvements of motor vehicles to provide safer vehicles on the highways.

A number of commenters sought clarification of the vehicle types to which the rule would apply (i.e., would the proposed rule apply only to MPVs, buses, and trucks over 4,536 kilograms (10,000 pounds GVWR) or also to trailers and motorcycles. One commenter questioned NHTSA's discussion of "Costs and Benefits," based on NHTSA's belief that change would be minimal. Advocates for Highway and Auto Safety, and ArvinMeritor raised unique issues.

In the sections which follow, NHTSA identifies and discusses the specific issues raised by the commenters.

A. Applicability of the NPRM to Trailers

Several of the manufacturers asked for clarification of whether the new parking brake requirements apply to all vehicles over 4,536 kilograms (10,000 pounds) gross vehicle weight rating (GVWR) or only to multipurpose passenger vehicles (MPVs), buses and trucks over 4,536 kilograms GVWR. Several commenters including Mr. Klein stated their beliefs that although not explicitly stated in the NPRM, the intent of the proposal was to apply the new requirements to MPVs, non-school buses and trucks over 4,536 kg, but not to trailers over 4,536 kg (or to motorcycles). The NATM and RVIA expressed their beliefs that the NPRM was not intended to apply to trailers.

NHTSA agrees that it was the intent of the agency to apply the NPRM only to MPVs, non-school buses, and trucks over 4,536 kg. We note that the agency has never intended to apply FMVSS No. 105 to trailers, including light trailers, or to motorcycles.

In reviewing this issue, we found that the existing application section of FMVSS No. 105 states that the standard "applies to hydraulically-braked vehicles with a GVWR greater than 3,500 kilograms (7,716 pounds)." The reference to "hydraulically braked vehicles" is overbroad and is in error.

This particular language was included in the standard in a final rule published in the **Federal Register** (62 FR 51064) on September 30, 1997. This rule extended the requirements of FMVSS No. 135, which applied at that time only to passenger cars, to trucks, buses, and MPVs with a GVWR of 3,500 kilograms (7,716 pounds) or less. The amendment to FMVSS No. 105 was a conforming amendment to remove these vehicles from its coverage once they were covered by FMVSS No. 135, and was not intended to extend the coverage of FMVSS No. 105 to trailers. The revised application section should have referred to multipurpose passenger vehicles, trucks and buses instead of "vehicles," as it had before the amendment. Unfortunately this overbroad language was reflected in the NPRM for this rulemaking. We are using the correct language for today's final rule (see S3 of the amended standard).

We note that Advocates supported extending the parking brake requirements to trailers. It expressed concern, however, that NHTSA did not collect any information or data for the administrative record on semitrailer/trailer rollaways. It also stated that NHTSA cannot ignore the security

implications of the need to ensure the safety of trailers by impeding their illegal use in transportation by a requirement for parking brakes.

For the reasons discussed earlier, we did not intend to include the extension of parking brake or other requirements of FMVSS No. 105 to hydraulically braked trailers. If the agency were to propose to include trailers in the standard, we would provide appropriate supporting analysis and provide an opportunity for comment. However, the agency has no such plans at this time.

B. Engagement Effort Threshold of Hand and Foot-Operated Parking Brakes

Advocates stated its continuing disagreement with the engagement effort threshold of both hand and foot operated parking brakes as "excessively high." Advocates did not provide suggested forces that it believes are acceptable. Advocates stated its view that "there is no information of record anywhere in the history of rulemaking on FMVSS No. 105 demonstrating that 125 pounds of force for hand engagement and 150 pounds of force for foot engagement is acceptable for all licensed operators of affected vehicles." Advocates also stated that NHTSA did not take into consideration the capabilities of operators with certain disabilities to engage parking brakes with the minimum forces required by the standard.

In response, NHTSA notes that Advocates did not provide information on the practicability, including costs, or benefits of providing systems that would operate with lower force levels. The agency believes that such systems would likely need to utilize electrical activation, which would be costly. NHTSA observes that FMVSS No. 105 allows for electrical activation of the parking brake (see S7.7.1.3(c)) with no requirement for application force levels. Electrical activation can be considered for drivers who may not otherwise be able to exert the energy required to actuate the hand or foot controls. Aftermarket parking brake supplemental control systems are also available for those drivers who may benefit from them.

C. Retrofitting of Parking Brakes

Advocates also supported extending the new rule to retrofitting parking brakes on vehicles over 4,536 kg (10,000 pounds), stating that the safety benefits would be "considerable." Advocates is referring to a delegation of authority to NHTSA from the Secretary of Transportation under Chapter 301 of Title 49 U.S.C. The delegation of

authority is at 49 CFR 1.50(n) and states as follows:

(n) Carry out, in coordination with the Federal Motor Carrier Safety Administrator, the authority vested in the Secretary by subchapter III of chapter 311 and section 31502 of title 49, U.S.C., to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture when the standards are based upon and similar to a Federal Motor Vehicle Safety Standard promulgated, either simultaneously or previously, under chapter 301 of title 4.

NHTSA will not adopt Advocates' suggestion. Retrofitting existing commercial vehicles with parking brakes was not proposed in the NPRM. Thus, to adopt Advocates' suggestion would be outside the scope of this rulemaking. Furthermore, if a vehicle did not already have parking brakes, it would not be practicable (i.e., it would not be cost effective) to retrofit the vehicle with parking brakes.

D. Issues Raised by ArvinMeritor

In its comments, ArvinMeritor (Arvin) raised the following issues, which are addressed below.

Arvin stated that the costs estimated for compliance with the NPRM (\$10.00 or less per vehicle) may be exceeded for some vehicles because of parking brake system re-design that might be necessary to meet the application force and grade holding requirements. NHTSA notes that the NPRM's cost estimate was based on the comments from several medium and heavy truck manufacturers, including General Motors and Ford, indicating that all hydraulically-braked trucks and buses are equipped with parking brakes. School buses must already meet the parking brake requirements in this final rule, and many school buses are built on chassis from a major truck manufacturer.

NHTSA agrees that some truck and bus manufacturers may incur additional costs to redesign the parking brake actuation mechanisms (levers and pedals) and other vehicle components to meet the performance requirements of the amendment. Also, in order to meet the grade holding requirements, the parking brake friction components (brake drums and linings) may also need to be redesigned. Arvin did not quantify the costs for the modifications but did provide information about existing parking brake designs. Arvin also described some of the design changes that may be implemented to meet the proposed requirements. Despite these additional costs that may be incurred, as it stated in the NPRM (See 67 FR 66098, at 66099, "Costs and Benefits,") NHTSA believes that any modifications required

to meet this final rule can be completed at an average incremental cost of \$10.00 per vehicle or less. Neither Arvin nor any other commenter disputed NHTSA's estimate of the average incremental cost per vehicle, nor did any commenter provide an alternative dollar estimate of the cost of providing the parking brake.

Arvin commented that the parking brake burnishing procedures in S7.7.4 of FMVSS No. 105 are not specific enough to ensure adequate grade-holding performance of the parking brake. While NHTSA has considered this comment, it believes that the parking brake burnishing procedures in S7.7.4 of FMVSS No. 105, which apply to vehicles with parking brake systems that do not use the service brake friction components, are adequate. The test procedures state that burnishing is conducted according to the vehicle manufacturer's published recommendations as furnished to the vehicle purchaser. If the manufacturer does not provide instructions to the vehicle purchaser for burnishing the parking brake friction components, the parking brake test is to be conducted without burnish.

Arvin commented that there may be a wide variety of parking brake performance because the parking brakes on hydraulically braked vehicles are not automatically adjusted and there are a number of different actuation system designs. Arvin asked the agency to consider requiring that parking brake systems continue to meet a specified level of performance while the vehicles are in service.

Based on its review of several parking brake designs for hydraulically-braked vehicles with GVWRs greater than 4,536 kilograms (10,000 pounds), NHTSA believes that adjustment of the friction components appears to be straightforward and inexpensive. NHTSA believes that drivers and operators should maintain the parking brake system with appropriate adjustment and service. Although NHTSA does not have the statutory authority to test vehicles in service for compliance with parking brake performance, we note that the Federal Motor Carrier Safety Administration has jurisdiction over in-service requirements for large commercial vehicles.

Arvin commented that the proposed parking brake systems are not designed to provide emergency brake (vehicle stopping capability) service and would need to be substantially upgraded in order to provide an emergency brake function. In response, NHTSA notes that it is not requiring that the parking brake system provide an emergency brake

function. At 49 CFR Part 571.3, "emergency brake" is defined as: a "mechanism designed to stop a motor vehicle after a failure of the service brake system." The brake performance standards for hydraulic and electric brake vehicles, FMVSS Nos. 105 and 135, do not require vehicles to be equipped with an emergency brake, primarily because the service brake system is required to function with a variety of failed components. The parking brake system on hydraulically-braked vehicles has never been required to provide an emergency brake function.

E. Lead Time

TMA stated that the issue of lead time before the new requirements would take effect was not specifically raised in the NPRM. TMA stated its belief that a one-year lead time would be adequate. NHTSA agrees with TMA's comment that a one-year lead time would be adequate. Therefore, this final rule will take effect one year from the date of publication of this final rule in the **Federal Register**.

IV. Final Rule

For the reasons discussed above, NHTSA has decided to issue a final rule amending FMVSS No. 105 by extending the minimum performance requirements and associated test procedures for parking brake systems to all MPVs, buses and trucks with gross vehicle weight ratings over 4,536 kilograms. NHTSA has concluded that it is in the interest of safety to require all MPVs, trucks and buses with GVWRs over 4,536 kilograms to have parking brakes that meet the performance requirements currently applicable to over 4,536 kilogram school buses.

To remove any ambiguity about the vehicle types to which FMVSS No. 105 applies, this final rule amends the application section (S3.) by stating that the standard applies "to multipurpose passenger vehicles, trucks, and buses with a GVWR greater than 3,500 kilograms (7,716 pounds) that are equipped with hydraulic or electric brake systems.

Finally, after granting a petition for rulemaking requesting that NHTSA update a reference to the Society of Automotive Engineers' (SAE) Recommended Practice for Moving Barrier Collision Tests, J972 (SAE J972), NHTSA noted there are no changes to the description of the rigid moving barrier in the more recent (May 2000) version of the document, although the "Barrier" paragraph has been re-designated as paragraph 4.3 instead of paragraph 3.3 in its designation in the

November 1966 version of the document.

NHTSA noted that the information in the updated reference is substantively identical to the information in the original reference. Therefore, in this final rule, NHTSA amends S7.19 to update the reference to the May 2000 version of SAE J972.

Corrections—In a final rule of September 30, 1997 (62 FR 51064), NHTSA, among other changes, amended the title of FMVSS No. 135 from "Passenger Car Brake Systems" to "Light Vehicle Brake Systems." The amended title accurately reflects the fact that when the final rule took effect, FMVSS No. 135 applies not just to passenger cars, but also to trucks, buses, and multipurpose passenger vehicles (MPV) with gross vehicle weight ratings of (GVWR) of 3,500 kilograms (7,716 pounds) or less. Several years later, although FMVSS No. 135 now applies to trucks, buses, and MPVs with GVWRs of 3,500 kilograms or less, the title of FMVSS No. 135 in 49 CFR has not yet been amended. This final rule corrects the title of FMVSS No. 135 to read "Light Vehicle Brake Systems."

This final rule also corrects an error in the description of the conditions that may be indicated by illumination of the brake warning indicator. In the final rule dated September 5, 1997 (62 FR 46907), amending FMVSSs Nos. 105 and 135 to include electric brake systems, the agency incorrectly stated in the first sentence of S5.5.5 *Labeling* (b) that: "Vehicles manufactured with a split service brake system may use a common brake warning indicator to indicate two or more of the functions described in S5.5.1(a) through S5.5.1(d)." (Emphasis added) This final rule corrects the first sentence of S5.5.5(b) to read: "Vehicles manufactured with a split service brake system may use a common brake warning indicator to indicate two or more of the functions described in S5.5.1(a) through S5.5.1(g)."

V. Statutory Basis for the Rulemaking

We have issued this final rule pursuant to our statutory authority. Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms. 49 U.S.C. 30111(a). When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information. 49 U.S.C. 30111(b). The Secretary must also consider whether a

proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and deaths and injuries resulting from traffic accidents. *Id.* Responsibility for promulgation of Federal motor vehicle safety standards was subsequently delegated to NHTSA. 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

As a Federal agency, before promulgating changes to a Federal motor vehicle safety standard, NHTSA also has a statutory responsibility to follow the informal rulemaking procedures mandated in the *Administrative Procedure Act* at 5 U.S.C. 553. Among these requirements are **Federal Register** publication of a general notice of proposed rulemaking, and giving interested persons an opportunity to participate in the rulemaking through submission of written data, views or arguments. After consideration of the public comments, we must incorporate into the rules adopted, a concise general statement of the rule's basis and purpose.

The agency has carefully considered these statutory requirements in promulgating this final rule to amend FMVSS No. 105. As previously discussed in detail, we have solicited public comment in an NPRM and have carefully considered the public comments before issuing this final rule. As a result, we believe that this final rule reflects consideration of all relevant available motor vehicle safety information. Consideration of all these statutory factors has resulted in the following decisions in this final rule.

In the NPRM, we proposed to make FMVSS No. 105 parking brake requirements applicable to all "vehicles" over 4,536 kilograms (10,000 pounds). Some commenters questioned whether the term "vehicles" was intended to include motorcycles and trailers. In this final rule, NHTSA stated that it was its intent to make FMVSS No. 105 parking brake requirements applicable only to MPVs, buses and trucks over 4,536 kilograms (10,000 pounds). Thus, we amended S3., the applicability section, to make explicit the standard applies to MPVs, buses and trucks.

As indicated, we have thoroughly reviewed the public comments and amended the final rule to reflect the comments. In the few instances where we did not adopt a comment, we explain why we did not adopt the comment. In most instances, the

comments addressed matters that were not raised in the NPRM, and thus were outside the scope of the rulemaking. We believe that this final rule, which extends minimum performance requirements and associated test procedures for parking brake systems to all MPVs, buses and trucks with GVWRs greater than 4,536 kilograms (10,000 pounds) meets the need for safety.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The 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 entitlements, 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.

This notice was not reviewed under Executive Order 12866. Further, this notice was determined not to be significant within the meaning of the DOT Regulatory Policies and Procedures.

In this document, NHTSA extends the applicability of already existing parking brake requirements to cover vehicles previously excluded. As explained above, comments from heavy vehicle manufacturers indicate that most, if not all, of these vehicles are already manufactured with parking brakes designed to meet the minimum performance requirements that the agency is proposing to apply. For the remaining vehicles, the agency estimates the cost of complying with these requirements to be less than \$10 per vehicle. Considering that the total number of such vehicles that are subject to the requirements is estimated to be about 212,000 annually, the agency

estimates that the total annual effect of this rule is less than \$2,120,000. Accordingly, the agency concludes that this rule has no significant economic effects.

The DOT's regulatory policies and procedures require the preparation of a full regulatory evaluation, unless the agency finds that the impacts of a rulemaking are so minimal as not to warrant the preparation of a full regulatory evaluation. Since public comments suggest that most, if not all, of these vehicles are already manufactured with parking brakes designed to meet the minimum performance requirements that the agency applies in this final rule, the agency concludes that the impacts of this rulemaking are minimal. Thus, it has not prepared a full regulatory evaluation.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. As explained above, anecdotal evidence from heavy vehicle manufacturers suggests that most, if not all, of these vehicles are already manufactured with parking brakes designed to meet the minimum performance requirements that the agency is applying in this final rule. For the remaining vehicles, the agency estimates the cost of complying with these requirements to be less than \$10 per vehicle. Considering that the total number of such vehicles that are subject

to the requirements is approximately 212,000 vehicles annually, the agency estimates that the total annual effect of this rule to be less than \$2,120,000. Accordingly, I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA 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." The Executive Order defines "policies that have federalism implications" 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." Under Executive Order 13132, NHTSA may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the regulation.

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132. The agency has determined that this rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This rule will not have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Executive Order 12988 (Civil Justice Reform)

This final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. This final rule does not require any collections of information, or recordkeeping or retention requirements as defined by the OMB in 5 CFR Part 1320.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

For this final rule, there are no voluntary consensus standards available at this time. However, NHTSA will consider any such standards if they become available.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a

written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA 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 NHTSA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of more than \$100 million annually. The estimated cost of complying with this rule is less than \$10 per vehicle. Considering that the total number of vehicles to which these requirements apply is approximately 212,000 vehicles annually, the estimated aggregate cost of this rule is less than \$2,120,000. Accordingly, the agency has not prepared an Unfunded Mandates assessment.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make this rulemaking easier to understand?

We have solicited comments on the Plain Language implications of the NPRM in the **Federal Register** document of October 30, 2002 (67 FR 66098) on p. 66101. We received no comments on the Plain Language issue.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by Reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

Authority: 49 U.S.C. 322, 30111, 30115, 30166, and 30177; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.105 is amended by revising S3, S5.2, S5.2.3, S7.7.1, paragraph (b) of S7.7.1.3, and S7.19 to read as follows:

§ 571.105 Standard No. 105; Hydraulic and electric brake systems.

* * * * *

S3. *Application.* This standard applies to multi-purpose passenger vehicles, trucks, and buses with a GVWR greater than 3,500 kilograms (7,716 pounds) that are equipped with hydraulic or electric brake systems.

* * * * *

S5.2 *Parking Brake System.* Each vehicle shall be manufactured with a parking brake system of a friction type with a solely mechanical means to retain engagement, which shall under the conditions of S6, when tested according to the procedures specified in S7, meet the requirements specified in

S5.2.1, S5.2.2, or S5.2.3 as appropriate, with the system engaged—

(a) In the case of a vehicle with a GVWR of 4,536 kilograms (10,000 pounds) or less, with a force applied to the control not to exceed 125 pounds for a foot-operated system and 90 pounds for a hand-operated system; and

(b) In the case of a vehicle with a GVWR greater than 4,536 kilograms (10,000 pounds), with a force applied to the control not to exceed 150 pounds for a foot-operated system and 125 pounds for a hand-operated system.

* * * * *

S5.2.3 (a) The parking brake system on a multipurpose passenger vehicle, truck or bus (other than a school bus) with a GVWR of 4,536 kilograms (10,000 pounds) or less shall be capable of holding the vehicle stationary for 5 minutes, in both forward and reverse directions, on a 20 percent grade.

(b) The parking brake system on a multipurpose passenger vehicle, truck, or bus (including a school bus) with a GVWR greater than 4,536 kilograms (10,000 pounds) shall be capable of holding the vehicle stationary for 5 minutes, in both forward and reverse directions, on a 20 percent grade.

* * * * *

S7.7.1 Test procedure for requirements of S5.2.1 and S5.2.3.

* * * * *

S7.7.1.3

* * * * *

(b) In the case of a vehicle with a GVWR greater than 4,536 kilograms (10,000 pounds) not more than 150 pounds for a foot-operated system, and not more than 125 pounds for a hand-operated system.

* * * * *

S7.19 *Moving barrier test.* (Only for vehicles that have been tested according to S7.7.2.) Load the vehicle to GVWR, release parking brake, and place the transmission selector control to engage the parking mechanism. With a moving barrier as described in paragraph 4.3 of SAE recommended practice J972

“Moving Barrier Collision Tests,” Nov. 1966 (revised May 2000), impact the vehicle from the front at 2½ mph. 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 may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001. Copies may be inspected at the National Highway Traffic Safety Administration, Technical Information Services, 400 Seventh Street, SW., Plaza Level, Room 403, Washington, DC 20590, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Keep the longitudinal axis of the barrier parallel with the longitudinal axis of the vehicle. Repeat the test, impacting the vehicle from the rear.

Note: The vehicle used for this test need not be the same vehicle that has been used for the braking tests.

* * * * *

■ 3. Section 571.135 is amended by revising the section heading, and revising in S5.5.5(b) the first sentence, to read as follows:

§ 571.135 Standard No. 135; Light vehicle brake systems.

* * * * *

S5.5.5(b) Vehicles manufactured with a split service brake system may use a common brake warning indicator to indicate two or more of the functions described in S5.5.1(a) through S5.5.1(g).

* * * * *

Issued: June 24, 2005.
Jeffrey W. Runge,
Administrator.
 [FR Doc. 05-12880 Filed 6-29-05; 8:45 am]
BILLING CODE 4910-59-P

Proposed Rules

Federal Register

Vol. 70, No. 125

Thursday, June 30, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-AH70

List of Approved Spent Fuel Storage Casks: VSC-24 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the BNG Fuel Solutions Corporation Ventilated Storage Cask (VSC-24) System listing within the "List of approved spent fuel storage casks" to include Amendment No. 5 to Certificate of Compliance Number (CoC No.) 1007. Amendment No. 5 would change the certificate holder's name from Pacific Sierra Nuclear Associates to BNG Fuel Solutions Corporation. No changes were required to be made to the VSC-24 Final Safety Analysis Report nor its Technical Specifications.

DATES: Comments on the proposed rule must be received on or before August 1, 2005.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150-AH70) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301)

415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher (301) 415-5905; e-mail cag@nrc.gov. Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays (telephone (301) 415-1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers at the NRC's Public Document Room (PDR), O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML050310446.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415-6219, e-mail, jmm2@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 5 to CoC No. 1007 and does not include other aspects of the VSC-24 System. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on September 13, 2005. However, if the NRC receives significant adverse comments by August 1, 2005, then the NRC will publish a document that withdraws the direct final rule and will subsequently address the comments received, in a final rule. The NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or Technical Specifications.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1007 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1007.
Initial Certificate Effective Date: May 7, 1993.
Amendment Number 1 Effective Date: May 30, 2000.
Amendment Number 2 Effective Date: September 5, 2000.
Amendment Number 3 Effective Date: May 21, 2001.
Amendment Number 4 Effective Date: February 3, 2003.
Amendment Number 5 Effective Date: September 13, 2005.

SAR Submitted by: BNG Fuel Solutions Corporation.

SAR Title: Final Safety Analysis Report for the Ventilated Storage Cask System.

Docket Number: 72–1007.

Certificate Expiration Date: May 7, 2013.

Model Number: VSC–24

* * * * *

Dated at Rockville, Maryland, this 14th day of June, 2005.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. 05–12888 Filed 6–29–05; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM310; Notice No. 25–05–07–SC]

Special Conditions: Gulfstream Aerospace Limited Partnership (GALP) Model G150 Airplane; Windshield Coating in Lieu of Wipers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Gulfstream Aerospace Limited Partnership (GALP) Model G150 airplane. This airplane will have a novel or unusual design feature associated with use of a hydrophobic coating, rather than windshield wipers, as the means to maintain a clear portion of the windshield during precipitation conditions, as required by the airworthiness standards for transport category airplanes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before August 15, 2005.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM310, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM310. Comments

may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: John McConnell, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1365; facsimile (425) 227–1320, e-mail john.mcconnell@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

Background

On September 22, 2002, GALP applied for an amendment to Type Certificate Number A16NM to include the new GALP Model G150 airplane. The GALP Model G150, which is a derivative of the GALP Model G100 currently approved under Type Certificate Number A16NM, is intended to be a nine passenger executive airplane with a maximum takeoff weight of 26,000 pounds and a maximum operating altitude of 45,000 feet.

The GALP Model G150 flightdeck design incorporates a hydrophobic coating to provide adequate pilot

compartment view in the presence of precipitation. Sole reliance on such a coating, without windshield wipers, constitutes a novel or unusual design feature for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. Therefore, special conditions are required that provides the level of safety equivalent to that established by the regulations.

Type Certification Basis

Under the provisions of 14 CFR 21.101, GALP must show that the Model G150 meets the applicable provisions of the regulations incorporated by reference in Type Certificate Number A16NM or the applicable regulations in effect on the date of application for the change to the type certificate. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate Number A16NM are 14 CFR part 25, effective February 1, 1965, including Amendments 25-1 through 25-107.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. GALP has elected to voluntarily comply with Amendment 25-108 for the G150 type certification program.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model G150 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model G150 must comply with (1) either the "No Acoustical Change" provisions of § 21.93(b) or 14 CFR part 36, as amended by Amendments 36-1 through 36-24, and (2) either the "No Emission Change" provisions of § 21.93(c) or 14 CFR part 34, as amended by Amendments 34-1 through 34-3.

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

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel

or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The GALP Mode G150 will incorporate the following novel or unusual design feature: Hydrophobic windshield coating as the sole means to maintain a clear portion of the windshield, during precipitation conditions, sufficient for both pilots to have a sufficiently extensive view along the flight path.

Discussion

Section 25.773(b)(1) requires that both pilots of a transport category airplane be provided a means to maintain a sufficiently clear portion of the windshield during precipitation conditions, and that this clear portion of the windshield must have a sufficiently extensive view along the flight path. The regulations require this means to maintain such an area during precipitation in heavy rain speeds up to $1.5 V_{SR1}$.

This requirement has existed in principle since 1953 in Part 4b of the Civil Air Regulations (CAR). Section 4b.351(b)(1) of CAR 4b required that "Means shall be provided for maintaining a sufficient portion of the windshield clear so that both pilots are afforded a sufficiently extensive view along the flight path in all normal flight attitudes of the airplane. Such means shall be designed to function under the following conditions without continuous attention on the part the crew: (i) In heavy rain at speeds up to $1.6 V_{S1}$, flaps retracted." Effective December 26, 1990, Amendment 25-108 changed the criterion for effectiveness of the means to maintain an area of clear vision from $1.6 V_{S1}$ to $1.5 V_{SR1}$ to accommodate the redefinition of the reference stall speed as the 1-g stall speed. As noted in the preamble to the final rule for that amendment, the 7 percent decrease in the speed value offsets a corresponding increase in the reference stall speed associated with the use of V_{SR1} rather than V_{S1} .

The requirement that the means to maintain a clear area of forward vision must function at high speeds and high precipitation rates is based on the use of windshield wipers as the means to maintain an adequate area of clear vision in precipitation conditions. The requirement in 14 CFR 121.313(b), and in 14 CFR 125.213(b), to provide "a windshield wiper or equivalent for each

pilot station" has remained unchanged since at least 1953.

The effectiveness of windshield wipers to maintain an area of clear vision normally degrades as airflow and precipitation rates increase. It is assumed that because high speeds and high precipitation rates represent limiting conditions for windshield wipers, they will also be effective at lower speeds and precipitation levels. Accordingly, § 25.773(b)(1)(i) does not require maintenance of a clear area of forward vision at lower speeds or lower precipitation rates.

A forced air stream blown over the windshield has also been used to maintain an area of clear vision in precipitation. The limiting conditions for this technology are comparable to those for windshield wipers. Accordingly, introduction of this technology did not present a need for special conditions to maintain the level of safety embodied in the existing regulations.

Hydrophobic windshield coatings may depend to some degree on airflow to maintain a clear vision area. The heavy rain and high-speed conditions specified in the current rule do not necessarily represent the limiting conditions for this new technology. For example, airflow over the windshield, which may be necessary to remove moisture from the windshield, may not be adequate to maintain a sufficiently clear area of the windshield in low speed flight or during surface operations. Alternately, airflow over the windshield may be disturbed during such critical times as the approach to land, where the airplane is at a higher than normal pitch attitude. In these cases, areas of airflow disturbance or separation on the windshield could cause failure to maintain a clear vision area on the windshield.

In addition to potentially depending on airflow to function effectively, hydrophobic coatings may also be dependent on water droplet size for effective precipitation removal. For example, precipitation in the form of a light mist may not be sufficient for the coating's properties to result in maintaining a clear area of vision.

In summary, the current regulations identify speed and precipitation rate requirements that represent limiting conditions for windshield wipers and blowers, but not for hydrophobic coatings, so it is necessary to issue special conditions to maintain the level of safety represented by the current regulations.

These special conditions provide an appropriate safety standard for the hydrophobic coating technology as the

means to maintain a clear area of vision by requiring it to be effective at low speeds and precipitation rates as well as the higher speeds and precipitation rates identified in the current regulation. These are the only new or changed requirements relative to those in § 25.773(b)(1) at Amendment 25-108.

Applicability

As discussed above, these special conditions are applicable to the Model G150. Should GALP apply at a later date for a change to the type certificate to include other type designs incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Gulfstream Aerospace Limited Partnership (GALP) Model G150 airplane.

Pilot Compartment View—Hydrophobic Coatings in Lieu of Windshield Wipers. The airplane must have a means to maintain a clear portion of the windshield, during precipitation conditions, enough for both pilots to have a sufficiently extensive view along the flight path in normal flight attitudes of the airplane. This means must be designed to function, without continuous attention on the part of the crew, in conditions from light misting precipitation to heavy rain at speeds from fully stopped in still air, to 1.5 V_{SR1} with lift and drag devices retracted.

Issued in Renton, Washington, on June 21, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate,
Aircraft Certification Service.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket Nos. PL05-8-000 and RM04-4-000]

Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding

Issued June 16, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed rule; withdrawal; policy statement.

SUMMARY: On February 2, 2004, the Federal Energy Regulatory Commission (Commission) issued a notice of proposed rulemaking (NOPR) proposing to amend its open access regulations governing capacity release and standards for business practices and electronic communications with interstate natural gas pipelines. The NOPR proposed to incorporate by reference ten creditworthiness standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB) and adopt additional regulations related to the creditworthiness of shippers on interstate natural gas pipelines. The Commission adopted the NAESB creditworthiness standards in Docket No. RM96-1-026 (70 FR 28204), and is now issuing a policy statement on creditworthiness. Therefore, the proposed rulemaking in Docket No. RM04-4-000 is withdrawn.

DATES: The withdrawal of the proposed rulemaking is made on the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: David Faerberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202)-502-8275, david.fajerberg@ferc.gov.

Frank Karabetsos, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202)-502-8133, frank.karabetsos@ferc.gov.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

1. The Commission is issuing a policy statement setting forth its approach to credit issues relating to transportation on natural gas pipelines. The policy statement is intended to provide the

industry with guidance on the Commission's policies with respect to credit and the way in which the Commission will evaluate future proceedings involving changes to the creditworthiness provisions of pipeline tariffs.

I. Background

2. In 2002, a number of interstate natural gas pipelines made filings with the Commission to revise the creditworthiness provisions in their tariffs. These pipelines claimed that, due to increased credit rating downgrades for many energy companies, industry attention has focused on issues relating to a pipeline's risk profile and its credit exposure. The pipelines argued that tariff revisions are needed to strengthen creditworthiness provisions and minimize the risk to the pipeline and its shippers in the event that a shipper defaults on its obligations.

3. In September 2002, the Commission issued orders that began to examine and investigate issues relating to a pipeline's ability to determine the creditworthiness of its shippers.¹ Several parties in these proceedings requested that the Commission develop uniform guidelines for pipeline creditworthiness provisions. The parties argued that generic guidelines would reduce the potential burden faced by customers who otherwise would need to comply with inconsistent and overly burdensome credit requirements.

4. The Commission concluded that developing generic standards for creditworthiness determination could be valuable since shippers would be able to provide the same documents to every pipeline to obtain capacity. The Commission encouraged the parties to initiate the standards development process at the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB) to see whether a consensus standard could be developed for creditworthiness determinations. In June 2003, NAESB filed a progress report with the Commission in Docket No. RM96-1-000 stating that its Wholesale Gas Quadrant had adopted ten standards relating to creditworthiness. A number of parties filed comments with the Commission after NAESB filed its report.

5. On February 2, 2004, the Commission issued a Notice of Proposed Rulemaking (NOPR) in Docket

¹ See *Tennessee Gas Pipeline Co.*, 100 FERC ¶ 61,267 (2002); *Northern Natural Gas Co.*, 100 FERC ¶ 61,278 (2002); *Natural Gas Pipeline Co. of America*, 101 FERC ¶ 61,269 (2002).

No. RM04-4-000² that proposed to amend the Commission's open access regulations governing capacity release and standards for business practices and electronic communications with interstate natural gas pipelines. The NOPR proposed to incorporate by reference the ten creditworthiness standards promulgated by NAESB's WGQ and to adopt additional regulations related to the creditworthiness of shippers on interstate natural gas pipelines.³ Forty-two comments were filed in response to the NOPR.⁴

II. Discussion

6. The Commission has determined not to go forward with a final rule on creditworthiness, but to issue this policy statement to provide the industry with guidance as to the Commission's credit policies and the way in which the Commission will examine future proceedings in which creditworthiness issues are considered. Since the issuance of the NOPR, filings by pipelines to revise their creditworthiness standards have declined markedly, and, in general, the circumstances in the energy industry that led to concern about shippers' credit status and their effect on pipeline risk profiles have improved. Based on the comments filed in the NOPR and changes in the financial picture of the natural gas industry, we conclude that standardizing the creditworthiness process beyond the business practices adopted by NAESB is not necessary at this time and that creditworthiness issues that arise in individual filings can be addressed on a case-by-case basis. The guidance provided here will assist the industry in evaluating the issues that may arise in individual cases.

² *Creditworthiness Standards for Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking*, 69 FR 8587 (Feb. 25, 2004), FERC Stats. & Regs., Proposed Regulations ¶ 32,573 (Feb. 12, 2004).

³ On May 9, 2005, the Commission issued Order No. 587-S, in which the Commission incorporated by reference the most recent version, Version 1.7, of the consensus standards promulgated by the WGQ of NAESB. 111 FERC ¶ 61,203 (2005). Among other things, Version 1.7 contains the ten standards regarding creditworthiness which the Commission proposed to adopt in its NOPR in Docket No. RM04-4-000. The standards 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.

⁴ The commenters and the abbreviations for each commenter are listed in the Appendix.

A. Shipper Information Provided to the Pipeline

7. The WGQ Executive Committee considered, but did not adopt, a proposed standard which would have established a uniform set of documents that shippers would have to provide to pipelines, distinguishing between the various customer groups that use pipeline services. The list of information under this proposed standard was as follows:

- a. Audited Financial Statements;
- b. Annual Report;
- c. List of Affiliates, Parent Companies, and Subsidiaries;
- d. Publicly Available Information from Credit Reports of Credit and Bond Rating Agencies;
- e. Private Credit Ratings, if obtained by the shipper;
- f. Bank References;
- g. Trade References;
- h. Statement of Legal Composition;
- i. Statement of Length of Time Business has been in Operation;
- j. Most recent filed statements with the Securities and Exchange Commission (or an equivalent authority) or such other publicly available information;

k. For public entities, the most recent publicly available interim financial statements, with an attestation by its Chief Financial Officer, Controller, or equivalent (CFO) that such statements constitute a true, correct, and fair representation of financial condition prepared in accordance with Generally Accepted Accounting Principles (GAAP) or equivalent;

- l. For non-public entities, including those that are state-regulated utilities:
 - i. The most recent available interim financial statements, with an attestation by its CFO that such statements constitute a true, correct, and fair representation of financial condition prepared in accordance with GAAP or equivalent;
 - ii. An existing sworn filing, including the most recent available interim financial statements and annual financial reports filed with the respective regulatory authority, showing the shipper's current financial condition;

m. For state-regulated utility local distribution companies, documentation from their respective state regulatory commission (or an equivalent authority) of an authorized gas supply cost recovery mechanism which fully recovers both gas commodity and transportation capacity costs and is afforded regulatory asset accounting treatment in accordance with GAAP or equivalent;

n. Such other information as may be mutually agreed to by the parties;

o. Such other information as the pipeline may receive approval to include in its tariff or general terms and conditions.

In comments, Reliant argues that item "o", which makes the list non-exclusive, would create uncertainty as to exact requirements and could lead to discriminatory treatment of shippers.⁵ Pipelines urge the Commission to include item "o" in the regulations.⁶

8. The Commission generally finds this list to be a reasonable compilation of information that, in most cases, will provide pipelines with sufficient data with which to evaluate shipper credit. Pipelines may, in appropriate cases, seek to require additional information, but they should be able to justify why the additional data is necessary in the particular case.

B. Criteria for Determining Creditworthiness

9. Several shippers recommend in their comments that the Commission require that pipelines have defined, objective criteria in their tariffs that detail when a customer is creditworthy.⁷ Pipelines, as well as some shippers, maintain the Commission should not establish a defined set of criteria since pipelines need to take into account the individual circumstances and complexities of shipper relationships.⁸

10. The Commission's policy is that pipelines must establish and use objective criteria for determining creditworthiness.⁹ However, the Commission recognizes that there may not be a defined set of criteria for evaluating the circumstances facing each shipper, and that pipelines need to take into account the individual circumstances and complexities of different shipper relationships in making their determinations. Pipelines, however, should promptly inform a shipper in writing of the reasons for any determination that the shipper is not creditworthy, so that the shipper can

⁵ See Comments of Reliant at 6.

⁶ See Comments of National Fuel; INGAA; El Paso; NiSource; NFGD.

⁷ See Comments of PGC; Reliant; SEMCO; Tenaska; AGA; APS/PWEC; EPSA; Calpine.

⁸ Comments of AGA; NYISO; NRECA; Peoples; Amerada Hess; Alliance; Northern Natural; Vector; Dominion; Duke Energy; Kern River; National Fuel; NiSource; Williston Basin; INGAA; El Paso.

⁹ See *Tennessee Gas Pipeline Co.*, 102 FERC ¶ 61,075 at P 41, *order on reh'g*, 103 FERC ¶ 61,275 at P 40-41 (2003), *PG&E Gas Transmission, Northwest Corp.*, 103 FERC ¶ 61,137 at P 67 (2003).

evaluate and challenge the determination.¹⁰

C. Collateral Requirements for Non-Creditworthy Shippers

11. Since Order Nos. 436 and 636, the Commission's general policy in order to ensure that open access service is reasonably available has been to permit pipelines to require shippers that fail to meet the pipeline's creditworthiness requirements for pipeline service to put up collateral equal to three months' worth of reservation charges.¹¹ The Commission has viewed a customer's on-going credit risk as a business risk of the pipeline that should be reflected in its rate of return on equity.¹² The Commission has also recognized that in cases of new construction, particularly project-financed pipelines,¹³ pipelines and their lenders could require larger collateral requirements from initial shippers before committing funds to the construction project.¹⁴

12. In the NOPR, the Commission requested comment on these policies and, in particular, requested comment on whether pipelines should be permitted to take into account a

¹⁰ *Tennessee*, 102 FERC ¶ 61,075 at P 46; 103 FERC ¶ 61,275 at P 45.

¹¹ See *Florida Gas Transmission Co.*, 66 FERC ¶ 61,140 at 61,261 n.5&6, *order vacating prior order*, 66 FERC ¶ 61,376 at 62,257 (1994); *Southern Natural Gas Co.*, 62 FERC ¶ 61,136 at 61,954 (1993); *Valero Interstate Transmission Co.*, 62 FERC ¶ 61,197 at 62,397 (1993); *Texas Eastern Transmission Corp.*, 41 FERC ¶ 61,373 at 62,017 (1987); *Williams Natural Gas Co.*, 43 FERC ¶ 61,227 at 61,596 (1988); *Pacific Gas Transmission Co.*, 40 FERC ¶ 61,193 at 61,622 (1987); *Tennessee Gas Pipeline Co.*, 40 FERC ¶ 61,194 at 61,636 (1987); *Natural Gas Pipeline Co. of America*, 41 FERC ¶ 61,164 at 61,409, n.4 (1987); *Northern Natural Gas Co.*, 37 FERC ¶ 61,272 at 61,822 (1986).

¹² See *Ozark Gas Transmission Co.*, 68 FERC ¶ 61,032 at 61,107-108 (1994) (business and financial risk determine where the pipeline should be placed within the zone of reasonableness); *Williston Basin Interstate Pipeline Co.*, 67 FERC ¶ 61,137 at 61,360 (1994) ("Bad debts are a risk of doing business that is compensated through the pipeline's rate of return").

¹³ Project-financed pipelines are projects in which the lender secures its loans to the pipeline by the service agreements negotiated with the contract shippers. See *Kern River Gas Transmission Co.*, 50 FERC ¶ 61,069 at 61,145 (1990).

¹⁴ *Calpine Energy Services, L.P. v. Southern Natural Gas Co.*, 103 FERC ¶ 61,273, *reh'g denied*, 105 FERC ¶ 61,033 (2003) (30 months' worth of reservation charges found to be reasonable for an expansion project); *North Baja Pipeline, LLC*, 102 FERC ¶ 61,239 at P 15 (2003) (approving 12 months' worth of reservation charges as collateral for initial shippers on new pipeline); *Maritimes & Northeast Pipeline, L.L.C.*, 87 FERC ¶ 61,061 at 61,263 (1999) (12 months prepayment); *Alliance Pipeline L.P.*, 84 FERC ¶ 61,239 at 62,214 (1998); *Kern River Gas Transmission Co.*, 64 FERC ¶ 61,049 at 61,428 (1993) (stringent creditworthiness requirements required by lenders); *Mojave Pipeline Co.*, 58 FERC ¶ 61,097 at 61,352 (1992) (creditworthiness provisions required by lender); *Northern Border Pipeline Co.*, 51 FERC ¶ 61,261 at 61,769 (1990) (12 months' worth of collateral for new project).

shipper's credit status in determining the amount of collateral to be required when prospective shippers are bidding for available capacity. The pipelines generally maintain that the three months collateral may not be sufficient.¹⁵ Pipelines and some shippers¹⁶ support flexibility in setting collateral requirements based on contract term, volume, rate, and credit status. Pipelines also support the proposal for allowing pipelines to take into account credit status in determining collateral requirements when allocating capacity among bidders. Most shippers generally support the three-month period or less.¹⁷ But some shippers support the proposal for considering creditworthiness as part of a non-discriminatory process for determining net present value when considering bids for new capacity.¹⁸

13. The termination of an existing shipper's service is abandonment under the Natural Gas Act,¹⁹ and, accordingly, it is important to ensure that collateral requirements do not unnecessarily cause the termination of a shipper's service. The collateral requirement asked of existing shippers whose credit status has fallen below the pipeline's credit standards must be reasonable and directly related to the risks faced by the pipeline. In many if not most cases, the existing shipper is continuing to pay for service under its contracts even though its credit status has been lowered, and that shipper should not be pressed into default by overly onerous collateral requirements.

14. For existing shippers under contract, the Commission generally finds that its traditional policy of requiring no more than the equivalent of three months' worth of reservation charges reasonably balances the shippers' right to continued service with the pipelines' risk. Three months corresponds to the length of time it takes a pipeline to terminate a shipper in default and be in a position to remarket the capacity. Three months also is an appropriate measure of the pipeline's current remarketing risk. The amount of collateral advanced by a shipper under an existing contract does not directly reduce the current risk faced by the pipeline. When a shipper's credit rating has declined so that it is no

¹⁵ See, e.g., Comments of Alliance; Duke Energy; INGAA; National Fuel; NiSource; Northern Natural; Texas Gas; El Paso; Vector.

¹⁶ See Comments of BP.

¹⁷ See Comments of NWIGU; PG&E; PGC; PSEG; Reliant; SEMCO; Tenaska; APS/PWEC; Calpine.

¹⁸ See Comments of BP; ConEd; O&R; Peoples.

¹⁹ *American Gas Ass'n v. FERC*, 912 F.2d 1496, 1516-18 (D.C. Cir., 1990).

longer creditworthy under the pipeline's tariff, the pipeline faces a risk no matter what the collateral requirement. If the shipper defaults, the pipeline is faced with remarketing the capacity. Similarly, if the shipper cannot meet a higher collateral requirement, and is terminated for that reason, the pipeline also would be faced with remarketing the capacity.²⁰ Further, requiring more collateral will increase the current risk of default from a shipper that cannot provide such expensive collateral.²¹

15. The Commission needs to consider on a case-by-case basis any pipeline proposal to take into account a shipper's credit status in determining whether more than three months collateral can be required when shippers are bidding for available capacity on the pipeline's existing system. In allocating available capacity, the pipeline is generally permitted to allocate capacity to the highest valued bidder.²² A shipper's credit status may be a relevant factor in assessing of the value of its bid as compared with bids by more creditworthy shippers, and in determining the amount of collateral that a non-creditworthy shipper must provide to have its bid considered on an equivalent basis.

16. However, the Commission is concerned that any such proposal not impede open access as well as competition and market development by reducing the pool of potential shippers that can acquire capacity. Any pipeline that puts forth such a proposal must ensure that its method for evaluating credit status is objective, non-discriminatory, and results in collateral requirements that are reasonably related to the risk posed by the non-creditworthy shipper. In addition, the pipeline will need to ensure that its proposal reasonably reflects risks associated with contract term or volumes and may need to apply a reasonable limit on the amount of collateral a non-creditworthy shipper

²⁰ Certainly, if the shipper could put up more collateral, the pipeline would be better protected for a potential future default, since it would have a longer period to try to remarket the capacity. But such a potential future benefit does not change the current remarketing risk to the pipeline.

²¹ See *PG&E Gas Transmission, Northwest Corporation*, 105 FERC ¶ 61,382, at P 18-28 (2003).

²² See *Tennessee Gas Pipeline Co.*, 76 FERC ¶ 61,101 at 61,518 (1996) (accepting net present value formula for allocating capacity), *aff'd*, *Process Gas Consumers Group v. FERC*, 292 F.3d 831 (D.C. Cir. 2002) (affirming no length of contract cap for NPV bids); *Texas Eastern Transmission Corp.*, 79 FERC ¶ 61,258 (1997), *aff'd on rehearing*, 80 FERC ¶ 61,270 (1997) (use of net present value to allocate capacity), *aff'd*, *Municipal Defense Group v. FERC*, 170 F.3d 197 (D.C. Cir. 1999) (finding use of NPV allocation method not unduly discriminatory when applied to small customers seeking to expand service).

would have to provide in order to have its bid considered equivalent to that of creditworthy bidders.

17. The Commission will continue its policy of permitting larger collateral requirements for construction projects. For new construction projects, pipelines need sufficient collateral from non-creditworthy shippers to ensure, prior to the investment of significant resources in the project, that it can protect its financial commitment to the project. For mainline projects, the pipeline's collateral requirement must reasonably reflect the risk of the project, particularly the risk to the pipeline of remarketing the capacity should the initial shipper default.²³ Because these risks may vary depending on the specific project, no predetermined collateral amount would be appropriate for all projects. However, the collateral may not exceed the shipper's proportionate share of the project's cost.

18. Issues relating to collateral for construction projects should be determined in the precedent agreements at the certificate stage, and collateral requirements for new construction projects should not ordinarily be included in the pipeline's tariff.²⁴ In the absence of any specified collateral requirement in the precedent agreement, the pipeline's standard creditworthiness provisions in its tariff would apply once the facilities go into service.

19. The collateral requirements in the precedent agreements would apply only to the initial shippers on the project, and would continue to apply to these initial shippers even after the project goes into service.²⁵ The pipeline also should reduce the amount of collateral it holds as the shipper's contract term is reduced.²⁶ Once the contractual obligation is retired, the standard creditworthiness provisions of the pipeline's tariff would apply. In addition, in the event of a default by an initial shipper, the pipeline will be required to reduce the collateral it retains by mitigating damages.²⁷

²³ See *Calpine Energy Services, L.P. v. Southern Natural Gas Co.*, 103 FERC ¶61,273 at P 31 (2003) (approving 30 month collateral requirement based on the risks faced by the pipeline).

²⁴ *North Baja Pipeline, LLC*, 102 FERC ¶61,239, at P 15 (2003).

²⁵ See *Northern Natural Gas Co.*, 103 FERC ¶61,276, at P 17.

²⁶ See *Natural Gas Pipeline Co. of America*, 102 FERC ¶61,355 at P 80–85; *PG&E Northwest Corp.*, 103 FERC ¶61,137 at P 33, n.18, *order on rehearing*, 105 FERC ¶61,382 at P 64 (2003).

²⁷ One method of mitigation would be for the pipeline to determine its damages by taking the difference between the highest net present value bid for the capacity and the net present value of the remaining terms of the shipper's contract. The pipeline could then retain as much of the collateral as necessary to cover the damages. Pipelines could

20. For lateral line construction,²⁸ consistent with the Commission's current policy, the Commission will allow pipelines to require collateral up to the full cost of the project.²⁹ Unlike mainline projects, lateral lines are built to connect one or perhaps a few shippers, and the facilities may not be of significant use to other potential shippers. The likelihood of the pipeline remarketing that capacity in the event of a default by the shipper, therefore, is far less than for mainline construction. Because lateral line construction policies are part of a pipeline's tariff, collateral requirements for such projects should be included in the pipeline's tariff.

D. Forms of Security

21. Pipelines should accept reasonable forms of security. Such security could include cash deposits, letters of credit, surety bonds, parental guarantees, security in gas reserves, gas in storage, contracts or asset liens. A pipeline must not unreasonably discriminate in the forms of security it determines to accept from customers.

22. The Commission has held that a pipeline must provide its shippers with the opportunity to earn interest on collateral either by paying the interest itself, or giving the shipper the option to designate an escrow account to which the pipeline may gain access to payments for services provided, if needed.³⁰ Under either option, the shipper could retrieve any interest that accrued on the principal amount. If a pipeline holds the collateral, the applicable interest rate will be at least the same rate that the pipeline earns.³¹ Moreover, in such situations, the Commission will require that the pipeline be responsible for any expenses related to the maintenance of this escrow account.

E. Suspension and Termination of Service

23. Termination of service is an abandonment of service, and the Commission's regulations, therefore, require a pipeline to provide 30 days

also develop alternative measures for determining mitigation.

²⁸ A lateral line includes facilities as defined in 18 CFR 154.109(b) and 18 CFR 157.202 (2003).

²⁹ See *Natural Gas Pipeline Co. of America*, 102 FERC ¶61,355 at P 80–85 (2003) (allowing pipeline to request security in an amount up to the cost of the new facilities from its customers prior to commencing construction of new interconnecting facilities). See also *Panhandle Eastern Pipe Line Co.*, 91 FERC ¶61,037 at 61,141 (2000).

³⁰ *Tennessee Gas Pipeline Co.*, 102 FERC ¶61,075 at P 38 (2003).

³¹ The pipeline will have the option, but is not required to, pay a higher interest rate if it chooses.

notice to the Commission prior to terminating service.³² This notice ensures that the Commission has the opportunity to determine if termination is in the public convenience and a necessity.³³

24. The Commission allows pipelines to suspend service on shorter notice than termination, since it allows the pipeline to protect itself against potential losses arising from the continuation of service to a non-creditworthy shipper, such as the incurrence of large imbalances that may be extinguished in bankruptcy. Pipelines that suspend service are making an election of remedies: they are determining that the risks of continued service outweigh the potential collection of reservation or other charges during the time of the suspension. Since the pipeline is making an election to suspend and is not providing the service required under the contract during suspension, the Commission has not permitted pipelines to impose reservation charges during the period of suspension.³⁴ At the same time, the Commission does not permit a suspended shipper to release or recall capacity.³⁵ This permits the pipeline to resell the capacity as interruptible or short-term firm.

25. The Commission recognizes that when a pipeline suspends a firm shipper's contract, it is still providing some value to the shipper by reserving the capacity for the shipper's use.³⁶ Pipelines may propose some lesser charge to reflect the value of reserving the capacity for a short period of time. Such a filing, however, must address the shipper's ability to release capacity or otherwise share in the pipeline's generation of revenue from the use of the capacity for which the shipper is paying.

26. Some of the pipelines contend that the Commission's suspension policy may result in pipeline's more quickly seeking to terminate service

³² See 18 CFR 154.602 (2003) (requiring 30 days of advance notice to the customer and the Commission prior to contract termination).

³³ *Northern Natural Gas Co.*, 103 FERC ¶61,276, at P 51 (2003).

³⁴ The Commission has not wanted to create an incentive for pipelines to suspend service by making this a more attractive alternative than contract termination.

³⁵ *Trailblazer Pipeline Co.*, 103 FERC ¶61,225, at P 53 (2003).

³⁶ In *Tennessee Gas Pipeline Co. v. FERC*, 400 F.3d 23 (D.C. Cir. 2005), the court affirmed the Commission's policy of not permitting a pipeline to recover full reservation charges during suspension. The court noted that the Commission had not yet considered whether the pipeline should be able to impose a lesser charge during suspension and left such an issue to the Commission when a case is properly filed.

rather than working with shippers to overcome financial difficulties.³⁷ The Commission's policy on suspensions and termination goes only to unilateral decisions by the pipelines to terminate or suspend service. The Commission encourages pipelines and shippers to mutually negotiate suspension or other provisions to apply during the period when the shipper is trying to work out financial issues.

27. The Commission has required that pipelines provide shippers that have become non-creditworthy with a reasonable period of time to obtain the requisite collateral, taking into account the amount of money that may be involved and that the shipper may be faced with requests from multiple pipelines to provide collateral. The Commission, for instance, found proposals to require shippers to provide the total amount of collateral required within five days to be unreasonably short.³⁸

28. The Commission has developed a timeline that applies to suspension and termination procedures that it finds reasonable,³⁹ although pipelines may seek to justify alternative proposals. Under this timeline, when a shipper is no longer creditworthy, the pipeline may not terminate or suspend the shipper's service without providing the shipper with an opportunity to satisfy the collateral requirements. In this circumstance, the shipper must be given at least five business days within which to provide advance payment for one month's service, and must satisfy the collateral requirements within 30 days. This procedure would allow the shipper to have at least 30 days to provide the next three months of security for service. If the shipper fails to provide the required security within these time periods, the pipeline may suspend service immediately. Further, the pipeline may provide simultaneous written notice that it will terminate service in 30 days if the shipper fails to provide security. After a shipper either defaults or fails to provide the required collateral, pipelines would need to provide the shipper and the Commission with 30 days notice prior to terminating the shipper's contract.

³⁷ See Comments of INGAA; NiSource.

³⁸ *Northern Natural Gas Co.*, 102 FERC ¶ 61,076, at P 49 (2003); *Tennessee Gas Pipeline Co.*, 102 FERC ¶ 61,075 at P 18 (2003).

³⁹ See *Northern Natural Gas Co.*, 102 FERC ¶ 61,076, at P 49 (2003); *Tennessee Gas Pipeline Co.*, 102 FERC ¶ 61,075 at P 18 (2003); *Natural Gas Pipeline Co. of America*, 102 FERC ¶ 61,355 at P 52 (2003); *Gulf South Pipeline Co., LP*, 103 FERC ¶ 61,129 at P 49–52 (2003).

F. Capacity Release

29. The Commission will clarify its policies relating to creditworthiness and capacity release in two areas: creditworthiness requirements for replacement shippers; and rights of releasing and replacement shippers upon contract termination or suspension.

1. Creditworthiness Requirements for Replacement Shippers

30. Since Order No. 636, the Commission has held that in capacity release situations, both the releasing and replacement shippers must satisfy a pipeline's creditworthiness requirements.⁴⁰ The Commission further found that releasing shippers could not establish creditworthiness provisions for released capacity different from those in the pipeline's tariff.⁴¹ As the Commission explained, the same criteria should be applied to released capacity and pipeline capacity in order to ensure that all capacity, including released capacity, is available on an open access, non-discriminatory basis to all shippers.⁴²

31. Most commenters favor the continuation of the Commission's current policy, although EPSA maintains that the releasing shipper should be permitted to set lower collateral requirements than the pipeline's requirements. Since the replacement shipper has obligations to the pipeline (usage charges, penalties, imbalance cash outs, etc.) that are not covered by the releasing shipper's underlying contract, the pipeline does

⁴⁰ See *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636–A, FERC Statutes and Regulations, Regulations Preambles, January 1991–June 1996 ¶ 30,950 at 30,588 (1992). Under the capacity release regulations, 18 CFR § 284.8(f) (2003), the releasing shipper remains obligated under its contract to the pipeline, and must, therefore, satisfy the creditworthiness and other obligations associated with that contract, regardless of how many subordinate releases take place. For example, even if a replacement shipper is creditworthy, it may default and the releasing shipper would be responsible for payment. Moreover, given the ability of releasing shippers to recall and segment releases, both the releasing and replacement shippers need to be creditworthy to ensure their respective obligations.

⁴¹ See *El Paso Natural Gas Co.*, 61 FERC ¶ 61,333 at 62,299 (1992); *Panhandle Eastern Pipe Line Co.*, 61 FERC ¶ 61,357 at 62,417 (1992); *Texas Eastern Transmission Corp.*, 62 FERC ¶ 61,015 at 61,098 (1993); *CNG Transmission Corp.*, 64 FERC ¶ 61,303 at 63,225 (1993).

⁴² See *Tennessee Gas Pipeline Co.*, 102 FERC ¶ 61,075 at P 62 (2003) (a releasing shipper cannot impose creditworthiness conditions on a replacement shipper that are different from the creditworthiness conditions imposed by the pipeline.)

have a legitimate independent interest in assuring sufficient creditworthiness (or collateral) to cover the replacement shipper's obligations. The Commission, therefore, would not require a pipeline to permit a releasing shipper to establish a lesser collateral requirement. However, a pipeline can propose a tariff change to permit a releasing shipper to establish a lower collateral requirement.

2. Termination and Suspension

32. Pipelines will be permitted to terminate a release of capacity to the replacement shipper if the releasing shipper's service agreement is terminated, provided that the pipeline provides the replacement shipper with an opportunity to continue receiving service if it agrees to pay, for the remaining term of the replacement shipper's contract, the lesser of: (1) The releasing shipper's contract rate; (2) the maximum tariff rate applicable to the releasing shipper's capacity; or (3) some other rate that is acceptable to the pipeline.⁴³

33. This policy establishes a reasonable balance between the pipeline and replacement shippers in the event a releasing shipper's contract is terminated. Although the replacement shipper has a contract with the pipeline, the releasing shipper, not the pipeline, has established the rate for the release. Under a release transaction, the contract of the releasing shipper serves to guarantee that the pipeline receives the original contract price for the capacity. Once the releasing shipper's contract has been terminated, the pipeline may no longer wish to continue service to the replacement shipper at a lower rate, and should have the opportunity to remarket the capacity to obtain a higher rate.⁴⁴ On the other hand, the replacement shipper also has an investment in the use of the capacity, and should, therefore, have first call on retaining the capacity if it is willing to provide the pipeline with the same

⁴³ *Tenaska Marketing Ventures v. Northern Border Pipeline Co.*, 99 FERC ¶ 61,182 (2002). See *Texas Eastern Transmission, L.P.*, 101 FERC ¶ 61,071 at P 6 (2002); *Trailblazer Pipeline Co.*, 101 FERC ¶ 61,405 at P 32 (2002); *Northern Border Pipeline Co.*, 100 FERC ¶ 61,125 (2002); *Natural Gas Pipeline Co. of America*, 100 FERC ¶ 61,269 at P 7–19 (2002); *Canyon Creek Compression Co.*, 100 FERC ¶ 61,283 (2002); *Kinder Morgan Interstate Gas Transmission LLC*, 100 FERC ¶ 61,366 (2002).

⁴⁴ The pipeline is not required to terminate the replacement shipper's contract. It could decide to continue to provide service under that contract at the rate prescribed in the release. In that event, the replacement shipper would not have the right to terminate its contractual obligation since it is receiving the full service for which it contracted. See *Tenaska Marketing Ventures v. Northern Border Pipeline Co.*, 99 FERC ¶ 61,182 (2002) (replacement shipper could not cancel release contract upon bankruptcy of releasing shipper).

revenue as the releasing shipper. Under this policy, the replacement shipper is given the opportunity to retain the capacity by paying the releasing shipper's contract rate or the maximum rate for the remaining term of the contract.

34. With respect to segmented releases, the Commission will apply the same general policy. A replacement shipper will have the right to continue service if it agrees to take the full contract path of the releasing shipper at the rate paid by the releasing shipper. The Commission will not require the pipeline to permit the replacement shipper under a segmented release to retain its geographic segment of capacity. The pipeline did not negotiate the release of the segment and should not be held to that segmented release

agreement once the releasing shipper's contract terminates. The replacement shipper in that instance should be required to pay for the full capacity path of the defaulted shipper at the lower of the rate the defaulted shipper paid or the maximum rate applicable to the defaulted shipper's full capacity path.⁴⁵ In the case of multiple replacement shippers with geographically segmented releases, a pipeline would have to propose a reasonable method of allocating capacity among them if they each matched the full rate under the releasing shipper's contract.⁴⁶

35. AGA requests that upon suspension of a replacement shipper's contract, the capacity will revert to the releasing shipper. The Commission agrees that capacity will revert to the releasing shipper upon the suspension

or termination of the replacement shipper, since the releasing shipper remains liable for reservation charges under its contract with the pipeline even if the replacement shipper's service is suspended, and the releasing shipper will no longer be receiving credits during the time the replacement shipper is suspended.⁴⁷ In addition, the releasing shipper also can reserve recall rights that will permit it to recall capacity.⁴⁸

The Commission orders:

The Notice of Proposed Rulemaking in this docket is withdrawn.

By the Commission. Commissioner Brownell dissenting with a separate statement attached.

Magalie R. Salas,
Secretary.

COMMENTS FILED IN RESPONSE TO THE NOPR ON CREDITWORTHINESS STANDARDS FOR INTERSTATE NATURAL GAS PIPELINES IN DOCKET NO. RM04-4-000

| Commenter | Abbreviation |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| Alliance Pipeline L.P | Alliance. |
| Amerada Hess Corporation | Amerada Hess. |
| American Gas Association | AGA. |
| American Public Gas Association | APGA. |
| Aquila, Inc. d/b/a Aquila Networks | Aquila. |
| Arizona Public Service Company and Pinnacle West Energy Corporation | APS/PWEC. |
| BP America Production Company and BP Energy Company | BP. |
| Calpine Corporation | Calpine. |
| CenterPoint Energy Gas Transmission Company and CenterPoint Energy—Mississippi River Transmission Corporation | CEGT/MRT. |
| Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc | ConEd/O&R. |
| Dominion Resources, Inc | Dominion. |
| Duke Energy Gas Transmission Corporation | Duke Energy. |
| El Paso Corporation's Pipeline Group | El Paso. |
| Electric Power Supply Association | EPSA. |
| EnCana Marketing (USA) Inc | EnCana. |
| Energy America LLC and Direct Energy Marketing, Inc | Direct Energy. |
| Gulf South Pipeline Company, LP | Gulf South. |
| Interstate Natural Gas Association of America | INGAA. |
| Kern River Gas Transmission Company | Kern River. |
| KeySpan Delivery Companies | KeySpan. |
| Memphis Light, Gas and Water Division | MLGW. |
| National Fuel Gas Distribution Corporation | NFGD. |
| National Fuel Gas Supply Corporation | National Fuel. |
| National Rural Electric Cooperative Association | NRECA. |
| New York Independent System Operator, Inc | NYISO. |
| NiSource, Inc | NiSource. |
| Northern Municipal Distributors Group and Midwest Region Gas Task Force Association | NMDG/MRGTF. |
| Northern Natural Gas Company | Northern Natural. |
| Northwest Industrial Gas Users | NWIGU. |
| Pacific Gas and Electric Company | PG&E. |
| Peoples Gas Light and Coke Company, North Shore Gas Company and Peoples Energy Wholesale Marketing, LLC | Peoples. |
| Process Gas Consumers Group, American Forest & Paper Association, American Iron and Steel Institute, Georgia Industrial Group, Industrial Gas Users of Florida and Florida Industrial Gas Users. | PGC. |
| PSEG Energy Resources & Trade LLC | PSEG. |
| Public Service Commission of the State of New York | New York. |
| Reliant Resources, Inc | Reliant. |
| SEMCO Energy Gas Company | SEMCO. |
| Sempra Energy Global Enterprises and Sempra Energy International | Sempra. |
| Steuben Gas Storage Company | Steuben. |
| Tenaska Marketing Ventures | Tenaska. |
| Texas Gas Transmission, LLC | Texas Gas. |
| Vector Pipeline L.P | Vector. |

⁴⁵ *National Fuel Gas Supply Corp.*, 101 FERC ¶ 61,063 at P12 (2002).

⁴⁶ In the event of such multiple bids by replacement shippers, regardless of the allocation

method used by the pipeline, the shippers should be able to replicate their geographically segmented capacity by releasing segments of capacity to each other.

⁴⁷ See *Tennessee Gas Pipeline Co.*, 103 FERC ¶ 61,275, at P 99 (2003).

⁴⁸ *Id.* at P 74.

COMMENTS FILED IN RESPONSE TO THE NOPR ON CREDITWORTHINESS STANDARDS FOR INTERSTATE NATURAL GAS PIPELINES IN DOCKET NO. RM04-4-000—Continued

| Commenter | Abbreviation |
|---------------------------------------------------|------------------|
| Williston Basin Interstate Pipeline Company | Williston Basin. |

Nora Mead Brownell, Commissioner
dissenting:

I have previously expressed my conviction that establishing mandatory creditworthiness principles will promote consistent practices across markets and service providers and provide customers with an objective and transparent creditworthiness evaluation. Such an approach would lessen the opportunity for applying these provisions in an unduly discriminatory manner. Therefore, I cannot support the majority's decision to issue mere guidance, as opposed to a binding final rule.

The majority concludes that standardizing the creditworthiness process beyond the business practices adopted by NAESB is not necessary. Unfortunately, the NAESB business practices provide only the scantest of customer protections, for example, requiring a pipeline to state the reason it is requesting credit evaluation information from existing shippers and to acknowledge receipt of that requested information.¹ Further, comments from all segments of the transportation market that use interstate pipeline services generally support the issuance of a final rule. The Electric Power Supply Association asserts that electric generators need consistent credit terms to facilitate infrastructure investment.² The associations for local utilities argue that the proposed regulations reflect a balanced approach in providing the pipelines with protection against the risks of non-creditworthy shippers while at the same time assuring that pipelines can not impose unreasonable burdens on the shippers.³ Peoples Gas Light and Coke Company and EnCana Marketing (USA) Inc. point out that the proposed regulations reflect Commission's credit policy as it has evolved in several individual proceedings and declare that at this point it is appropriate to codify that policy and apply it to all pipelines.⁴ The Northwest Industrial Gas Users argue that, without consistent credit requirements, their ability to purchase unbundled service through interstate pipelines could be restricted.⁵ The Process Gas Consumers Group, the American Forest & Paper Association, the American Iron and Steel Institute, the Georgia Industrial Group, the Industrial Gas Users of Florida and the Florida Industrial Gas Users (Industrials) support the overwhelming majority of the proposed regulations as a fair balance

between the needs of the pipelines and their shippers.⁶ Finally, even the New York Independent System Operator acknowledges that standardization is generally beneficial and suggests that a comprehensive credit program can serve as a rational, workable model for the electric industry.⁷

The majority concludes that creditworthiness issues should be addressed on a case-by-case basis. This conclusion seems premised on the fear that mandatory principles will lead to institutionalizing a "one-size-fits-all" approach. Let me be clear, I agree that such an approach is hazardous and I would not support it. What I am saying is that creditworthy provisions need to be more systematic, transparent, and non-discriminatory with sufficient flexibility to adapt to specific situations but with customer safeguards such as written explanations. Promulgation of a final rule would have accomplished the goal of providing objective credit principles in every pipeline tariff while retaining the necessary flexibility to adapt to particular situations.

Commenters from all segments of the interstate transportation market supported the rulemaking approach and, I believe, the market would have been better served had we promulgated a final rule. As I stated in my dissent to the policy statement on electric creditworthiness,⁸ the non-binding effect of this policy statement seems to result in a known problem still wanting a remedy, and therefore, I dissent.

Nora Mead Brownell.

[FR Doc. 05-12874 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 19

RIN 2900-AL97

Board of Veterans' Appeals: Clarification of a Notice of Disagreement

AGENCY: Department of Veterans Affairs.
ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations governing appeals to the Board of Veterans' Appeals (Board) to clarify the actions an agency of original

jurisdiction must take to determine whether a written communication from a claimant that is ambiguous in its purpose is intended to be a Notice of Disagreement with an adverse claims decision.

DATES: Comments must be received on or before August 29, 2005.

ADDRESSES: Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273-9026; e-mail to VAregulations@mail.va.gov; or, through <http://www.regulations.gov>. Comments should indicate that they are submitted in response to "RIN 2900-AL97." All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273-9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals (012), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202-565-5978).

SUPPLEMENTARY INFORMATION: The Board is the component of VA that decides appeals from denials of claims for veterans' benefits rendered by VA agencies of original jurisdiction. The Board is under the administrative control and supervision of a Chairman directly responsible to the Secretary of Veterans Affairs. 38 U.S.C. 7101.

An agency of original jurisdiction (AOJ) makes the initial decision on a claim for VA benefits. An AOJ is typically one of VA's 57 regional offices in the case of benefits administered by the Veterans Benefits Administration (VBA), or a VA Medical Center in the case of benefits administered by the Veterans Health Administration (VHA). A claimant who wishes to appeal the AOJ's decision to the Board must file a timely Notice of Disagreement (NOD) with the AOJ that decided the claim. We propose an amendment to the rules governing NODs to clarify the actions an AOJ must take to determine whether a written communication received from a claimant, which is ambiguous in its purpose, is intended to be an NOD.

¹ See Order No. 587-S, 111 FERC ¶ 61,203 (2005).

² See Comments of Electric Power Supply Association at 2-3.

³ See Comments of American Gas Association at 1-2 and American Public Gas Association at 1.

⁴ See Comments of Peoples Gas Light and Coke Company at 3 and EnCana Marketing (USA) Inc. at 3.

⁵ See Comments of The Northwest Industrial Gas Users at 2.

⁶ See Comments of Industrials at 1 and 4-6.

⁷ See Comments New York Independent System Operator at 4.

⁸ *Policy Statement on Electric Creditworthiness*, 109 FERC ¶ 61,186 (2004).

When a claimant files a written communication that meets the requirements of 38 CFR 20.201, that communication is an NOD. The AOJ must respond to the NOD by reviewing the claim and determining whether additional development of the evidence to substantiate the claim is warranted. If the AOJ cannot grant the claim after this review and development process, it issues a Statement of the Case (SOC) to the claimant, identifying and summarizing the evidence pertinent to the decision on the issue(s) with which the claimant has expressed disagreement. The SOC also provides the claimant with a citation to the laws and regulations that govern the decision made on the claim, and explains how those laws were applied to the facts of the claim. See 38 U.S.C. 7105(d)(1). The SOC is issued to assist the claimant in preparing his or her substantive appeal. See 38 CFR 19.29.

On occasion, an AOJ receives from a claimant a written statement that is unclear as to whether the claimant seeks to initiate an appeal from an adverse AOJ decision, or only a portion of an adverse AOJ decision, or one of several AOJ decisions. Difficulty in interpreting a document is particularly likely to occur when the AOJ has denied multiple claims in one decision document. Currently, 38 CFR 19.26 requires the AOJ to contact a claimant to request clarification if an NOD "is received following a multiple-issue determination and it is not clear which issue, or issues, the claimant desires to appeal." We propose to amend 38 CFR 19.26 to require the AOJ to contact the claimant if the AOJ is uncertain as to whether the claimant intends to initiate the appellate process by the submission of a document which is not clear as to this intent on its face.

We propose to designate the first sentence of current § 19.26 as § 19.26(a), and to reorganize and rewrite the remaining sentences as separate paragraphs in order to distinguish the different elements of the regulation.

We propose to restate the second sentence of current § 19.26 with additional explanation, and designate it as § 19.26(b). In this paragraph (b), we propose to state that if the AOJ receives a written communication from a claimant that leaves the AOJ uncertain as to whether the claimant intends to initiate the appellate process, or as to which of multiple adverse determinations the claimant wishes to appeal, the AOJ must contact the claimant, and the claimant's representative, if any, to request clarification. The AOJ would also inform the claimant that VA will not

consider the unclear communication to be an NOD unless the claimant timely responds as described in § 19.26(c). Proposed § 19.26(b) would apply in cases where the AOJ has denied one claim, and where the AOJ has made "multiple-issue determination[s]," whereas the current rule applies only in the latter case.

With regard to the "multiple-issue determination[s]" current rule, § 19.26 states that "clarification sufficient to identify the issue, or issues, being appealed should be requested." We propose to change "should" to "will," in order to emphasize the mandatory nature of the duty. We propose to state in paragraph (b) that VA will inform the claimant that if the claimant does not respond to the request for clarification within the time period described in § 19.26(c), the communication from the claimant will not be considered to be an NOD as to any adverse decision for which clarification was requested but not obtained.

We propose to establish a limit to the period of time in which the claimant may respond to a request for clarification. Paragraph (c) would require the claimant to respond, either orally or in writing, to the AOJ's request for clarification within the later of the following two dates: (1) 60 days after the date of mailing of the AOJ's request for clarification, or (2) one year after the date of mailing of notice of the adverse decision being appealed (60 days for simultaneously contested claims). Under 38 U.S.C. 7105(b)(1) claimants have one year to initiate an appeal (in all but simultaneously contested claims) after the AOJ issues an initial adverse decision. Thus, the time limit that we propose would not abridge the statutory period for initiating an appeal. Moreover, by allowing a response to be alternatively filed within 60 days after the date the AOJ requests clarification, or within one year after the date of mailing of notice of the adverse decision being appealed, we have provided the claimant with a reasonable period in which to respond in the event VA requests clarification either within the last 60 days of the one-year appeal period, or later. We believe that 60 days is a reasonable time frame in which to expect the claimant to respond.

Because there can only be one valid NOD, the written communication from the claimant that prompts the AOJ to request clarification will be considered to be a valid NOD if the claimant subsequently provides the requested clarification. See *Hamilton v. Brown*, 39 F3d 1574 (1994) (holding that there may only be one valid NOD in each appeal). For purposes of calculating all

subsequent filing deadlines, the date of the single NOD must be the date the first communication indicating disagreement, albeit ambiguous, is received at the AOJ.

We propose a new paragraph (d), derived from the last sentence of current § 19.26, which provides that upon receipt of clarification of the claimant's intent to file an NOD, the AOJ will undertake any necessary review and development action and prepare a Statement of the Case pursuant to § 19.29, unless the NOD has been resolved by granting the benefit(s) sought on appeal or the NOD is withdrawn by the claimant or his or her representative.

We propose in paragraph (e) to state that references to the "claimant" in § 19.26 include reference to the claimant and his or her representative, if any, as well as to his or her fiduciary, if any. This paragraph simply provides a shorthand reference for purposes of readability. We envision that the AOJ will contact any of these parties when clarification of an NOD is required. Similarly, any may respond to the request. Once a clarifying response is received from one of these parties, further contact will not be necessary. Thus multiple contacts and responses are not required and would likely prove impractical. Contact for the purpose of seeking clarification would cease as soon as clarification is received from one of the authorized parties or when the potential sources for clarification have been exhausted. Proposed paragraph (e) would not require VA to contact both the claimant and the representative if, after contacting one of the two parties, VA is no longer unsure as to whether the claimant had intended to file an NOD. If, after receiving a response from one of the parties, VA is still not able to determine whether the document filed was intended as an NOD, VA will contact another party.

We propose to amend 38 CFR 19.27 only to clarify that the procedures for an administrative appeal are intended as a remedy in the event any intra-agency dispute remains after the procedures set forth in § 19.26 have been followed, as to whether a written communication expresses an intent to appeal or as to which denied claims the claimant wants to appeal. We anticipate that administrative appeals of this nature will occur only rarely.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure

by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, or tribal governments, or the private sector.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Paperwork Reduction Act

Proposed 38 CFR 19.26, which is set forth in full in the proposed regulatory text portion of this document, and current 38 CFR 20.201 contain collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). These provisions set forth procedures for initiating an appeal to the Board of Veterans' Appeals, including the type of information that must be contained in an NOD. As required under section 3507(d) of the Act, VA has submitted a copy of this proposed rulemaking action to the Office of Management and Budget (OMB) for its review of the collection of information.

OMB assigns control numbers to collections of information it approves. VA 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.

Title: Notice of Disagreement and Clarification of Notice of Disagreement.

Summary of collection of information: Under 38 CFR 20.302, a claimant who wishes to appeal the AOJ's decision to the Board must file a NOD with the AOJ that decided the claim within one year from the date that the AOJ mails notice of the determination to him or her. The provisions of 38 CFR 20.201 require that an NOD must be a written communication from a claimant or his or her representative expressing dissatisfaction or disagreement with an adjudicative determination by the AOJ and a desire to contest the result. Proposed 38 CFR 19.26 provides that

AOJs must seek clarification from a claimant if an unclear communication that may or may not constitute an NOD is received.

Description of the need for information and proposed use of information: The first element of a complete appeal to the Board is an NOD. The NOD is the mechanism that a claimant uses to inform the VA of his or her dissatisfaction with a decision denying a VA benefit. After receiving an NOD, VA is required to reexamine the denied claim, performing additional evidentiary development is warranted. If the claim cannot be granted at that stage, VA initiates the appellate processing by issuing a Statement of the Case to the claimant, informing the claimant of the laws and regulations governing his or her claim, and the basis for the denial of that claim.

Description of likely respondents: VA benefits claimants who have received a denial decision from an Agency of Original Jurisdiction.

Estimated number of respondents: 108,931 NODs were filed in fiscal year 2004. The number of NODs filed in future years will depend upon the number of dissatisfied claimants who wish to pursue the appellate process.

Estimated frequency of responses: This information is collected on a "one-time" basis.

Estimated average burden per collection: Respondents have wide discretion in the amount of time spent in preparing the notice of disagreement. They may simply identify, in writing, the issues with which they are in disagreement. Some may add a few sentences explaining why they are in disagreement. Most respondents use this approach. On the other hand, a respondent may write several pages explaining why he or she is in disagreement with the decision. With this in mind, the Board's best estimate would be that an average of one hour is spent in preparation of the notice of disagreement.

Estimated total annual reporting and recordkeeping burden: The estimated total annual reporting burden is approximately 108,931 hours. This information collection imposes no recordkeeping requirement. There should be no costs to respondents. No ongoing accumulation of information, or special purchase of services, supplies or equipment, is required.

The Department considers comments by the public on proposed collections of information in:

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including

whether the information will have practical utility;

- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections 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.

Written comments on the collections of information should be submitted to Sue Hamlin, Board of Veterans' Appeals (01C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, or e-mail to sue.hamlin@va.gov. Comments should indicate that they are in response to "RIN 2900–AL97," and must be received on or before August 29, 2005.

Catalog of Federal Domestic Assistance Numbers

There is no Catalog of Federal Domestic Assistance number for this proposed rule.

List of Subjects in 38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

Approved: March 22, 2005.

R. James Nicholson,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, we propose to amend 38 CFR part 19 as follows:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 19.26 is revised to read as follows:

§ 19.26 Action by agency of original jurisdiction on Notice of Disagreement.

(a) *Initial action.* When a claimant files a timely Notice of Disagreement (NOD), the agency of original jurisdiction (AOJ) must reexamine the claim and determine whether additional review or development is warranted.

(b) *Unclear communication or disagreement.* If within one year after issuing an adverse decision (or 60 days for simultaneously contested claims), the AOJ receives a written

communication from the claimant expressing dissatisfaction or disagreement with the adverse decision, but the AOJ cannot clearly identify that communication as expressing an intent to appeal, or the AOJ cannot identify which denied claim(s) the claimant wants to appeal, then the AOJ will contact the claimant to request clarification of the claimant's intent. In this request for clarification, the AOJ will explain that if the claimant does not respond to the request within the time period described in paragraph (c) of this section, the earlier, unclear communication will not be considered an NOD as to any adverse decision for which clarification was requested.

(c) *Response required from claimant*—(1) *Time to respond*. The claimant must respond to the AOJ's request for clarification within the later of the following dates:

(i) 60 days after the date of mailing of the AOJ's request for clarification; or
 (ii) One year after the date of mailing of notice of the adverse decision being appealed (60 days for simultaneously contested claims).

(2) *Failure to respond*. If the claimant fails to provide a timely response, the previous communication from the claimant will not be considered an NOD as to any claim for which clarification was requested. The AOJ will not consider the claimant to have appealed the decision(s) on any claim(s) as to which clarification was requested and not received.

(d) *Action following clarification*. When clarification of the claimant's intent to file an NOD is obtained, the AOJ will reexamine the claim and determine whether additional review or development is warranted. If no further review or development is required, or after necessary review or development is completed, the AOJ will prepare a Statement of the Case pursuant to § 19.29 unless the disagreement is resolved by a grant of the benefit(s) sought on appeal or the NOD is withdrawn by the claimant.

(e) *Definition*. For the purpose of the requirements in paragraphs (a) through (d) of this section, references to the "claimant" include reference to the claimant and his or her representative, if any, as well as to his or her fiduciary, if any.

(Authority: 38 U.S.C. 501, 7105, 7105A)

3. Section 19.27 is revised to read as follows:

§ 19.27 Adequacy of Notice of Disagreement questioned within the agency of original jurisdiction.

If, after following the procedures set forth in 38 CFR 19.26, there remains

within the agency of original jurisdiction a question as to whether a written communication expresses an intent to appeal or as to which denied claims a claimant wants to appeal, the procedures for an administrative appeal, as set forth in 38 CFR 19.50–19.53, must be followed.

(Authority: 38 U.S.C. 501, 7105, 7106)

[FR Doc. 05–12864 Filed 6–29–05; 8:45 am]

BILLING CODE 8320–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7930–6]

Indiana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Indiana has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is proposing to authorize the State's changes through this proposed final action.

DATES: Written comments must be received on or before August 1, 2005.

ADDRESSES: Send written comments to Gary Westefter, Indiana Regulatory Specialist, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please refer to Docket Number IN ARA20. We must receive your comments by August 1, 2005. You can view and copy Indiana's application from 9 a.m. to 4 p.m. at the following addresses: Indiana Department of Environmental Management, 100 North Senate, Indianapolis, Indiana, (mailing address P.O. Box 6015, Indianapolis, Indiana 46206) contact Steve Mojonier (317) 233–1655, or Lynn West (317) 232–3593; and EPA Region 5, contact Gary Westefter at the following address.

FOR FURTHER INFORMATION CONTACT: Gary Westefter, Indiana Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA

section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Indiana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Indiana Final authorization to operate its hazardous waste program with the changes described in the authorization application. Indiana has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Indiana, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

This decision means that a facility in Indiana subject to RCRA will now have to comply with the authorized State requirements (listed in section F of this notice) instead of the equivalent Federal requirements in order to comply with RCRA. Indiana has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports.
- Enforce RCRA requirements and suspend or revoke permits.
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Indiana is being authorized by today's action are already effective, and are not changed by today's action.

D. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will address all public comments in a later **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What Has Indiana Previously Been Authorized for?

Indiana initially received Final authorization on January 31, 1986,

effective January 31, 1986 (51 FR 3955) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on October 31, 1986, effective December 31, 1986 (51 FR 39752); January 5, 1988, effective January 19, 1988 (53 FR 128); July 13, 1989, effective September 11, 1989 (54 FR 29557); July 23, 1991, effective September 23, 1991 (56 FR 33717); July 24, 1991, effective September 23, 1991 (56 FR 33866); July 29, 1991, effective September 27, 1991 (56 FR 35831); July 30, 1991, effective September 30, 1991 (56 FR 36010); August 20, 1996, effective October 21, 1996 (61 FR 43018); September 1, 1999, effective November 30, 1999 (64 FR 47692); January 4, 2001 effective January 4, 2001 (66 FR 733); December 6, 2001 effective

December 6, 2001 (66 FR 63331); and October 29, 2004 (69 FR 63100) effective October 29, 2004.

F. What Changes Are We Authorizing With Today's Action?

On August 30, 2004, Indiana submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a final decision, subject to receipt of written comments that oppose this action, that Indiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we propose to grant Indiana Final authorization for the following program changes:

| Description of Federal requirement (include checklist #, if relevant) | Federal Register date and page (and/or RCRA statutory authority) | Analogous state authority |
|----------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Correction to the Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived-From Rules. Checklist 194 | October 3, 2001, 66 FR 50332 | 329 IAC 3.1-6-1. Effective February 13, 2004. |
| Inorganic Chemical Manufacturing Wastes; Identification and Listing. Checklist 195 as amended Checklist 195.1 CAMU Amendments | November 20, 2001, 66 FR 58258, April 9, 2002, 67 FR 17119. January 22, 2002, 67 FR 2962 | 329 IAC 3.1-6-1; 3.1-6-2(19); 3.1-7-1; 3.1-12-1. Effective February 13, 2004. 329 IAC 3.1-4-1; 3.1-4-1(b); 3.1-9-1; 3.1-9-2(16). Effective February 13, 2004. |
| Hazardous Air Pollutant Standards for Combustors: Interim Standards. Checklist 197 | February 13, 2002, 67 FR 6792 | 329 IAC 3.1-9-1; 3.1-11-1; 3.1-13-1. Effective February 13, 2004. |
| Hazardous Air Pollutant Standards for Combustors; Corrections. Checklist 198 | February 14, 2002, 67 FR 6968 | 329 IAC 3.1-11-1; 3.1-13-1. Effective February 13, 2004. |
| Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste. Checklist 199 | March 13, 2002, 67 FR 11251. | 329 IAC 3.1-6-1; 3.1-6-2(2). Effective February 13, 2004. |

G. Where Are the Revised State Rules Different From the Federal Rules?

Indiana has excluded the non-delegable Federal requirements at 40 CFR 268.5, 268.6, 268.42(b), 268.44, and 270.3 in their Incorporation by Reference at 3.1-12-2 and 3.1-13-2(4). EPA will continue to implement those requirements. This action involves no more stringent or broader in scope State requirements.

H. Who Handles Permits After the Authorization Takes Effect?

Indiana will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are

terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Indiana is not yet authorized.

I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Indiana?

Indiana is not authorized to carry out its hazardous waste program in "Indian Country", as defined in 18 U.S.C. 1151. Indian Country includes:

1. All lands within the exterior boundaries of Indian reservations within the State of Indiana;
2. Any land held in trust by the U.S. for an Indian tribe; and

3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country. Therefore, EPA retains the authority to implement and administer the RCRA program in Indian Country. However, at this time, there is no Indian Country within the State of Indiana.

J. What Is Codification and Is EPA Codifying Indiana's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. Indiana's rules, up to and including those revised January 4, 2001, have previously been codified through the incorporation-by-reference

effective December 24, 2001 (66 FR 53728, October 24, 2001). We reserve the amendment of 40 CFR part 272, subpart P for the codification of Indiana's program changes until a later date.

K. Statutory and Executive Order Reviews

This proposed rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes requirements other than those imposed by State law (see **SUPPLEMENTARY INFORMATION**, Section A. Why are Revisions to State Programs Necessary?). Therefore this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866: Regulatory Planning Review

The Office of Management and Budget has exempted this rule from its review under Executive Order 12866 (58 FR 51735, October 4, 1993).

2. Paperwork Reduction Act

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.*).

3. Regulatory Flexibility Act

After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this rule will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

5. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have federalism implications (*i.e.*, 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).

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to

this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian Tribes, or 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.)

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it is not based on environmental health or safety risks.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action as defined in Executive Order 12866.

9. National Technology Transfer Advancement Act

EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets requirements of RCRA. 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 to this rule.

10. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this 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.

11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings

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.

12. Congressional Review Act

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) To the U.S. Senate,

the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 16, 2005.

Margaret Guerriero,

Acting Regional Administrator, Region 5.

[FR Doc. 05-12940 Filed 6-29-05; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 05-6; FCC 05-10]

Revision of the Public Notice Requirements of Section 73.3580

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking ("NPRM") requests comment on whether we should modify the notice that radio and television station buyers and sellers are required to provide to the public in connection with proposed assignments and transfers of control. This NPRM also seeks comment on whether to eliminate the newspaper publication exemption for non-commercial educational ("NCE") stations and stations that are the only operating station in their broadcast service in their community of license.

DATES: Comments are due August 1, 2005 and reply comments are due August 15, 2005. Written comments on the Paperwork Reduction Act proposed Information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before August 29, 2005.

ADDRESSES: You may submit comments, identified by MB Docket No. 05-6, by any of the following methods:

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

- *Federal Communications Commission Web site*: <http://www.fcc.gov/cgb/ecfs>. Follow the instructions for submitting comments.

- *People with Disabilities*: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: (202) 418-0530 or (202) 418-0432.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to filing comments as set forth above, a copy of any comments on the information collections contained herein should be submitted to Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Cathy Williams@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to *Kristy_L.LaLonde@omb.eop.gov*, or via fax at 202-395-5167.

FOR FURTHER INFORMATION, CONTACT: Stephen Svab, Media Bureau at (202) 418-2700 or via Internet at stephen.svab@fcc.gov. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this *NPRM*, contact Cathy Williams at 202-418-2918, or via the Internet at Cathy.Williams@fcc.gov. If you would like to obtain or view a copy of this revised information collection, you may do so by visiting the FCC PRA Web page at: <http://www.fcc.gov/omd/pr>.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MB Docket No. 05-6, adopted January 10, 2005 and released March 15, 2005. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554, and may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 488-5300, facsimile (202) 488-5563, or via e-mail <http://www.BCPIWeb.com> or may be viewed via Internet at <http://www.fcc.gov/mb/>.

Initial Paperwork Reduction Act of 1995 Analysis

This document contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this *NPRM* as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due August 29, 2005. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060-0031.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License; Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License; § 73.3580, Local Public Notice of Filing of Broadcast Applications.

Form Number: FCC Form 314 and FCC Form 315.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 4,510.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Estimated Time Per Response: 1 hour to 6 hours.

Total Annual Burden: 15,890 hours.

Total Annual Costs: \$33,349,150.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On January 10, 2005, the Commission adopted a *Notice of Proposed Rulemaking (NPRM)*. In the Matter of the Revision of the Public Notice Requirements of § 73.3580, MB Docket No. 05-6, FCC 05-10. The *NPRM* proposes to revise 47 CFR 73.3580(c) to

add the requirement for newspaper publication to non-commercial educational (NCE) stations and stations that are the only operating station in their broadcast service in their community of license. Currently, these stations are exempt from this requirement.

The *NPRM* also proposes to revise the § 73.3580(d) requirement that an applicant give notice of the filing of a application for renewal of the station's license or permit in a newspaper as described in 47 CFR 73.3580(c). The *NPRM* proposes that the notice must now appear in a specific text as described in the proposed revision of 47 CFR 73.3580(d)(3)(i).

Synopsis of the Notice of Propose Rule Making

1. This *NPRM* requests comment on whether we should modify the notice that radio and television station buyers and sellers are required to provide to the public in connection with proposed assignments and transfers of control.

2. This *NPRM* also seeks comment on whether to eliminate the newspaper publication exemption for non-commercial educational ("NCE") stations and stations that are the only operating station in their broadcast service in their community of license.

Initial Regulatory Flexibility Analysis

3. Compliance requirements will naturally vary depending on the Commission's final decision in this proceeding. If the Commission decides at the final rules stage of this proceeding to modify the public notice regulations as proposed, applicants for consent to assignment of a construction permit or license for an AM, FM, or TV station or for consent to transfer control of an entity holding a construction permit or license for an AM, FM, or TV station would have to broadcast and publish public notice using the template proposed for inclusion in § 73.3580(d) of the Commission's rules (found in paragraph 5 of the *NPRM*). Additionally, if the Commission ultimately eliminates the current § 73.3580(e) exemption from the public notice requirements offered to noncommercial educational stations and stations that are the only operating station in their broadcast service in their community of license, applicants in these categories who file for assignment or transfer of a broadcast license would need to publish local notice of action in a newspaper of general circulation in the community to which the station is licensed. The Commission seeks comment on these proposals and their impact on small entities and on other ways to enhance the transparency of,

and public participation in, the sales application review and licensing process.

Filing of Comments and Reply Comments

5. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments August 1, 2005, and reply comments August 15, 2005. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

6. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

7. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments August 1, 2005, and reply comments August 15, 2005. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. The Media Bureau contact for this proceeding is Stephen Svab at (202) 418-2700, TTY (202) 418-7172, or at stephen.svab@fcc.gov.

8. Parties who choose to file by paper should also submit their comments on diskette. Parties should submit diskettes to Stephen Svab, Media Bureau, 445 12th Street SW., Room 2-B418, Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible form using MS DOS 5.0 and Microsoft Word, or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding (including the lead docket number in this case (MB Docket No. 05-6), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, referable in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554.

List of Subjects in 47 CFR Part 73

Radio, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, the Federal Communications

Commission proposes to amend 47 CFR part 73 as set forth below:

PART 73—RADIO BROADCAST SERVICES

1. The authority for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

2. Section 73.3580 is amended by revising paragraphs (c) introductory text, (d)(1), (d)(3), removing paragraph (e), redesignating paragraphs (f) through (i) as paragraphs (e) through (h), and by revising newly designated paragraphs (e) and (h) to read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

* * * * *

(c) An applicant who files an application or amendment thereto which is subject to the provisions of this section, must give notice of this filing in a newspaper. Exceptions to this requirement are applications for renewal of AM, FM, TV, Class A TV, non-commercial educational, those stations that are the only operating station in their broadcast service in their community of license and international broadcasting stations; low power TV stations; TV and FM translator stations; TV boosters stations; and FM boosters stations. The local public notice must be completed within 30 days of the tendering of the application. In the event the FCC notifies the applicant that a major change is involved, requiring the applicant to file public notice pursuant to §§ 73.3571, 73.3572, 73.3573 or 73.3578, this filing notice shall be given in a newspaper following this notification.

* * * * *

(d) * * *
(1) An applicant who files for renewal of a broadcast station license, other than a low power TV station license not locally originating programming as defined by § 74.701(h), an FM translator station or a TV translator station license, must give notice of this filing by broadcasting announcements on applicant's station. (Sample and schedule of announcements are below.) Newspaper publication is not required. An applicant who files for renewal of a low power TV station license not locally originating programming as defined by § 74.701(h), an FM translator station or a TV translator station license will comply with (f) below.

* * * * *

(3) *Filing announcements.* An applicant who files for modification, assignment or transfer of a broadcast station license (except for International

broadcast, low power TV, TV translator, TV booster, FM translator and FM booster stations) shall give notice of the filing in a newspaper as described in paragraph (c) of this section, and also broadcast the same notice over the station as follows:

(i) At least once daily on four days in the second week immediately following either the tendering for filing of the application or immediately following notification to the applicant by the FCC that Public Notice is required pursuant to §§ 73.3571, 73.3572, 73.3573 or § 73.3578. For commercial radio stations these announcements shall be made between 7 a.m. and 9 a.m. and/or 4 p.m. and 6 p.m. For stations which neither operate between 7 a.m. and 9 a.m. nor between 4 p.m. and 6 p.m., these announcements shall be made during the first two hours of broadcast operation. For commercial TV stations, these announcements shall be made between 6 p.m. and 11 p.m. (5 p.m. and 10 p.m. Central and Mountain time). For applicants who file for an assignment or transfer of a broadcast license, the following announcement shall be broadcast in accordance with the terms outlined above in this section and published in a newspaper as described in paragraph (c) of this section: On (*date of filing application*), the owners of (call sign), (insert assignor or transferor here), filed an application with the FCC for consent to sell (call sign) to (insert assignee or transferee here). A copy of this application will be available for public inspection during our regular business hours. It contains additional information concerning the proposed buyer and the agreement for the sale of the station. Individuals who wish to advise the FCC of facts relating to this application may file comments and informal objections prior to Commission action on the application. Petitions to deny the application must be filed no later than (*date the 30th day after issuance of the public notice of the acceptance for filing of the application*). Further information concerning the FCC's station sale process is available at (*address of location of the station's public inspection file*) or may be obtained from the FCC, Washington, DC 20554 or the FCC Web site, at <http://www.fcc.gov/e-file>. After accessing this Web page, users should click on the "CDBS Public Access" link and follow instructions found there.

* * * * *

(e) The notice required by paragraphs (c) and (d) of this section shall contain, when applicable, the following information, except as otherwise provided in paragraph (d) of this section

in regard to renewal applications and applications for assignment or transfer of license:

* * * * *

(h) Paragraphs (a) through (g) of this section apply to major amendments to license renewal applications. See § 73.3578(a).

[FR Doc. 05-13026 Filed 6-29-05; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2005-21243]

RIN 2127-AI66

Federal Motor Vehicle Safety Standards; Child Restraint Systems

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child restraint systems," requires that the webbing of child restraints must not lose more than a specified percentage of its original breaking strength as a result of being exposed to certain adverse conditions. The standard currently does not specify a minimum breaking strength for the unexposed webbing. This document proposes such a minimum, as well as a minimum breaking strength requirement for the exposed webbing. It also makes clearer in the text of FMVSS No. 213 that the heavier of two weights specified in the standard is used to abrade the webbing used to attach child restraint systems to the child restraint anchorages located in a vehicle.

DATES: Comments must be received on or before August 29, 2005.

ADDRESSES: You may submit comments (identified by the DOT Docket Management System Docket Number in the heading of this NPRM) by any of the following methods:

- Web site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. 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 Analyses and 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: For technical and policy issues, you may contact Mr. Tewabe Asebe, Office of Rulemaking (Telephone: 202-366-2365) (Fax: 202-366-7002). For legal issues, you may contact Ms. Deirdre R. Fujita, Office of Chief Counsel (Telephone: 202-366-2992) (Fax: 202-366-3820). You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Introduction

FMVSS No. 213 regulates child restraint systems used in motor vehicles and aircraft (49 CFR 571.213). This NPRM concerns the standard's strength requirements for belt webbing, set forth in S5.4.1 of FMVSS No. 213. Among other things, that section states that the webbing of belts provided with a child restraint system and used to attach the system to the vehicle, or to restrain the child within the system, shall meet certain strength requirements after being subjected to abrasion (S5.4.1(a)), light exposure (S5.4.1(b)), and micro-organisms (S5.4.1(b)).¹

Each of these strength requirements is expressed in the form of a percentage of

¹ S5.4.1(a) and (b) reference FMVSS No. 209, 49 CFR 571.209, "Seat belt assemblies," which specifies requirements for seat belt assemblies.

the strength of the original webbing. S5.4.1(a) specifies that, after being subjected to abrasion as specified in certain sections of FMVSS No. 209, the webbing must have a breaking strength of not less than 75 percent of the strength of the unabraded webbing. S5.4.1(b) of FMVSS No. 213, referring to S4.2(e) in FMVSS No. 209, specifies that after being exposed to light, the webbing shall have a breaking strength of not less than 60 percent of the strength before exposure. The same section of FMVSS No. 213 also refers to S4.2(f) of FMVSS No. 209, which specifies that after being exposed to micro-organisms, the webbing shall have a breaking strength of not less than 85 percent of the strength before exposure to micro-organisms.

This NPRM seeks to achieve three goals. First is to specify a minimum breaking strength for unabraded webbing or webbing that has not been exposed to light or micro-organisms (hereinafter referred to as “new webbing”). Second is to affirm that a purpose of S5.4.1(a) and (b) of FMVSS No. 213 is to limit the degradation rate of the webbing. Limiting degradation is done by having a minimum breaking strength requirement that applies to webbing that has been exposed to mechanical or environmental conditions in the test laboratory that accelerate the aging of the webbing. (Webbing that has been abraded and exposed to the accelerated conditions will be referred to as “exposed webbing.”) NHTSA tentatively concludes that specifying

minimum breaking strength requirements for new and exposed webbing eliminates the need for the current percentage strength degradation requirements. Third is to clarify the weight used in the abrasion test to abrade the webbing used to attach child restraint systems to the child restraint anchorages located in a vehicle.

Table 1, below, summarizes this NPRM’s proposed minimum breaking strength requirements for new and exposed webbing: (a) Used to attach the child restraint system to the child restraint anchorage system on the vehicle (hereinafter “tether webbing”), and (b) used to restrain the child in the child restraint (hereinafter “harness webbing”).

TABLE 1.—PROPOSED BREAKING STRENGTH REQUIREMENTS

| Type of webbing | Type of exposure | Proposed breaking strength requirement |
|-------------------------------|-----------------------------------|----------------------------------------|
| New tether webbing | | 15,000 N |
| Exposed tether webbing | Abrasion | 11,200 N |
| | Exposure to light | 9,000 N |
| | Exposure to micro-organisms | 12,700 N |
| New harness webbing | | 11,000 N |
| Exposed harness webbing | Abrasion | 8,200 N |
| | Exposure to light | 6,600 N |
| | Exposure to micro-organisms | 9,300 N |

I. Current Minimum Breaking Strength Requirement

FMVSS No. 213 does not specify a minimum breaking strength for new webbing. NHTSA is concerned that, because currently each of the strength requirements for exposed webbing is expressed in the form of a percentage of the strength of the webbing as new, where there is no specified minimum breaking strength for new webbing, manufacturers could use webbing of inferior strength to meet the standard’s requirements. The exposed webbing might have a breaking strength that is within the specified percentage of the strength of the new webbing, but the webbing might not have an absolute strength high enough to provide a margin of safety for use throughout the life of a child restraint.

Until 1979, FMVSS No. 213 had specified minimum breaking strength requirements for harness webbing used in a child restraint. The original FMVSS No. 213, “Child Seating Systems” (March 26, 1970; 35 FR 5120), required harness webbing to meet FMVSS No. 209’s performance requirements for “Type 3” seat belt assemblies.² FMVSS

No. 209 required that the webbing in a Type 3 seat belt assembly have not less than: 1500 pounds (6,672 N) breaking strength for webbing in pelvic and upper torso restraints; 4,000 pounds (17,793 N) breaking strength for webbing in seat back retainers; and 4,000 pounds (17,793 N) breaking strength for webbing connecting pelvic and upper torso restraints to attachment hardware when the assembly had a single webbing connection, or 3,000 pounds (13,345 N) breaking strength for such webbing when the assembly had two or more webbing connections.³ (S4.2(b))

In December 1979, NHTSA upgraded FMVSS No. 213 to expand the coverage of the standard to all types of restraint systems and to incorporate dynamic testing of the devices. Requirements for child harnesses were moved from FMVSS No. 209 to FMVSS No. 213, and all references to “Type 3” belts were deleted from the standards. The 1979 rule expanded the applicability of FMVSS No. 213’s webbing

pounds (23 kilograms)(kg) and capable of sitting upright by themselves, typically children from 8 months to 6 years old.

³The pound forces were compared to kilograms. Because a kilogram is a unit of mass, the pound forces should have been compared to Newton (1 lbf = 4.45 N).

requirements, from webbing used to restrain the child, to “webbing * * * used to attach the system to the vehicle or to restrain the child within the system * * *.” 44 FR 72131, 72149. In place of the webbing strength requirements that had been in FMVSS No. 209, the final rule established a requirement in FMVSS No. 213 that webbing used in child restraint systems have an abraded breaking strength of not less than 75 percent of its unabraded breaking strength.

The final rule did not retain the breaking strength requirements for unabraded webbing formerly contained in FMVSS No. 209, and did not establish a new minimum breaking strength requirement for unabraded webbing. In the NPRM preceding the 1979 final rule, the agency noted that while it was not explicitly proposing belt elongation and strength requirements, “these factors would have to be considered by manufacturers of child restraints equipped with belts to ensure that the webbing abrasion and the proposed acceleration and excursion limits are met.” (43 FR 21475; May 18, 1978.)

Since that time, not having a minimum breaking strength for unabraded webbing has affected the enforcement action of the agency.

²FMVSS No. 209 defined a Type 3 seat belt assembly as a combination pelvic and upper torso restraint for persons weighing not more than 50

Evenflo petitioned for and was granted an exemption from the notification and remedy requirements of 49 U.S.C. 30118–30120, on the basis that a noncompliance with S5.4.1(a) of FMVSS No. 213 was inconsequential to motor vehicle safety.⁴ (67 FR 21798; May 1, 2002; Docket No. 2000–7818, Notice 2.) The breaking strength of unabraded tether webbing on some of Evenflo's child restraints was 20,426 N. After being abraded, the tether webbing's breaking strength was 13,706 N, or about 67 percent of the strength of the unabraded tether webbing (which did not comply with the requirement that the strength of the exposed webbing must be at least 75 percent of the strength of the unabraded tether webbing). Evenflo reported that notwithstanding this failure, its tether webbing, even in a severely abraded condition, passed the FMVSS No. 213 dynamic test requirements for child restraint systems with over a 90 percent strength safety margin.⁵ Evenflo also stated that its tether webbing is stronger before abrasion than the tether webbing of other major U.S. child restraint manufacturers, and that the strength of its webbing is reduced to that of its competitors' webbing only when it is severely abraded, beyond that required by FMVSS No. 213.

The agency granted the petition after analyzing, *inter alia*, FMVSS No. 213 compliance data pertaining to breaking strength and abrasion of new tether webbing used in child restraint systems and adult seat belt assemblies. The agency determined that the tether webbing used in Evenflo's child restraints achieved the performance previously specified in FMVSS Nos. 209 and 213 during 1971–1979 for webbing in the unabraded condition and after abrasion conditioning. The agency further noted, however, that it would undertake rulemaking to consider whether to amend FMVSS No. 213 to require a minimum breaking strength for

webbing “to ensure that all child restraints being introduced into the market have adequate webbing strength to provide child safety protection over their lifetime.” (67 FR at 21799)

II. Agency Proposal

The agency is proposing minimum breaking strength requirements for new webbing. In addition, NHTSA believes that webbing should retain a minimum breaking strength for the usable life of the child restraint system. Webbing would be better able to retain its strength by meeting a minimum breaking strength requirement after abrasion or exposure to environmental conditions, namely exposure to light and exposure to micro-organisms. By specifying a minimum breaking strength requirement after mechanical or environmental webbing exposure, in conjunction with the minimum breaking strength requirement for new webbing, NHTSA effectively limits the mechanical and environmental degradation of the webbing. These tests are conducted to ensure that the webbing will still perform acceptably in protecting a child in the event of a crash, even after the webbing has been degraded through exposure to specified conditions that are intended to simulate those conditions that the webbing will likely encounter through normal use.

The basis for the current exposed webbing strength requirements—expressed as a percentage of the webbing's unexposed strength—is an SAE standard (Motor vehicle seat belt assemblies “SAE J4C, 1966) whose requirements were originally adopted into FMVSS No. 209, and subsequently into FMVSS No. 213, for use in evaluating webbing strength following environmental conditioning. As noted earlier, webbing must maintain at least: (a) 75 percent of its original strength after abrasion, (b) 60 percent of its original strength after exposure to light, and (c) 85 percent of its original strength after exposure to micro-organisms. The agency believes that, while in real-world conditions webbing could be subject to all of these conditions simultaneously and that the tests described are conducted separately, the exposed webbing strength levels are nonetheless sufficient to ensure that the restraint will perform acceptably. This is demonstrated through a review of NHTSA compliance data, in conjunction with a lack of real-world reports of webbing degradation.

The agency also notes that current child restraints are required by FMVSS No. 213 to have components that attach to a child restraint anchorage system

“LATCH”⁶ on a vehicle. At this time, child restraint manufacturers have predominately chosen to attach these components to the child restraint by use of webbing material. Because this tether webbing material attaches the child restraint to the vehicle and takes the place of the vehicle's seat belts in fulfilling this function, it is essential that this child restraint tether webbing meet minimum breaking strength requirements. These requirements will ensure a secure attachment of the restraint to the vehicle for the lifetime of the restraint.

Rationale for Proposed Values

NHTSA believes that, in setting minimum tether and harness webbing breaking strength requirements, the agency should consider the effect of the child occupant's weight, crash duration and severity, as well as potential misuse by consumers in securing child restraint systems to vehicles. For example, if a consumer improperly attaches one of the child restraint system's LATCH anchorages, higher than normal loads could be placed on the other attachments. The agency tentatively concludes that the safety factor included in the minimum breaking strength requirements should account for these possibilities. Moreover, due to the nature of their use, the webbing used in child restraint systems may encounter more soiling than webbing material used in adult restraint systems.

Before FMVSS No. 213 was established, FMVSS No. 209 maintained separate strength requirements: one for webbing used to attach the child seating system to the vehicle (tether webbing), and another for webbing used to restrain the child in the child seating system (harness webbing). The agency is proposing to continue this approach by establishing separate minimum breaking strength requirements for tether webbing (as used in this preamble, this term includes webbing used to attach a child restraint to all three anchorages of a LATCH system), and another for harness webbing.

To determine proposed levels for these minimum breaking strength

⁴ Section 30118(c) requires a manufacturer to notify NHTSA and the owners, purchasers, and dealers of noncompliant vehicles or equipment if the manufacturer (1) learns the vehicles or equipment contains a defect and decides in good faith that the defect is related to motor vehicle safety; or (2) decides in good faith that the vehicle or equipment does not comply with an applicable Federal motor vehicle safety standard. Section 30120(a)(1) requires the manufacturer to remedy the noncompliance without charge. Section 30118(d) requires that, upon application by a manufacturer, NHTSA must exempt the manufacturer from the notification and remedy requirements if the agency decides the noncompliance is inconsequential to motor safety.

⁵ FMVSS No. 213 requires child restraint systems to meet requirements for integrity, injury criteria, occupant excursion, and force distribution after being subjected to a 48 km/h (30 mph) frontal barrier crash.

⁶ “LATCH” stands for “Lower Anchors and Tethers for Children,” a term that was developed by manufacturers and retailers to refer to the standardized child restraint anchorage system required by FMVSS No. 225, “Child restraint anchorage systems.” This preamble uses the term to describe either an FMVSS No. 225 anchorage system in a vehicle or a child restraint that attaches to an FMVSS No. 225 child restraint anchorage system. Child restraints have been required to have components enabling attachment to the lower anchors of a vehicle's LATCH system since September 1, 2002. They have had top tethers that attach to the tether anchor of a LATCH system since 1999.

requirements, the agency evaluated two data sources. First, the agency reviewed FMVSS No. 213 compliance data for the years 2000–2002. NHTSA examined webbing compliance test data for 129 new child restraint systems. Twenty of these tests involved tether webbing, while the other 109 tests involved harness webbing. Second, NHTSA reviewed the FMVSS No. 209 breaking strength requirements for Type 3 seat belt assembly webbing prior to the establishment of FMVSS No. 213, which had also been adopted directly from the requirements of SAE J4C. The Type 3 seat belt assemblies requirements used prior to 1979 were:

1. 1,500 pounds (6,670 N) breaking strength for webbing in pelvic and upper torso restraints.
2. 4,000 pounds (17,793 N) breaking strength for webbing in seat back retainers.
3. 4,000 pounds (17,793 N) breaking strength for webbing connecting pelvic and upper torso restraints to attachment hardware when the assembly had a single webbing connection, or 3,000 pounds (13,340 N) breaking strength for such webbing when the assembly had two or more webbing connections.

New Tether Webbing

NHTSA is proposing a minimum breaking strength requirement of 15,000 N for new tether webbing. The 15,000 N proposal is based on the following rationale.

The term tether webbing (as used in this preamble) includes webbing used to attach a child restraint to any of the three anchorages of a LATCH system—either the two lower anchorages or the upper tether anchorage. Tether webbing needs to be able to withstand the loads imposed by the mass of a child and child restraint together in the event of a crash, in the same manner as the webbing used in Type 3 seat belt assemblies. (This is in contrast to harness webbing, which only needs to restrain the child occupant within the restraint system.) Tether webbing is thus analogous to Type 3 seat belt webbing referenced in FMVSS No. 213 prior to 1979. Type 3 webbing was required to meet a breaking strength in the range of approximately 13,000–18,000 N (depending on the number of webbing connections as noted earlier).

The agency is proposing that new tether webbing meet a minimum breaking strength of 15,000 N—the approximate mid-point of the range specified for Type 3 seat belt assemblies prior to 1979. NHTSA tentatively believes that a 17,000 N requirement might be excessive. Only 12 of the 20 webbings that we tested in the FMVSS

No. 213 compliance program in 2000–2002 would pass such a requirement, while NHTSA has not seen any real-world problems with respect to webbing failures. A lower bound of 13,000 N would result in 18 of the 20 tether webbing samples passing. With the tether webbing being used to attach the child and child restraint to the vehicle (via the LATCH system), it is imperative that the webbing be strong enough to bear the mass of the child and restraint in a crash over the lifetime of the restraint. A 15,000 N requirement has a margin of safety above the minimum 13,000 N lower limit previously established for Type 3 webbing.

In addition, NHTSA has examined tether webbing compliance data for 20 child restraint systems, and has concluded that a 15,000 N breaking strength requirement for new tether webbing is both feasible and practicable. Of the 20 webbings evaluated, the highest unexposed (“unabraded”) webbing strength measured was 20,871 N. Seventeen (17) of the 20 unabraded webbing strengths measured above 15,000 N. The data show that the median unabraded webbing strength was 18,156 N, with the average being 17,153 N. A summary of the compliance data has been placed in the docket. It is also worth reiterating that the agency is unaware of any real-world data that would indicate the presence of a safety problem associated with the strength levels of current webbings.

One sample of Safeline tether webbing would fail the proposed 15,000 N requirement with an unabraded tether webbing breaking strength of 12,238 N. One sample of Evenflo tether webbing would also fail the proposed 15,000 N requirement with an unabraded tether webbing breaking strength of 13,973 N. Similarly, one sample of Britax tether webbing had an unabraded breaking strength of only 5,385 N. These samples met the current strength requirement (which is based on retaining a percentage of the webbing’s original strength) because they all retained 100 percent of the unabraded tether webbing strength. The Britax sample had an unusually low breaking strength (5,385 N) compared to the other tether webbings, as the average unabraded strength of other tether webbings evaluated in the compliance test program was 17,153 N. That is, for the 20 child restraints examined, the majority of all tether webbings are about three times stronger than the Britax tether webbing.

Exposed Tether Webbing. While the minimum strength proposals apply to new tether webbing, the abrasion test and the other tests that distress the

webbing account for the use of the child restraint components over the long-term and specify a limit on how much the tether webbing can degrade. To ensure tether webbing has enough strength to endure a lifetime of use and exposure, this NPRM proposes to require the tether webbing to meet minimum strength requirements after abrasion, exposure to light, and exposure to micro-organisms. These are the same test conditions to which such webbing is currently subjected (see S5.4.1 of FMVSS No. 213). Each of the post-exposure strength requirements is calculated from current percentages of the strength of the original (new) tether webbing now required by FMVSS No. 213.

We propose not changing the percentages now used in S5.4.1 to calculate the required minimum strength of the exposed tether webbing. These percentages are: 75% (abrasion); 60% (exposure to light); and 85% (exposure to micro-organisms). Since we are proposing that new tether webbing meet a minimum strength requirement of 15,000 N, the proposed minimum strength requirements for exposed tether webbing are: 11,200 N (abrasion), 9,000 N (exposure to light), and 12,700 N (exposure to micro-organisms).

Abrasion. The tether webbing compliance data indicates that an 11,200 N breaking strength requirement for abraded tether webbing appears to be feasible and practicable. Of the 20 webbings evaluated, the highest abraded tether webbing strength was 20,203 N, while the lowest was 5,385 N. Eighteen (18) of the 20 abraded tether webbing strengths were above 11,200 N. The median abraded tether webbing strength was 16,287 N, with the average being 15,689 N.

Two of the 20 tether webbings evaluated failed to meet the current 75 percent abrasion test requirement. One was a sample of Evenflo tether webbing from the 2000 compliance test program, which retained only 67 percent of its measured unabraded strength. The other was a sample of Cosco tether webbing from the 2001 test program, which retained only 55 percent of its unabraded strength. The Evenflo sample would meet the proposed 11,200 N strength requirement for abraded tether webbing, while the Cosco sample would be just below (10,900 N) the proposed requirement.

We also note that the Britax sample from the 2002 compliance test program retained all its unabraded strength after abrasion, which met the current strength requirement for exposed tether webbing. However, with a breaking strength of only 5,385 N, the tether webbing would

fail to meet the proposed requirement of 11,200 N.

Exposure to light. The proposed minimum strength requirements for tether webbing exposure to light is 9,000 N. Nineteen (19) of the 20 tether webbing strengths after exposure to light measure above 9,000 N. Of the 20 tether webbings evaluated, the highest exposed to light tether webbing strength was 21,850 N, while the lowest was 5,563 N. The median light exposed tether webbing strength was 14,930 N, with the average being 14,902 N. The exposure to light test data for the same 20 tether webbing samples evaluated for abrasion testing discussed earlier have also been placed in the docket.

Of the 20 webbings evaluated, only Britax at 59 percent failed to meet the current 60 percent exposure to light test requirement. That sample would meet the proposed 9,000 N strength requirement for exposure to light test.

We also note that one of the Britax samples for FY 2002 data retained all its original strength after exposure to light test, which met the current strength requirement for exposed tether webbing. However, with a breaking strength of only 5,563 N, the tether webbing would fail to meet the proposed requirement of 9,000 N.

Exposure to micro-organisms. S5.1(f) of FMVSS No. 209 states: "Note: This test shall not be required on tether webbing made from material which is inherently resistant to micro-organisms." Currently, manufacturers use nylon or polyester material for their tether webbing and, therefore, the agency has no data for micro-organisms tests for tether webbing.

Because it is possible that in the future manufacturers may use less resistant tether webbing material, the agency is proposing tether webbing strengths for new and exposed webbing of 15,000 N and 12,700 N, respectively.

Harness Webbing

Child restraints, other than belt-positioning booster seats, use an internal harness system and/or a structural element positioned in front of the child to restrain the forward motion of a child occupant in the event of a crash. Most child restraints using an internal harness system are recommended for use by children weighing up to 18 kilograms (kg) (40 pounds).⁷ However, data from a

⁷ For most children weighing more than 18 kg, belt-positioning booster seats are used with vehicle lap and shoulder belts. Many belt-positioning booster seats are designed for dual use as a toddler restraint. A toddler restraint is a forward-facing child restraint system, generally recommended for children weighing 30–40 pounds, that has its own

Children's Hospital of Philadelphia (CHOP) study show that even though manufacturers' typically recommend use of harness-type restraints only up to 18 kg, many children are kept in child restraints with internal harnesses well beyond that weight.⁸ Using the crash surveillance database from the Partners for Child Passenger Safety (PCPS) project, CHOP estimated that from 1999 to 2002, 32 percent fewer U.S. children between 9 and 36.4 kg (20–80 lb) were restrained inappropriately in seat belts, and that the most prevalent form of restraint shifted from seat belts to child restraints with harnesses. Of note, by the end of 2002, 27 percent of children weighing between 18.6 and 22.7 kg (41–50 lb) were restrained in child restraints with harnesses. These children were of weights typically above the manufacturer's recommended limit for those restraints. In developing an appropriate minimum breaking strength requirement for webbing used in child restraint harnesses, NHTSA considered the CHOP study and assumed the Hybrid III 6-year-old dummy weight of 23.4 kg (51.6 pounds) to be representative of a heavier child in a harness-type restraint.⁹

New Harness Webbing. NHTSA is proposing a minimum breaking strength requirement of 11,000 N for new harness webbing. The 11,000 N proposal is based on the following rationale.

NHTSA examined the breaking strength requirements for Type 3 seat belt assemblies used prior to 1979, in conjunction with FMVSS No. 213 harness webbing compliance test data for the years 2000–2002, in developing the proposed 11,000 N breaking strength requirement for harness webbing. The breaking strength requirements for Type 3 seat belt assemblies ranged from 1,500 pounds (6,670 N) for webbing in pelvic

internal harness system to restrain the child. These restraints are dependent on the vehicle's belts or LATCH system to attach the child restraint to the vehicle. The harness is designed to be removed by the consumer when the child restraint is to be used with a vehicle's lap and shoulder belt as a belt-positioning booster (typically when the child weighs 40 pounds).

⁸ Winston *et al.*, "Shifts in Child Restraint Use According to Child Weight in the United States From 1999 to 2002," 47th Annual Proceedings, Association for the Advancement of Automotive Medicine, September 22, 2003.

⁹ NHTSA is aware that Britax manufactures forward-facing child restraints that are certified for children weighing up to 65 pounds, and has a restraint that is recommended for children up to 80 pounds. However, all other forward-facing child restraints (with internal harnesses) are certified for children up to 40 pounds. To account for a safety margin, our analysis is based on calculations assuming that a child weighing 50 pounds will be restrained by the harness webbing. We believe that 50 pounds represents a reasonable upper weight for these calculations.

and upper torso restraints to 4,000 pounds (17,793 N) for webbing in seat back retainers. The proposed breaking strength requirement of 11,000 N for harness webbing falls within this range of values, and appears to be practicable and reasonable based on the compliance data results discussed below.

NHTSA examined harness webbing compliance data for 109 child restraint systems collected from 2000 to 2002. A summary of this compliance data has been placed in the docket.

These compliance data show that 92 percent (100 out of 109) of the harness webbing comply with the proposed 11,000 N minimum breaking strength requirement. The highest unabraded harness webbing strength was measured to be 22,517 N. The lowest was 6,097 N. The median unabraded harness webbing strength was 12,594 N, with the average being 13,519 N. Based on these data and an examination of the Type 3 seat belt assembly strength requirements used prior to 1979, NHTSA tentatively concludes that a minimum breaking strength of 11,000 N for new harness webbing would be reasonable. Importantly, there have been no real-world reports of harness webbing failures that would lead the agency to believe that more stringent strength requirements are necessary.

Exposed Harness Webbing. Similar to the proposal discussed earlier regarding requirements for the strength of tether webbing after abrasion, exposure to light and to micro-organisms, this NPRM would also require harness webbing to meet minimum strength requirements after exposure to those conditions. We propose not changing the percentages now used in S5.4.1 to calculate the required minimum strength of the exposed webbing. These percentages are: 75% (abrasion); 60% (exposure to light); and 85% (exposure to micro-organisms). Since we are proposing that new harness webbing should meet a minimum strength requirement of 11,000 N, the proposed minimum strength requirements for exposed harness webbing are: 8,200 N (abrasion), 6,600 N (exposure to light), and 9,300 N (exposure to micro-organisms).

Abrasion. The harness webbing compliance data indicate that the median abraded harness webbing strength was 11,748 N, with the average being 12,630 N. One hundred and five (105) of the 109 harness webbing samples tested in fiscal years 2000 to 2002 met the proposed 8,200 N minimum strength requirement for abraded harness webbing.

Exposure to Light. The exposure to light test data for the 109 samples (the same unabraded or original harness

webbing samples as discussed above) have also been placed in the docket. The proposed minimum strength requirement for harness webbing after exposure to light is 6,600 N. One hundred and three (103) of the 109 harness webbing after exposure to light measure above 6,600 N. Of the 109 harness webbings exposed to light that were evaluated, the highest exposed to light harness webbing strength was 22,072 N, while the lowest was 4,005 N. The median light exposed harness webbing strength was 10,636 N, with the average being 11,287 N.

Only one of the 109 harness webbing evaluated failed to meet the current 60 percent exposure to light test requirement. Only the Cosco and five other samples (6 out of 109) would not meet the proposed 6,600 N minimum strength requirement for harness webbing after exposure to light.

Micro-organisms. S5.1 (f) of FMVSS No. 209 states: “**Note:** This test shall not be required on webbing made from material which is inherently resistant to micro-organisms.” Currently, manufacturers use nylon or polyester material for their harness webbing and, therefore, the agency has no data for micro-organisms tests for harness webbing. However, the standard does not preclude manufacturers from using biodegradable materials, and in the future manufacturers may use less resistant harness webbing material. Accordingly, the agency is proposing webbing strengths of 11,000 N and 9,300 N for new and for harness webbing exposed to micro-organisms, respectively.

Harmonization With Other Standards

For possible harmonization with other standards on this proposal, the agency evaluated the United Nations Economic Commission for Europe (ECE) Regulation 44 “Restraining devices for child occupants of power-driven vehicles (Child restraint system). A summary of the ECE Reg. 44 requirements for webbing is: (1) The breaking load not to have less than 75 percent of the average of the loads determined in the test, (2) the breaking load shall be not less than 3,600 N to restrain children with mass up to 18 kg, 5,000 N to restrain children with mass from 15 to 25 kg, and 7,200 N to restrain children with mass from 22 to 36 kg.

In addition to the strength requirements, the test conditions and tests for the two standards are different. For example, ECE uses room temperature, light exposure, cold, heat, water, and abrasion for webbing conditioning. On the other hand, NHTSA uses light exposure, micro-

organisms, and abrasion for webbing conditioning. In addition, ECE uses Xenon for exposure to light test, NHTSA uses Carbon Arc and Soda-lime glass (for polyester) for exposure to light test. For abrasion test, ECE uses 1,000 cycles with 1 kg mass and 5,000 cycles for 0.5 kg mass at a rate of 30 cycles per minute. NHTSA uses 2,500 cycles at a rate of 18 cycles per minute with 1.5 kg mass for harness (webbing contacts the child) webbing and 2.35 kg mass for tether (webbing does not contact the child) webbing. ECE requires rigid attachments to secure a CRS to lower vehicle anchorages. NHTSA does not require rigid attachments to secure a CRS to lower vehicle anchorages. ECE does not differentiate between the strap for harness and the strap for tether webbing, while NHTSA does. ECE specifies webbing breaking strength after conditioning, and limits the degradation level for any conditioning at 75 percent of the original breaking strength. NHTSA, consistent with FMVSS No. 209, “Seat belt assemblies,” specifies webbing breaking strength before and after conditioning, and at different degradation levels for each conditioning. While ECE specifies webbing breaking strength requirements based on mass of a child, NHTSA specifies webbing breaking strength requirements based on the upper mass limit of the heaviest child likely to use a restraint system.

The proposed changes are intended to be standard maintenance, and are a small part of the FMVSS No. 213. The differences in conditioning, use, and testing would make it very difficult to harmonize only the webbing breaking strengths requirements between the two standards. At this time, the agency is proposing to maintain consistency with existing FMVSS No. 209 requirements. As opportunity permits, the agency will continue to look for ways to harmonize this standard with ECE Reg. 44 and other international child restraint system standards.

III. Weight Used To Abrade Tether Webbing

Today’s document clarifies the text of the standard to determine what weight is used to abrade the tether webbing used in a child restraint system for the abrasion test.

S5.4.1(a) of FMVSS No. 213 requires that child restraint belt webbing must meet breaking strength requirements after being abraded pursuant to a procedure specified in S5.1(d) of FMVSS No. 209. S5.1(d)’s abrasion procedure requires that belt webbing be drawn across two edges of a hexagonal steel bar by an oscillating drum, with

one end of the webbing sample attached to the drum and the other attached to a weight with a specified mass. Two different weights are specified:

One end of the webbing (A) shall be attached to a mass (B) of 2.35 [kilogram (kg)] \pm .05 kg, except that a mass of 1.5 kg \pm .05 kg shall be used for webbing in pelvic and upper torso restraints of a belt assembly used in a child restraint system.

A tether strap used to attach a child restraint to the vehicle is neither a pelvic nor upper torso restraint, and therefore does not fall within the exclusion allowing for use of the 1.5 kg mass. Thus, the 2.35 kg mass is used to abrade tether webbing. Today’s document would amend present S5.4.1(a) of FMVSS No. 213 to specifically refer to the 2.35 kg mass as that used in the abrasion test to abrade webbing used to attach a child restraint to a vehicle’s LATCH system (tether webbing). (The proposed change is set forth in proposed S5.4.1(b).) The agency believes that webbing connecting the child restraint system to a LATCH system (tether webbing) should be subjected to the weight of the higher mass because installation and removal of the child seat exposes the webbing to greater potential for abrasion, and because the webbing used for the LATCH attachments must restrain the mass of both the child and the child restraint system. Thus, the LATCH webbing needs to be stronger than harness webbing. Use of the 2.35 kg mass would better ensure that the webbing is strong enough to withstand the forces generated by the child restraint and the restrained child in a crash over the lifetime of the restraint and through the hands of successive owners. Comments are requested on this issue.

To the extent that child restraint manufacturers do not now use webbing that meets the standard’s strength requirements when abraded with the 2.35 kg mass for LATCH attachments, comments are requested on the leadtime that is needed to make the change to the webbing. Presumably stronger webbing will have to be used for the LATCH attachments.

IV. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, “Regulatory Planning and Review” (58 FR 51735, October 4, 1993), provides criteria for determining whether a regulatory action is “significant” and therefore subject to Office of Management and Budget (OMB) review and to 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 entitlements, 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.

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This proposed rule was not reviewed by the Office of Management and Budget. The rulemaking action is also not considered to be significant under the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

The agency tentatively concludes that this rulemaking action would not have an annual effect on the economy of \$100 million. The agency is proposing to establish minimum breaking strength requirements for webbing used in child restraint systems. The agency estimates that most child restraint systems would meet these proposed requirements. NHTSA estimates that the cost of webbing material that would meet the proposed requirements is only about \$.10 per foot. Thus, the impacts of this rulemaking are so minor so as not to warrant the preparation of a full regulatory evaluation.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), the agency must determine the impact of its proposal or final rule on small businesses. The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require

Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this proposed rule under the Regulatory Flexibility Act. I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that most child restraint systems would meet the proposed requirements. For manufacturers producing child restraints that do not meet the proposed minimum strength requirements, it would not be difficult for these manufacturers to obtain and use complying webbing on their child restraints.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this proposed rule would not have any significant impact on the quality of the human environment.

Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA 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." Under Executive Order 13132, NHTSA may not issue a regulation with federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

NHTSA has analyzed this proposed rule in accordance with the principles and criteria set forth in Executive Order

13132 and has determined that the proposed rule would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposed rule would not have any substantial effects on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among the various local officials.

Civil Justice Reform (E.O. 12988)

This proposed amendment would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposed rule would not require any collections of information as defined by the OMB in 5 CFR Part 1320.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical.¹⁰ Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs NHTSA to provide Congress, through the OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

¹⁰ Public Law 104-113, codified at 15 U.S.C. 272.

There are no relevant voluntary consensus standards available at this time. However, the agency will consider any such standards when they become available.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year (adjusted for inflation with a base year of 1995). Adjusting this amount by the gross domestic product price deflator for the year 2004 results in about \$118 million ($115.5 \div 98.11 \times \100 million). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA 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 NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

The agency has tentatively concluded that this proposed rule would not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$118 million annually. Because this proposed rule would not have a \$118 million effect, no Unfunded Mandates assessment has been prepared.

Plain Language

Executive Order 12866 requires Federal agencies to write all notices in plain language. Application of the principles of plain language includes consideration of the following questions:

- Has the agency organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?

- Could the agency improve clarity by adding tables, lists, or diagrams?
- What else could the agency do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Public Participation

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21) NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**. You may also submit your comments to the docket electronically by logging onto the Docket Management System (DMS) Web site at <http://dms.dot.gov>. Click on "Help & Information" or "Help/Info" to obtain instructions for filing your comments electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your

complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in NHTSA's confidential business information regulation (49 CFR Part 512).

Will the Agency Consider Late Comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the agency will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for the agency to consider it in developing a final rule (assuming that one is issued), the agency will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (<http://dms.dot.gov>).
2. On that page, click on "search."
3. On the next page (<http://dms.dot.gov/search>), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA-1998-1234," you would type "1234." After typing the docket number, click on "search."
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the Docket for new material.

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>.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 571 as follows:

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. S5.4.1 of § 571.213 would be amended by redesignating paragraphs (a) through (c) as paragraphs (b) through (d), adding a new paragraph (a), and revising the re-designated paragraphs (b) and (c) to read as follows:

§ 571.213 Standard No. 213; child restraint systems.

* * * * *

S5.4.1 *Performance requirements.* The webbing of belts provided with a child restraint system and used to attach the system to the vehicle or to restrain the child within the system shall—

(a) Have a minimum breaking strength for new webbing of not less than 15,000 N in the case of webbing used to secure a child restraint system to the tether and lower anchorages of a child restraint anchorage system, and not less than 11,000 N in the case of the webbing used to secure a child to a child restraint system. "New webbing" means webbing that has not been exposed to abrasion, light or micro-organisms as specified elsewhere in this section.

(b)(1) After being subjected to abrasion as specified in S5.1(d) or S5.3(c) of FMVSS 209 (§ 571.209), have a breaking strength of not less than 11,200 N for webbing used to secure a child restraint system to the tether and lower anchorages of a child restraint

anchorage system and 8,200 N for webbing used to secure a child to a child restraint system, when tested in accordance with S5.1(b) of FMVSS 209.

(2) A mass of $2.35 \pm .05$ kg shall be used in the test procedure in S5.1(d) of FMVSS 209 for webbing used to secure a child restraint system to the tether and lower anchorages of a child restraint anchorage system. The mass is shown as (B) in Figure 2 of FMVSS 209.

(c)(1) After exposure to the light of a carbon arc and tested by the procedure specified in S5.1(e) of FMVSS 209 (§ 571.209), have a breaking strength of not less than 9,000 N for webbing used to secure a child restraint system to the tether and lower anchorages of a child restraint anchorage system and 6,600 N for webbing used to secure a child to a child restraint system, and shall have a color retention not less than No. 2 on the Geometric Gray Scale published by the American Association of Textile Chemists and Colorists, Post Office Box 886, Durham, NC.

(2) After being subjected to micro-organisms and tested by the procedures specified in S5.1(f) of FMVSS 209 (§ 571.209), shall have a breaking strength not less than 12,700 N for webbing used to secure a child restraint system to the tether and lower anchorages of a child restraint anchorage system and 9,300 N for webbing used to secure a child to a child restraint system.

* * * * *

Issued: June 23, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05-12875 Filed 6-29-05; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AU06

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants in California and Southern Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as

amended (Act), announce the reopening of the comment period on the proposal to designate critical habitat for four vernal pool crustaceans and eleven vernal pool plants in California and Southern Oregon, and the availability of the draft economic analysis of the proposed designation of critical habitat. The economic analysis identifies potential costs of approximately \$992 million over or 20-year period or \$87.5 million per year as a result of the designation of critical habitat, including those costs coextensive with listing. We are reopening the comment period for the proposal to designate critical habitat for these species to allow all interested parties an opportunity to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period, and will be fully considered in the preparation of the final rule.

DATES: We will accept public comments until July 20, 2005.

ADDRESSES: Written comments and information may be submitted to us by any one of the following methods:

1. You may submit written comments and information to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W-2605, Sacramento, CA 95825;

2. You may hand-deliver written comments and information to our office, at the above address during normal business hours;

3. You may fax your comments to (916) 414-6710; or

4. You may also send comments by electronic mail (e-mail) to fw1_vernalpool@fws.gov. Please see the "Public Comments Solicited" section below for file format and other information about electronic filing. In the event that our internet connection is not functional, please submit your comments by the alternate methods mentioned above.

FOR FURTHER INFORMATION CONTACT: Arnold Roessler, Sacramento Fish and Wildlife Office, at the address above (telephone (916) 414-6600; facsimile (916) 414-6710).

SUPPLEMENTARY INFORMATION:

Public Comment Solicited

The final economic analysis concerning the designation of critical habitat for four vernal pool crustaceans and eleven vernal pool plants in California and Southern Oregon will consider information and recommendations from all interested

parties. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of exclusion outweigh the benefits of specifying such area as part of critical habitat;

(2) Assumptions reflected in the draft economic analysis regarding land use practices and current, planned, or reasonably foreseeable activities in the subject areas, including comments or information relating to the potential effects that the designation could have on private landowners as a result of actual or foreseeable State and local government responses due to the California Environmental Quality Act;

(3) Land use practices and current, planned, or foreseeable activities in the subject areas and their possible impacts on proposed critical habitats;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of these critical habitats, including impacts that may not have been addressed in the draft economic analysis and, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for these species;

(6) The draft economic analysis notes that approximately 80 percent of the total costs are represented by 25 percent of the critical habitat. We are considering excluding those areas, which can be identified in Table IV-4 of the draft economic analysis as the 20 highest cost areas based on FIPS. Please comment as to whether the Secretary should exclude these areas based on the benefits associated with exclusion or inclusion of these areas in the final critical habitat which have not already been identified. The basis of the proposed exclusion that is being considered is purely economic;

(7) Should the Secretary exclude the 35 highest cost areas based on the figures in Table IV-4 of the draft economic analysis? What are the benefits of exclusion or inclusion of these areas?

(8) Should the Secretary exclude the 50 highest cost areas based on the figures in Table IV-4 of the draft economic analysis? What are the benefits of exclusion or inclusion of these areas?

(9) Table IV-2 of the draft economic analysis details increases in the costs per home related to this critical habitat designation. In addition to any other exclusions, the Secretary is considering excluding any areas identified as experiencing a per-home increase in

excess of \$3,000 from the designation of critical habitat. Please identify and benefits related to the exclusion or inclusion of those areas;

(10) Are there any benefits or costs of the proposed designation that the draft economic analysis fails to capture?

Please provide as much information as possible related to any costs or benefits that were not identified; and

(11) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

All previous comments and information submitted during the initial comment period need not be resubmitted. Our final determination on the proposed critical habitat will take into consideration all comments and any additional information received. Refer to the **ADDRESSES** section above for information on how to submit written comments and information.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. If you do not receive a confirmation from the system that we have received your email message, contact us directly by calling our Sacramento Fish and Wildlife Office at telephone number (916) 414-6600, during normal business hours.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours, in our Sacramento Fish and Wildlife Office at the above address. You may obtain copies of the proposed rule and draft economic analysis from

the above address, by calling (916) 414-6600, or from our Web site at <http://sacramento.fws.gov/>.

Background

On September 24, 2002, we proposed a total of 128 units of critical habitat for these 15 vernal pool species (Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*), vernal pool tadpole shrimp (*Lepidurus packardii*), Butte County meadowfoam (*Limnanthes floccosa* ssp. *californica*), Contra Costa goldfields (*Lasthenia conjugens*), Hoover's spurge (*Chamaesyce hooveri*), fleshy (or succulent) owl's-clover (*Castilleja campestris* ssp. *succulenta*), Colusa grass (*Neostapfia colusana*), Greene's tuctoria (*Tuctoria greenei*), hairy Orcutt grass (*Orcuttia pilosa*), Sacramento Orcutt grass (*Orcuttia viscida*), San Joaquin Valley Orcutt grass (*Orcuttia inaequalis*), slender Orcutt grass (*Orcuttia tenuis*), and Solano grass (*Tuctoria mucronata*)), totaling approximately 1,662,762 acres (ac) (672,920 hectares (ha)) in 36 counties in California and 1 county in Oregon (67 FR 59884). In accordance with our regulations at 50 CFR 424.16(c)(2), we opened a 60-day comment period on this proposal, which closed on November 25, 2002, but was subsequently extended until December 23, 2002. An economic analysis was completed on the proposed designation and the Draft Economic Analysis (DEA) was released to the public for comment on November 21, 2002 (67 FR 70201). The public comment period was reopened on March 14, 2003, for an additional 14 days (68 FR 12336).

All the species listed above live in vernal pools (shallow depressions that hold water seasonally), swales (shallow drainages that carry water seasonally), and ephemeral freshwater habitats. None are known to occur in riverine waters, marine waters, or other permanent bodies of water. The vernal pool habitats of these species have a discontinuous distribution west of the Sierra Nevada that extends from southern Oregon through California into northern Baja California, Mexico. The species have all adapted to the generally mild climate and seasonal periods of inundation and drying that help make the vernal pool ecosystems of California and southern Oregon unique.

Section 4(b)(2) of the Act requires that the Secretary of the Interior shall designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact,

impact to national security, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if she determines that the benefit of such exclusion outweighs the benefits of specifying such area as part of the critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species concerned. During the development of the final designation, we reviewed the lands proposed as critical habitat based on public comments and any new information that may have become available and refined the boundaries of the proposal to remove lands determined not to be essential to the conservation of the 15 vernal pool species. We then took into consideration the potential economic impacts of the designation, impacts on national security, and other relevant factors such as partnerships and on-going management actions benefiting the species covered by the designation. Next, we determined that the benefits of excluding certain lands from the final designation of critical habitat for the 15 vernal pool species outweighed the benefit of including them in the designation, and the specific exclusions would not result in the extinction of any of the species involved. Lands excluded from the final designation based on policy and management plans or programs that provide a benefit to the species included: lands within specific National Wildlife Refuges and Fish Hatcheries; Department of Defense lands; Tribal lands; State Wildlife Areas and Ecological Reserves; and lands covered by habitat conservation plans or other management plans that provide a benefit for the species. We also excluded lands proposed as critical habitat in Butte, Madera, Merced, Sacramento, and Solano counties based on potential economic impacts.

On July 15, 2003, we made a final determination of critical habitat for the 15 vernal pool species. On August 6, 2003, the final rule to designate critical habitat for 4 vernal pool crustaceans and 11 vernal pool plants was published in the **Federal Register** (68 FR 46684). The final designation included approximately 1,184,513 acres (ac) (417,989 hectares (ha)) of land within California and Southern Oregon. However, the area estimate did not reflect the exclusion of lands within the following counties: Butte, Madera, Merced, Sacramento, and Solano from the final designation pursuant to section 4(b)(2) of the Act. The final critical habitat designation with the five

counties removed totaled approximately 739,105 ac (299,106 ha).

In January 2004, Butte Environmental Council, and several other organizations, filed a complaint alleging that we: (1) Violated the Act, and the Administrative Procedure Act (APA), by excluding over 1 million acres from the final designation of critical habitat for the 15 vernal pool species; (2) violated mandatory notice-and-comment requirements under the Act and APA; and (3) have engaged in an unlawful pattern, practice, and policy by failing to properly consider the economic impacts of designating critical habitat. On October 28, 2004, the Court signed a Memorandum and Order that remanded the final designation to the Service in part. In particular, the court ordered us to: (1) Reconsider the exclusions from the final designation of critical habitat for the 15 vernal pool species, with the exception of those lands within the 5 California counties that were excluded based on potential economic impacts, and publish a new final determination as to those lands within 120 days; and (2) reconsider the exclusion of the five California counties based on potential economic impacts and publish a new final determination no later than July 31, 2005. The court also made it clear that the partial remand would not affect the areas included in the August 6, 2003, final designation (68 FR 46684).

On December 28, 2004, we published a notice (69 FR 77700) that addressed the first requirement of the remand—the reconsideration of the non-economic exclusions from the final designation of critical habitat for the 15 vernal pool species, with the exception of those lands within the 5 California counties that were excluded based on potential economic impacts, and reopened the public comment period. The final non-economic exclusions were published in a **Federal Register** notice on March 8, 2005 (70 FR 11140). The second requirement of the order (economic exclusions) will be finalized by the July 31, 2005, court-ordered date.

The current draft economic analysis estimates the foreseeable economic impacts of the critical habitat designation on government agencies and private businesses and individuals. The economic analysis identifies potential costs of approximately \$992 million over or 20-year period or \$87.5 million per year as a result of the designation of critical habitat, including those costs coextensive with listing. At this time the Service has not identified any areas to exclude under section 4(b)(2) of the Act. The Service will consider excluding areas if the benefits of excluding them

from the critical habitat designation outweigh the benefits of including them. The economic analysis presents the Service's tentative conclusions with respect to the economic effects of the proposed critical habitat designation. The Service will not make any final decisions about exclusions, however, until it has obtained public comment on the economic analysis. The Service is interested in comments from the public on the economic analysis, on whether any of the areas identified in the economic analysis as having economic effects should be excluded for economic reasons, and whether those or any other areas should be excluded for other reasons. Reopening of the comment period will provide the public an opportunity to evaluate and comment on both the proposed rule and the draft economic analysis. Comments already submitted on the proposed designation of critical habitat for four vernal pool crustaceans and eleven vernal pool plants do not need to be resubmitted as they will be fully considered in the final determination.

Required Determinations—Amended

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. However, because the draft economic analysis suggests that the potential economic impacts of conservation activities related to this designation are anticipated to be \$87.5 million per year, we do not anticipate that this designation will have an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small

entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if this proposed designation of critical habitat for the 15 vernal pool species would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, residential and commercial development, mining, sand and gravel, and agriculture). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of

critical habitat would be incorporated into the existing consultation process.

In our economic analysis of this proposed designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of these 15 vernal pool species and proposed designation of their critical habitat. We determined from our analysis that the small business entities that may be affected are firms in the new home construction sector. It appears that approximately three small businesses may be affected in Sacramento County, and one, or less than one, each in Butte, Solano, Stanislaus, Monterey, Contra Costa, Merced, and Tehama counties, for a total of approximately six firms. These firms may be affected by activities associated with the conservation of the 15 vernal pool species, inclusive of activities associated with listing, recovery, and critical habitat. In total, these small businesses account for approximately four percent of small businesses located in the potentially affected areas. In our previous final designation for these 15 vernal pool species 68 FR 46684; August 6, 2003), Butte, Madera, Merced, Sacramento, and Solano counties were excluded pursuant to section 4(b)(2) of the Act because we found that potentially disproportionate economic impacts from the designation in those counties outweighed the benefit of including those areas in the final designation. Approximately five of the six small business firms that may be affected by this designation occur in these counties. Thus, in the development of our final rule, we will explore potential alternatives to minimize impacts to these affected small business entities. These alternatives may include the exclusion of all or portions of critical habitat units in these counties. As such, we expect that the final designation of critical habitat for the 15 vernal pool species will not result in a significant impact on small business entities.

Therefore, we believe that the designation of critical habitat for the 15 vernal pool species will not result in a disproportionate effect to these small business entities. However, we are seeking comment on potentially excluding these areas from the final designation if it is determined that there will be a substantial and significant impact to small real estate development businesses in these particular watersheds.

We determined that the critical habitat designation is expected to have the largest impacts on the market for developable land. Critical habitat for

vernal pools occurs in a number of rapidly growing communities. Regulatory requirements to avoid onsite impacts and mitigate offsite impacts affect the welfare of both producers and consumers. Two scenarios are considered. In the first scenario, avoidance requirements are assumed to reduce the stock of new housing. Given the importance of regulation of housing development even in the absence of critical habitat, this scenario is taken as the base case. In this scenario, critical habitat is expected to impose losses of approximately \$965 million relating to lost development opportunities over the 20-year study period, or approximately \$85.2 million annually. An alternative scenario is constructed in which all avoidance requirements are accommodated through densification. In this case, welfare losses from critical habitat are \$820.2 million over the 20-year study period.

These economic impacts of critical habitat designation vary widely among the 35 affected counties, and even within counties. The counties most impacted by the critical habitat designation include: Sacramento (\$374 million), Butte (\$145 million), Placer (\$120 million), Solano (\$87 million), Fresno (\$43 million), Madera (\$33 million), Monterey (\$29 million), Shasta (\$20 million), Tehama (\$19 million) and Merced (\$16 million). Further, economic impacts are unevenly distributed within counties. The analysis was conducted at the census tract level, resulting in a high degree of spatial precision.

Please refer to our draft economic analysis of this designation for a more detailed discussion of potential economic impacts.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues.

Seventeen energy production facilities are planned or under construction in the counties with critical habitat. A Geographic Information System (GIS) analysis was used to compute their proximity to the nearest critical habitat designation. Fifteen of those plants are at least 1 mile from proposed critical habitat and are judged to be at low risk of disruption. The projects for the other two energy production facilities have

been through the planning phases and are currently under construction. As such, the designation of critical habitat for these 15 vernal pool species is not expected to have additional impacts on these projects (please refer to the draft economic analysis for further discussion of these two facilities and our evaluation).

On the basis of the information from our draft economic analysis, the designation of critical habitat for the 15 vernal pools is not expected to significantly affect any of these 17 energy production facilities, and thus not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) "Federal private sector mandate" includes a regulation that "would impose an enforceable duty

upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the draft economic analysis of the proposed designation of critical habitat for the 15 vernal pool species, there are many small government entities located adjacent to the boundaries of the proposed designation. It is likely that small governments involved with developments and infrastructure projects will be interested parties or involved with projects involving section 7 consultations for the vernal pool species within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a city's budget. Consequently, we do not believe that the designation of critical habitat for the 15 vernal pool species will significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

The primary potential economic effects identified in the analysis identified the California Department of Transportation, energy production facilities, and the University of California as entities that may incur impacts. Please refer to the discussion above under Executive Order 13211 for our evaluation of potential effects on energy production facilities.

The California Department of Transportation is planning to undertake a number of projects to build, upgrade, and maintain the state's road network in areas of vernal pool critical habitat. Drawing on typical mitigation requirements for past transportation

projects, impacts of critical habitat on this type of activity are estimated to be \$16.9 million.

The University of California selected Merced County as its preferred location for its tenth campus. Over the last several years, a broad planning effort has been undertaken to determine the preferred location, size, design, and financing for both the core campus and the associated university community. Many variables for the project remain undetermined at this time. Possible sites for campus and community development will impact about 66.5 ac (26.9 ha) of wetted vernal pools, pools/swales, and seasonal wetlands. Preliminary estimates of mitigation costs for an early campus and community development prototype calculated the wetlands mitigation costs at about \$135,000 per wetted acre affected. At this unit cost, total mitigation costs associated with the current estimate of wetted vernal pool loss would be about \$10 million. These estimates were based on very approximate and preliminary assumptions. The actual mitigation and other costs associated with campus and community development will be determined over the next few years, as the Merced County Natural Community Conservation Plan/Habitat Conservation Plan is developed. At this time, the precise levels of conservation and mitigation associated with this project are not possible to predict until the Service has issued its Biological Opinion and the Army Corps of Engineers has approved a 404 permit for the project.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for the 15 vernal pool species. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for the vernal pool species does not pose significant takings implications.

Author

The primary authors of this notice are staff from the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 23, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05-12963 Filed 6-27-05; 3:05 pm]

BILLING CODE 4310-55-P

Notices

Federal Register

Vol. 70, No. 125

Thursday, June 30, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Marten Creek Timber Sales and Associated Activities Kootenai National Forest, Sanders County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA, Forest Service, will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of timber harvest, prescribed fire, and watershed rehabilitation in the Marten Creek project area on the Cabinet Ranger District of the Kootenai National Forest. The Marten Creek project area is located approximately 7 air miles northwest of Trout Creek, Montana, near the community of Trout Creek, Montana.

Scoping Comment Date: Comments concerning the scope of the analysis should be postmarked or received by September 2, 2005.

ADDRESSES: Written comments and suggestions concerning the scope of the analysis should be sent to Julie Molzahn (jmolzahn@fs.fed.us), District Ranger, Cabinet Ranger District, 2693 Hwy 200, Trout Creek, Montana, 59874.

FOR FURTHER INFORMATION CONTACT: Dave Clay (dclay@fs.fed.us), Project Leader, Cabinet Ranger District. Phone: (406) 827-3533.

SUPPLEMENTARY INFORMATION: The Marten Creek project area contains approximately 43,770 acres of land within the Kootenai National Forest in Sanders County, Montana. The legal location of the Marten Creek project area is as follows: All or portions of T25N, R34W; T25N, R33W; T25N, R32W, T24N, R33W, and T24N, R32W; PMM, Sanders County, Montana. The proposed actions would occur on National Forest lands in the Marten Creek drainage. All proposed timber harvest activities are outside the

boundaries of any inventoried roadless area or any areas considered for inclusion to the National Wilderness System as recommended by the Kootenai National Forest Plan or by any past or present legislative wilderness proposals, with the exception of approximately 3,878 acres of underburning-only in the McNeeley and Devil's Gap Inventoried Roadless Area.

The purpose and need for this project is to: (1) Manage for vegetation conditions that are suitable for fire-department ecosystems; (2) Improve and maintain big game winter range; (3) Enhance or maintain conditions in old growth forest stands; (4) Reduce excess fuel loads in the Wildland/Urban interface; (5) Improve growing conditions and long term management of overstocked mid-successional stands; (6) Enhance the rate of natural recovery of streams; and (7) Contribute forest products to the local and regional economy.

The Forest Service proposes to harvest timber through application of a variety of harvest methods of approximately 1,860 acres of forestland within the Marten Creek project area. Use of existing, temporary and permanent roads would be needed to access timber harvest areas. An estimated 47.0 miles of existing roads would be reconstructed in addition to 7.0 miles of new specified road construction to facilitate timber removal and improve access for resource management. An estimated 1.0 miles of temporary road would be constructed and obliterated following completion of sale related activities. An additional 7.0 miles of existing road no longer needed for resource management, at this time, would be decommissioned by various methods, such as removal of culverts, recontouring, and ripping and seeding. The method of decommissioning would be selected for each road or portion of road on a site-specific basis.

Regeneration Harvest: This harvest would leave approximately 20–30 large trees per acre as individual trees and in groups, where feasible, to provide future snags and down woody material for wildlife habitat. A total of approximately 303 acres would be harvested through this method.

Intermediate Harvest: This type of harvest would commercially thin codominant and intermediate trees while retaining a stocked stand of

overstory trees on approximately 1,557 acres.

Underburning: Underburning is proposed on approximately 6,676 acres outside harvest units to reduce fuel loads and reduce fire risk.

Burning of Natural Fuels and Slash: Burning of natural fuels and slash resulting from timber harvest is proposed on approximately 1,860 acres.

Watershed/Fish Habitat Improvement: Watershed improvement projects are proposed for approximately 20 sites on approximately seven miles of road. These would include removing failed culverts, saturated road prisms and restoring channels at road crossings. Additional stream channel restoration projects are proposed on approximately one mile of the mainstream of Marten Creek and approximately one-half mile of the South Fork of Marten Creek. Riparian revegetation aimed at providing bank stability is being proposed on approximately two miles of stream banks within the middle reaches of Marten and South Fork of Marten Creek drainage. Reconstruction proposed for the project would apply Best Management Practices on approximately 47.0 miles of existing road.

Range of Alternatives: The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

Public Involvement and Scoping: In July, 2005 preliminary efforts were made to involve the public in considering management opportunities within the Marten Creek Decision Area. Comments received prior to this notice will be included in the documentation for the EIS. This proposal includes openings greater than 40 acres. A 60 day public review period, and approval by the Regional Forester for exceeding the 40 acre limitation for regeneration harvest will occur prior to the signing of the Record of Decision. This 60 day period is initiated with this Notice of Intent.

Forest Plan Amendments: The Proposed Action includes two project-specific Forest Plan amendments

necessary to meet the project's objectives: (1) An amendment to allow removal of existing cavity habitat in MA 10 (big game winter range). This amendment would be needed to allow removal of some snags within the cutting units. OSHA regulations require that many snags in logging units be felled to ensure the safety of forest workers. Therefore, we would anticipate the loss of some but not all standing dead timber for both safety concerns and harvest system logistics, and this would reduce "cavity habitat" associated with snags in the MA to some degree.

(2) An amendment to allow MA 12 open road density to be managed by 0.80 miles/square mile during project implementation. The amendment would be needed to suspend Facilities Standard #3, which states that open road density should be maintained by 0.75 miles/square mile. The open road density would return to 0.75 following project completion.

Estimated Dates for Filing: The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by March 2006. At that time, EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be a minimum of 45 days from the date of EPA publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The Final EIS is scheduled to be complete by May 2006. In the final EIS, the Forest Service will respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the Draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations: The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the Draft EIS stage but that are not raised until after completion of the Final EIS may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th cir. 1986) and

Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the Draft EIS 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statements should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service handbook 1909.15, Section 21.)

Responsible Official: As the Forest Supervisor of the Kootenai National Forest, 1101 U.S. Highway 2 West, Libby, MT 59923, I am the Responsible Official. As the Responsible Official, I will decide if the proposal project will be implemented. I will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations. I have delegated the responsibility for preparing the DEIS and FEIS to Julie Molzahn, District Ranger, Cabinet Ranger District, 2963 Hwy 200, Trout Creek, Montana 59874.

Dated: June 22, 2005.

Bob Castaneda,

Forest Supervisor, Kootenai National Forest.
[FR Doc. 05-12892 Filed 6-29-05; 8:45 am]

BILLING CODE 3410-11-M

ANTITRUST MODERNIZATION COMMISSION

Notice of Public Hearings

AGENCY: Antitrust Modernization Commission.

ACTION: Notice of public hearings.

SUMMARY: The Antitrust Modernization Commission will hold public hearings on July 28, 2005. The topics of the hearings are the Robinson-Patman Act and certain civil remedies issues.

DATES: July 28, 2005, 9:15 a.m. to 11:30 a.m. and 12:30 p.m. to 5 p.m. Interested members of the public may attend. Registration is not required.

ADDRESSES: Federal Trade Commission, Conference Center, 601 New Jersey Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Andrew J. Heimert, Executive Director & General Counsel, Antitrust Modernization Commission: telephone: (202) 233-0701; e-mail: info@amc.gov. Mr. Heimert is also the Designated Federal Officer (DFO) for the Antitrust Modernization Commission.

SUPPLEMENTARY INFORMATION: The purpose of these hearings is for the Antitrust Modernization Commission to take testimony and receive evidence regarding the Robinson-Patman Act and certain civil remedies issues. The hearing on the Robinson-Patman Act will consist of one panel. It will begin at 9:15 a.m. and adjourn at 11:30 a.m. The hearing on civil remedies issues will consist of two panels. The first civil remedies panel will address damages multipliers, attorneys' fees, and prejudgment interest. The panel will begin at 12:30 p.m. and run until 3 p.m. The second civil remedies panel will address joint and several liability, contribution, and claim reduction, and will run from 3 p.m. to 5 p.m. Materials relating to the hearings, including lists of witnesses and the prepared statements of the witnesses, will be made available on the Commission's Web site (<http://www.amc.gov>) in advance of the hearings. The starting time for the panel on Robinson-Patman Act is approximate, as the Commission will be holding a public meeting beginning at 9 a.m., the notice of which is published elsewhere in this issue of the **Federal Register**.

Interested members of the public may submit written testimony on the subject of the hearing in the form of comments, pursuant to the Commission's request for comments. See 70 FR 28,902 (May 19, 2005). Members of the public will not be provided with an opportunity to make oral remarks at the hearings.

The AMC is holding this hearing pursuant to its authorizing statute. Antitrust Modernization Commission Act of 2002, Pub. L. 107-273, § 11057(a), 116 Stat. 1758, 1858.

Dated: June 24, 2005.

By direction of the Antitrust Modernization Commission.

Andrew J. Heimert,

Executive Director & General Counsel, Antitrust Modernization Commission.

[FR Doc. 05-12872 Filed 6-29-05; 8:45 am]

BILLING CODE 6820-YM-P

ANTITRUST MODERNIZATION COMMISSION

Public Meeting

AGENCY: Antitrust Modernization Commission.

ACTION: Notice of public meeting.

SUMMARY: The Antitrust Modernization Commission will hold a public meeting on July 28, 2005. The purpose of the meeting is for the Antitrust Modernization Commission to consider and vote on plans (including proposed requests for public comment and public hearings) for studying certain issues selected by the Commission in its January 13 and March 24, 2005, meetings.

DATES: July 28, 2005, 9 a.m. to 9:15 a.m. Interested members of the public may attend. Registration is not required.

ADDRESSES: Federal Trade Commission, Conference Center, 601 New Jersey Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew J. Heimert, Executive Director & General Counsel, Antitrust Modernization Commission: telephone: (202) 233-0701; e-mail: *info@amc.gov*. Mr. Heimert is also the Designated Federal Officer (DFO) for the Antitrust Modernization Commission.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the Antitrust Modernization Commission to consider and vote on plans recommended by its study groups for studying certain issues selected by the Commission in its January 13 and March 24, 2005, meetings, including proposed requests for public comment and public hearings. Materials relating to the meeting will be made available on the Commission's Web site (*http://www.amc.gov*) in advance of the meeting.

The AMC has called this meeting pursuant to its authorizing statute and the Federal Advisory Committee Act. Antitrust Modernization Commission Act of 2002, Pub. L. 107-273, § 11054(f), 116 Stat. 1758, 1857; Federal Advisory

Committee Act, 5 U.S.C. App., 10(a)(2); 41 CFR 102-3.150 (2004).

Dated: June 24, 2005.

By direction of Deborah A. Garza, Chair of the Antitrust Modernization Commission. Approved by Designated Federal Officer:

Andrew J. Heimert,

Executive Director & General Counsel, Antitrust Modernization Commission.

[FR Doc. 05-12873 Filed 6-29-05; 8:45 am]

BILLING CODE 6820-YM-P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD MAY 21, 2005-JUNE 17, 2005

| Firm name | Address | Date petition accepted | Product |
|----------------------------------------|-------------------------------------------------------|------------------------|------------------------------------------------------------------|
| Best Fish Company, LLC dba Crab Fresh. | 2130 Harvor Avenue S.W. Seattle, WA 98126. | 01-Jun-05 | Crabs. |
| Freedom Tool and Mold, Inc .. | 57707 N. Northwest Highway, Chicago, IL 60646. | 07-Jun-05 | Molds, machined of metal for plastic injection molding. |
| Comfort Designs, Inc | 1167 North Washington Street, Wilkes Barre, PA 18705. | 08-Jun-05 | Upholstered furniture. |
| Bangor Electronics Co., Inc ... | 100 Industrial Park Drive, Bangor, MI 49013. | 13-Jun-05 | Permanent magnets of metal. |
| Bancroft Cap, Co | 1122 South 2nd Street, Cabot, AR 72023. | 13-Jun-05 | Hats and headgear. |
| Compacting Tooling, Inc | 403 Wide Drive, McKeesport, PA 15135. | 13-Jun-05 | Parts for automotive and fire arms industries. |
| Fall River Shirt Company | 135 Alden Street, Fall River, MA 02732. | 13-Jun-05 | Dress and casual shirts for men and women. |
| Ferriot, Inc | 1000 Arlington Circle, Akron, Oh 44306. | 13-Jun-05 | Injection molds, and plastic products from molds. |
| Sauceda's Precision Grinding, Inc. | 351 N. Milam, San Benito, TX 78586. | 13-Jun-05 | Plates, sticks, and tips for tools, unmounted. |
| Stored Energy Systems | 1840 Industrial Circle, Longmont, CO 80501. | 13-Jun-05 | Dual purpose starter-generators for internal combustion engines. |
| Wilde Tool Company, Inc | 13th St. & Potawatomie Street, Hiawatha, KS 66434. | 13-Jun-05 | Pliers, pry bars and punches. |
| Advanced Cable Ties, Inc | 245 Suffolk Lane, Gardner, MA 01440. | 16-Jun-05 | Cable ties. |
| InterConnect Wiring, L.P | 5024 West Vickery Blvd., Fort Worth, TX 76107. | 16-Jun-05 | Electrical wiring harnesses. |
| Jensen Design, Inc | 933 S. West Street, Wichita, KS 67213. | 17-Jun-05 | Residential metal furniture and fixtures. |
| National Aluminum Brass Foundry, Inc. | 1304 West Elm Street, Independence, MO 64050. | 17-Jun-05 | Castings and battery terminals. |

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7812, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: June 23, 2005.

Anthony J. Meyer,

Senior Program Analyst, Office of Strategic Initiatives.

[FR Doc. 05-12894 Filed 6-29-05; 8:45 am]

BILLING CODE 3510-24-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[03-BIS-15]

Action Affecting Export Privileges; Mohammed Arastafar; Order Relating to Mohammed Arastafar

In the Matter of: Mr. Mohammed Arastafar, Westboschlaan, 151A, 2265 EN Leidschendam, The Netherlands, Resident.

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS") having initiated an administrative proceeding against Mohammed Arastafar, pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 CFR parts 730-774 (2005)) ("Regulations"),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420 (2000))

¹ The charged violations occurred in 2002 and 2003. The Regulations governing the violations at issue are found in the 2002 and 2003 versions of the Code of Federal Regulations (15 CFR parts 730-774 (2002-2003)). The 2005 Regulations establish the procedures that apply to this matter.

("Act"),² by issuing a charging letter to Mohammed Arastafar that alleged that Mohammed Arastafar committed two violations of the Regulation. Specifically, the charges are:

1. *One Violation of 15 CFR 764.2(c)—Solicitation of the Unlicensed Export of Items to Iran:* From on or about July 15, 2002 to on or about January 28, 2003, Mohammed Arastafar solicited the export of gas processor parts, items subject both to the Regulations (EAR99³) and the Iranian Transactions Regulations of the Treasury Department's Office of Foreign Assets Control ("OFAC") and located in the United States, to Iran through the Netherlands without the authorization from OFAC required by Section 746.7 of the Regulations.

2. *One Violation of 15 CFR 764.2(e)—Acting with Knowledge of a Violation:* In connection with the solicitation referenced in paragraph 1 above, Mohammed Arastafar ordered the above-described items with knowledge that a violation of the Regulations was intended to occur in connection with the items. Mohammed Arastafar knew that U.S. government authorization was required for the purported export and would not be obtained.

Whereas, BIS and Mohammed Arastafar have entered into a Settlement Agreement pursuant to Section 7661.8(b) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

Whereas, I have approved of the terms of such Settlement Agreement;

It is Therefore Ordered:

First, that for a period of five years from the date of entry of this Order, Mohammed Arastafar, Westboschlaan, 151A, 2265 EN Leidschendam, The Netherlands, and when acting for or on behalf of Mohammed Arastafar, his representatives, agents, assigns or employees ("Denied Person") may not, directly or indirectly, participate in any

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 6, 2004 (69 FR 48763, August 10, 2004), has continued the Regulations in effect under the IEEPA.

³ The term "EAR99" refers to items subject to the Regulations that are not listed on the Commerce Control List. See 15 CFR 734.3(c).

way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation,

maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Mohammed Arastafar by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that a copy of this Order shall be delivered to the United States Coast Guard ALJ Docketing Center, 40 Gay Street, Baltimore, Maryland 21202-4022, notifying that office that this case is withdrawn from adjudication, as provided by Section 766.18 of the Regulations.

Sixth, that the charging letter, the Settlement Agreement, and this Order shall be made available to the public and record of the case as described in Section 766.22 of the Regulations.

Seventh, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 23rd day of June 2005.

Wendy L. Wysong,

Acting Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 05-12871 Filed 6-29-05; 8:45 am]

BILLING CODE 3510-OT-M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various

antidumping and countervailing duty orders and findings with May anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: June 30, 2005.

FOR FURTHER INFORMATION CONTACT:

Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482-4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b) (2002), for administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates.

Initiation of Reviews:

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than May 31, 2006.

| | Period to be reviewed |
|--------------------------------------------------|-----------------------|
| Antidumping Duty Proceedings | |
| Belgium: | |
| Stainless Steel Plate in Coils, A-423-808 | 5/1/04-4/30/05 |
| Ugine & ALZ Belgium | |
| Canada: | |
| Certain Softwood Lumber, A-122-838 | 5/1/04-4/30/05 |
| 465016 BC Ltd. | |
| 582912 BC Ltd. (dba Paragon Wood Products Lumby) | |
| Abitibi-Consolidated Company of Canada | |
| Abitibi-Consolidated Inc. | |
| Abitibi-LP Engineered Wood Inc. | |
| AJ Forest Products Ltd. | |
| Alberta Spruce Industries Ltd. | |
| Alexandre Cote Ltee. | |
| Allmac Lumber Sales Ltd. | |
| Allmar International | |
| Alpa Lumber Mills Inc. | |
| Alpine Forest Trading Inc. | |
| American Bayridge Corporation | |
| Andersen Pacific Forest Ltd. | |
| Anderson Pacific Forest Products | |
| Apex Forest Products, Inc. | |
| Apollo Forest Products Ltd. | |
| Aquila Cedar Products Ltd. | |
| Arbec Forest Products Inc. | |
| Arbutus Manufacturing Limited | |
| Armand Duhamel & Fils Inc. | |
| Aspen Planers Ltd. | |
| Atco Lumber Ltd. | |
| Atikokan Forest Products Ltd. | |
| Atlantic Warehousing Ltd. | |
| Atlas Lumber Alberta Ltd. | |
| AWL Forest Products | |
| B&L Forest Products Ltd. | |
| B.B. Pallets Inc. | |
| Bakerview Forest Products Inc. | |
| Bardeaux et Cedres St-Honore Inc. | |

| | Period to be reviewed |
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| <p> Barrett Lumber Company Limited Barrette-Chapais Ltee Barry Maedel Woods & Timber Bathurst Lumber Bathurst Lumber, Division of UPM Kymmene Miramichi Beaubois Coaticook Inc. Bel Air Forest Products Inc. Bel Air Lumber Mills, Inc. Blackville Lumber Inc. Blackville Lumber Inc., Division of UPM Miramichi Blanchette & Blanchette Inc. Bois Bonsai Bois Cobodex (1995) Inc. Bois De L'est Fb Inc. Bois D'oeuvre Cedrico Inc. Bois Fontaine Inc. Bois Granval G.d.s. Inc. Bois Kheops Inc. Bois Marsoui G.d.s. Inc. Bois Neos Inc. Bois Nor Que Wood Inc. Bois Omega Ltee Boisaco Inc. Bonnyman & Byers Limited Boscos Canada Inc. Boucher Bros. Lumber Ltd. Bowater Canadian Forest Products Incorporated Bowater Incorporated Bridgeside Forest Industries Ltd. (Bridgeside Higa Forest Industries, Ltd.) Brink Forest Products Ltd. Brittania Lumber Company Limited Brown & Rutherford Co. Ltd. Brunswick Valley Lumber Inc. Buchanan Distribution Inc. Buchanan Forest Products Ltd. Buchanan Lumber Buchanan Lumber Sales Inc. Buchanan Northern Hardwoods, Inc. Busque & Laflamme Inc. Byrnexco Inc. C & C Lath Mill Ltd. C. Ernest Harrison & Sons Ltd. C.E. Harrison & Sons Limited Caledonia Forest Products Ltd. Cambie Cedar Products Ltd. Canadian Forest Products Ltd. Canadian Lumber Company Ltd. Canadian Overseas Log & Lumber, Ltd. Canfor Corporation Canfor Uneeda / Uneeda Wood Products Canwel Building Materials Ltd. Canyon Lumber Company Ltd. Cardinal Lumber Manufacturing & Sales Inc. Careau Bois Inc. Carrier & Begin Inc. Carrier Forest Products Carrier Lumber Ltd. Carson Lake Lumber Limited Cascadia Forest Products Ltd. Cattermole Timber CDS Lumber Products Ltd. Cedartone Specialties Ltd. Cedrico Lumber Inc. Central Cedar, Ltd. Centurion Lumber Manufacturing (1983) Ltd. Chaleur Sawmills Associates Chasyn Wood Technologies Inc. Cheslatta Forest Products Ltd. Chipman Sawmill Inc. Choicewood Products Inc. City Lumber Sales & Services Limited Clair Industrial Development Corp. Ltd. Clermond Hamel Ltee. </p> | |

| | Period to be reviewed |
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| <p>Clotures Rustiques L.g. Inc. Coast Clear Wood Ltd. Colonial Fence Mfg. Ltd. Comeau Lumber Limited Commonwealth Plywood Co. Ltd. Cooper Creek Cedar Ltd. Cottles Island Lumber Co. Ltd. Cowichan Lumber Ltd. Crystal Forest Industries Ltd. Cushman Lumber Company Ltd. Daaquam Lumber Inc. (aka Bois Daaquam Inc.) Dakeryn Industries Ltd. Davron Forest Products Ltd. Deep Cove Forest Products Delco Forest Products Ltd. Delta Cedar Products Deniso Lebel Inc. Devon Lumber Co. Ltd. Doman Forest Products Limited Doman Industries Limited Doman-western Lumber Ltd. Domexport, Inc. Domino Forest Products Inc. Domtar Inc. Downie Timber Ltd. Dubreuil Forest Products Limited Dunkley Lumber Ltd. E. Tremblay et Fils Ltee Eacan Timber Canada Ltd. Eacan Timber Ltd. Eacan Timber Usa Ltd. East Fraser Fiber Co., Ltd. Eastwood Forest Products Inc. Ed Bobocel Lumber 1993 Ltd. Edwin Blaikie Lumber Ltd. Elmira Wood Products Limited Elmsdale Lumber Co., Ltd. ER Probyn Export Ltd. Errington Cedar Products Ltd. Excel Forest Products F W Taylor Lumber Company F.L. Bodogh Lumber Co. Ltd. Falcon Lumber Limited Faulkener Wood Specialties, Ltd. Fawcett Quality Lumber Products Federated Co-operatives Limited Fenclo Ltee Finmac Lumber Limited Fletcher Lumber Fontaine Inc. (dba J. A. Fontaine et Fils Incorporée) Forest Products Northwest Inc. Forex Log & Lumber, Ltd. Fort St. James Forest Products Ltd. Forwest Wood Specialties Inc. Forwood Forest Products Inc. FPS Canada Inc. Fraser Pacific Forest Products Inc. Fraser Pacific Lumber Company Fraser Papers Inc. Fraser Plaster Rock Fraser Pulp Chips Ltd. Fraser Timber Limited Fraserview Cedar Products Ltd. Fraserwood Industries Ltd. G.A. Grier (1991) Inc. G.A.G. Sales, Inc. G.D.S. Valoribois Inc. G.L. Sawmill Ltd. Galloway Lumber Co., Ltd. Gerard Crete & Fils Inc. Gestion Natanis Inc. Gestofor, Inc. Gilbert Smith Forest Products Ltd.</p> | |

| | Period to be reviewed |
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| <p> Goldwood Industries Ltd. Goodfellow Inc. Gordon Buchanan Enterprises Ltd. Gorman Bros. Lumber Ltd. Great Lakes MSR Lumber Ltd. Great West Timber Limited Greenwood Forest Products (1983) Ltd. H.A. Fawcett & Son Limited H.J. Crabbe & Sons Ltd. H.S. Bartram (1984) Ltd. Haida Forest Products Ltd. Hainesville Sawmill Ltd. Halo Sawmill Limited Partnership Halo Sawmills Hanson's Sawmill Harry Freeman & Son Limited Hefler Forest Products Ltd. Herridge Trucking & Sawmilling Ltd. Hilmoe Forest Products, Ltd. Holdright Lumber Products Ltd. Howe Sound Forest Products (2005) Ltd. Hudson Mitchell & Sons Lumber Inc. Hughes Lumber Specialties Inc. Hy Mark Wood Products Inc. Hyak Specialty Wood Products Ltd. Industries G.D.S. Inc. Industries P.F. Inc. Industries Perron Inc. International Forest Products Ltd. (Interfor) International Forest Products, Ltd. (Interfor) Interpac Log & Lumber Ltd. Ivor Forest Products Ltd. J&G Log and Lumber Ltd. J&G Log Works Ltd. J.A. Turner & Sons (1987) Limited J.D. Irving, Limited J.H. Huscroft Ltd. Jackpine Engineered Wood Products Jackpine Forest Products Ltd. Jackpine Group of Companies Jamestown Lumber Company Ltd. Jasco Forest Products Ltd. Jeffrey Hanson John W. Jamer Ltd. JR Remanufacturing Kalesnikoff Lumber Co. Ltd. Kebois Limited (dba Kebois Limitee) Kebois Ltee Kenora Forest Products Ltd. Kenwood Lumber Ltd. Kispiox Forest Products Ltd. Kitwanga Lumber Company Kootenay Innovative Wood KP Wood Ltd. Kruger, Inc. Krystal Klear Marketing Inc. L&M Lumber Ltd. La Crete Sawmills Ltd. Lakeland Mills Ltd. Lamco Forest Products Landmark Truss & Lumber Inc. Langevin Forest Products, Inc. Lattes Waska Laths Inc. Lawsons Lumber Company Ltd. Lecours Lumber Co. Limited Ledwidge Lumber Co., Ltd. Leggett & Platt (B.C.) Ltd. Leggett & Platt Canada Co. Leggett & Platt Ltd. Leggett & Platt, Inc. Leggettwood Leonard Ellen Canada (1991) Inc. Les Bois D'oeuvre Beaudoin & Gauthier </p> | |

| | Period to be reviewed |
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| <p> Les Bois Indifor Lumber Inc. Les Bois K-7 Lumber Inc. Les Bois Lac Frontiere Inc. Les Bois S&P Grondin Inc. (aka Les Bois Grondin Inc.) Les Chantiers Chibougamau Ltee Les Placements Jean-paul Fontaine Ltee Les Produits Forestiers D.G. Ltee Les Produits Forestiers Dube Inc. (Dube Forest Products) Les Produits Forestiers Fbm Inc. Les Produits Forestiers Miradas Inc. Les Scieries du Lac St-jean Inc. Les Scieries J. Lavoie Inc. Leslie Forest Products Ltd. Ligni Bel Ltd. Lignum Ltd. Lindsay Lumber Ltd. Liskeard Lumber Limited Long Lake Forest Products Inc. Long Lake Forest Products Inc. (Nakina Division) Louisiana Pacific Corporation Lulumco Inc. Lumberplus Industries Inc. Lyle Forest Products Ltd. M & G Higgins Lumber Ltd. M.L. Wilkins & Son Ltd. Mactara Limited Maher Forest Products, Ltd. Maibec Industries Inc. Mainland Sawmill Mainland Sawmill (Division of Terminal Forest Products) Manitou Forest Products Ltd. Manning Diversified Forest Products Ltd. Maple Creek Saw Mills Inc. Marcel Lauzon Inc. Marine Way Industries Inc. Marwood Ltd. Materiaux Blanchet Inc. Max Meilleur et Fils Ltee. Mckenzie Forest Products Inc. MDFP Sales MF Bernard Inc. Mid America Lumber Mid Valley Lumber Specialties Ltd. Midway Lumber Mills Ltd. Mill & Timber Products Ltd. Millar Western Forest Products Ltd. Millco Wood Products Ltd. Miramichi Lumber Products Mirax Lumber Products Ltd. Mobilier Rustique (Beauce) Inc. Monterra Lumber Mills Limited Mountain View Specialties Mountain View Specialties Products Inc. N.F. Douglas Lumber Ltd. Nechako Lumber Co., Ltd. Newcastle Lumber Co. Inc. Nexfor Inc. Nicholson and Cates Limited Nickel Lake Lumber Noble Custom Cut Ltd. Norbord Industries Inc. Norsask Forest Products Inc. North American Forest Products Ltd. North American Hardwoods Ltd. North Enderby Distribution Ltd. North Enderby Timber Ltd. North Mitchell Lumber Company Ltd. North of 50 North Star Wholesale Lumber North Star Wholesale Lumber Ltd. Northern Sawmills, Inc. Northland Forest Products Ltd. Northwest Specialty Lumber </p> | |

| | Period to be reviewed |
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| <p> Olav Haavaldsrud Timber Company Limited Olympic Industries Inc. Optibois Inc. Oregon Canadian Forest Products P. Proulx Forest Products Inc. Pacific Coast Timber Inc. Pacific Lumber Company Pacific Lumber Remanufacturing Inc. Pacific Specialty Wood Products Ltd. (Clearwood Industries Ltd.) Pallan Timber Products (2000) Ltd. Pallan Timber Products Ltd. Palliser Lumber Sales Ltd. Parallel Wood Products, Ltd. Pat Power Forest Products Corporation Patrick Lumber Company Paul Vallee Inc. Peak Forest Products, Ltd. Pharlap Forest Products Inc. Phoenix Forest Products Inc. Pope & Talbot Inc. Pope & Talbot Ltd. Porcupine Wood Products Ltd. Port Moody Timber Ltd. Portbec Forest Products Ltd. Power Wood Corp. Precibois Inc. Preparabois Inc. Pro Lumber Inc. Produits Forest La Tuque Inc. Produits Forestiers Berscifer Inc. Produits Forestiers Petit Paris Inc. Produits Forestiers Saguenay Inc. Promobois G.d.s. Inc. Prudential Forest Products Limited Quadra Wood Products Ltd. R. Fryer Forest Products Limited Raintree Lumber Specialties Ltd. Ratcliff Forest Products Inc. Redtree Cedar Products Ltd. Redwood Value Added Products Inc. Rembos Inc. Rene Bernard Inc. Ridge Cedar Ltd. Ridgetimber Trading Inc. Ridgewood Forest Products Limited Rielly Industrial Lumber Inc. Riverside Forest Products Ltd. Riverside Marketing and Sales Rojac Cedar Products Inc. Rojac Enterprises Inc. Roland Boulanger & Cie Ltee Russell White Lumber Limited S&R Sawmills Ltd. Saran Cedar Sauder Industries Limited Sauder Industries Ltd.—Cowichan Division Sawarne Lumber Co. Ltd. Scierie A&M St-Pierre Inc. Scierie Adrien Arseneault Ltee. Scierie Alexandre Lemay & Fils Inc. Scierie Chaleur Scierie Dion et Fils Inc. Scierie Duhamel Sawmill Inc. Scierie Gallichan Scierie Gauthier Ltee Scierie La Patrie, Inc. Scierie Landrienne, Inc. Scierie Lapointe & Roy Ltee Scierie Leduc, Division of Stadaconia Inc. Scierie Norbois Inc. Scierie Nord-Sud (North-South Sawmill Inc.) Scierie St-Elzear Inc. Scierie Tech </p> | |

| | Period to be reviewed |
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| <p>Scierie West Brome Inc. Scieries du Lac St. Jean Inc. Seed Timber Co. Ltd. Selkirk Specialty Wood Ltd. Sexton Lumber Co. Limited Seycove Forest Products Limited Seymour Creek Cedar Products Ltd. Shawood Lumber Inc. Sigurdson Brothers Logging Co. Ltd. Silvermere Forest Products Inc. Sinclar Enterprises Ltd. Skagit Industries Skana Forest Products Ltd. Slocan Forest Products Ltd. Societe En Commandite Scierie Opticiwan Solid Wood Products Inc. South Beach Trading Inc. South-East Forest Products Ltd. Spray Lake Sawmills Ltd. Spruce Forest Products Ltd. Spruce Products Spruceland Millworks (Alberta) Spruceland Millworks Inc. St. Anthony Lathing Ltd. Stag Timber Stuart Lake Lumber Co. Ltd. Stuart Lake Marketing Co. Ltd. Sunbury Cedar Sales Suncoast Lumber & Milling Sundance Forest Industries Ltd. Swiftwood Forest Products Limited Sylvanex Lumber Products Inc. T.F. Specialty Sawmill T.P. Downey & Sons Ltd. Tall Tree Lumber Co. Taylor Lumber Company Ltd. Teal Cedar Products Ltd. Teal-Jones Group Teeda Corp Tembec Inc. Tembec Industries Inc. Terminal Forest Products (Terminal Sawmill Division) Terminal Forest Products Ltd. The Pas Lumber Co. Ltd. The Teal Jones Group—Stag Timber Division Timber Ridge Forest Products Inc. Timberwest Forest Corp. Timberworld Forest Products Inc. T'loh Forest Products Limited Partnership Tolko Industries Ltd. Tolko Marketing & Sales Top Quality Lumber Ltd. Trans-pacific Trading Ltd. Treeline Wood Products Ltd. Triad Forest Products, Ltd. Twin Rivers Cedar Products Ltd. Tye Timber Products Ltd. Uniforet Inc. Uniforet Scierie-Pate Inc. Uphill Wood Supply Inc. UPM Miramichi UPM-Kymmene Miramichi Inc. Usine Sartigan Inc. Vancouver Specialty Cedar Products Ltd. Vanderhoof Specialty Wood Products Inc. Vandermeer Forest Products (Canada) Ltd. Vanderwell Contractors (1971) Ltd. Vanport Canada, Co. Velcan Forest Products Inc. Vernon Kiln & Millwork Ltd. Visscher Lumber Inc. W.I. Woodtone Industries Inc. Wakefield Cedar Products Ltd.</p> | |

| | Period to be reviewed |
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| Welco Lumber Corporation Weldwood of Canada Ltd. Wentworth Lumber Ltd. West Bay Forest Products and Manufacturing Ltd. West Chilcotin Forest Products Ltd. West Fraser Mills Ltd. Western Forest Products Limited Western Forest Products, Inc. Westex Timber Mills., Ltd. Westmark Products Ltd. Weston Forest Corp. Westshore Specialties Ltd. West-wood Industries Ltd. Weyerhaeuser Company Weyerhaeuser Company Limited Weyerhaeuser Saskatchewan Limited. WFP Forest Products Limited WFP Lumber Sales Limited WFP Western Lumber Ltd. Wilfrid Paquet & Fils Ltee. Williams Brothers Ltd. Winnipeg Forest Products, Inc. Winton Global Ltd. Woodko Enterprises, Ltd. Woodline Forest Products Ltd. Woodtone Industries Inc. Wynndel Box & Lumber Co., Ltd. | |
| Republic of Korea: Certain Polyester Staple Fiber, A-580-839 | 5/1/04-4/30/05 |
| Huvis Corporation Saehan Industries, Inc. Daehan Synthetic Company, Ltd. (division of Taekwang Industrial Co., Ltd.) Dongwoo Industry Company | |
| Taiwan: Polyester Staple Fiber, A-583-833 | 5/1/04-4/30/05 |
| Far Eastern Textile Ltd. | |
| Taiwan: Stainless Steel Plate in Coils, A-583-830 | 5/1/04-4/30/05 |
| Ta Chen Stainless Pipe Co., Ltd. Yieh United Steel Corporation China Steel Corporation Tang Eng Iron Works PFP Taiwan Co., Ltd. Yieh Loong Enterprise Co., Ltd.(aka Chung Hung Steel Co., Ltd.) Yieh Trading Co. Goang Jau Shing Enterprise Co., Ltd. Yieh Mau Corporation Chien Shing Stainless Co., Ltd. East Tack Enterprise Co., Ltd. Shing Shong Ta Metal Ind. Co., Ltd. Sinkang Industries, Ltd. Chang Mien Industries Co., Ltd. Chain Chin Industrial Co., Ltd. Emerdex Stainless Steel Flat Roll Products, Inc., Emerdex Stainless Steel, Inc., Emerdex Group | |
| The People's Republic of China: Pure Magnesium, ¹ A-570-832 | 5/1/04-4/30/05 |
| Tianjin Magnesium International, Co. | |
| Venezuela: Silicomanganese, A-307-820 | 5/1/04-4/30/05 |
| Hornos Electricos de Venezuela | |
| | Period/class or kind |
| Antifriction Bearings Proceedings and Firms | |
| France: A-427-801 | 5/1/04-4/30/05 |
| SKF France S.A. and Sarma | Ball and |
| SNR Roulements | Spherical Ball |
| Germany: A-428-801 | 5/1/04-4/30/05 |
| Gabreuder Reinfort GmbH & Co., KG | Ball |
| INA-Schaeffler KG/FAG Kugelfischer AG | Ball |
| SKF GmbH | Ball |
| Italy: A-475-801 | 5/1/04-4/30/05 |
| FAG Italia S.p.A. | Ball |
| SKF Industrie S.p.A. | Ball |
| Japan: A-588-804 | 5/1/04-4/30/05 |
| Asahi Seiko Co., Ltd. | Ball |
| Koyo Seiko Co., Ltd | Ball |

| | Period to be reviewed |
|--------------------------------------------------|-----------------------|
| Nachi-Fujikoshi Corporation | Ball |
| Nippon Pillow Block Company, Ltd. | Ball |
| NSK Ltd. | Ball |
| NTN Corporation | Ball |
| Sapporo Precision, Inc. | Ball |
| Singapore: A-599-801 | 5/1/04-4/30/05 |
| NMB/Pelmec | Ball |
| U.K.: A-412-801 | 5/1/04-4/30/05 |
| NSK Bearings Europe | Ball |
| The Barden Corporation (U.K.), Ltd. | Ball |
| Countervailing Duty Proceedings | |
| Canada: Certain Softwood Lumber, C-122-839 | 4/1/04-3/31/05 |
| Suspension Agreements | |
| None. | |

¹ If one of the named companies does not qualify for a separate rate, all other exporters of pure magnesium from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia v. United States*, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: June 28, 2005.

Holly A. Kuga,

Senior Office Director, AD/CVD Operations, Office 4 for Import Administration.

[FR Doc. 05-13095 Filed 6-29-05; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

A-533-813

Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review

SUMMARY: On March 8, 2005, the Department of Commerce published the preliminary results of the fifth administrative review of the antidumping duty order on certain preserved mushrooms from India. The review covers four manufacturers/exporters. The period of review is February 1, 2003, through January 31, 2004.

Based on our analysis of the comments received, we have made changes in the margin calculations for two of the four companies covered by this review. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: June 30, 2005.

FOR FURTHER INFORMATION CONTACT:

David J. Goldberger or Katherine Johnson, AD/CVD Operations, Office 2, Import Administration—Room B095, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4136 or (202) 482-4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

The review covers four manufacturers/exporters: Agro Dutch Industries Ltd. ("Agro Dutch"), Flex Foods, Ltd. ("Flex Foods"), Premier Mushroom Farms ("Premier"), and Weikfield Agro Products Ltd. ("Weikfield"). The period of review is February 1, 2003, through January 31, 2004.

On March 4, 2005, the Department of Commerce ("the Department") published the preliminary results of the fifth administrative review of the antidumping duty order on certain preserved mushrooms from India (70 FR 10597) ("*Preliminary Results*"). We invited parties to comment on the preliminary results of review.

On March 2, 2005, the Department issued a final supplemental questionnaire to Flex Foods. Flex Foods responded to the supplemental questionnaire on March 22, 2005. We received case briefs from Flex Foods on April 19, 2005, and Agro Dutch on April 20, 2005. The petitioner filed a rebuttal brief on April 27, 2005. Premier and Weikfield did not comment on the preliminary results. On May 11, 2005, the Department issued a letter to Agro Dutch requesting additional information on its reporting of transportation insurance expenses. Agro Dutch submitted this information on May 18, 2005. We have conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended ("the Act").

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved

mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. “Preserved mushrooms” refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are “brined” mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including “refrigerated” or “quick blanched mushrooms”; (3) dried mushrooms; (4) frozen mushrooms; and (5) “marinated,” “acidified” or “pickled” mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is currently classifiable under subheadings 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the *Harmonized Tariff Schedule of the United States* (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping duty administrative review are addressed in the “Issues and Decision Memorandum” (“Decision Memo”) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated June 24, 2005, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B-099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly

on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Decision Memo are identical in content.

Changes from the Preliminary Results

Based on information submitted by Agro Dutch and Flex Foods after the preliminary results and our analysis of the comments received, we have made certain changes to the margin calculations for Agro Dutch and Flex Foods:

1. We incorporated the transportation insurance expense data from Agro Dutch’s original questionnaire response in our calculation in order to properly account for the expenses incurred on U.S. and Israeli sales.
2. We corrected programming errors in our preliminary results calculation affecting the currency conversions of certain expenses in the comparison market program of Agro Dutch.
3. We revised the third-country net price calculation in the comparison market program to subtract, rather than add, Agro Dutch’s billing adjustment on certain third-country sales.
4. We corrected Agro Dutch’s normal value calculation to deduct third-country imputed credit expense in the margin calculation program.
5. We corrected an error in the calculation of normal value where, in the preliminary results, we had inadvertently applied the currency conversion factor to the third-country billing adjustment that was already in U.S. dollars.
6. We subtracted the cost of the raw material used for research and development from Flex Foods’s raw material cost and added this expense to the general and administrative (G&A) expenses in the calculation of Flex Food’s G&A expense ratio. *See Memo to File: Flex Foods Limited Final Results Calculation Memorandum*, June 24, 2005 (*Flex Foods Final Results Calculation Memorandum*).
7. We recalculated Flex Foods’ raw material costs to subtract the cost of raw materials consumed in the manufacturing of spawn sold to outside buyers. *See Flex Foods Final Results Calculation Memorandum*.
8. We recalculated Flex Foods’ farming costs included in the reported material costs to reflect the costs incurred during the POR, rather than Flex Foods’ 2003 - 2004 fiscal year. *See Flex Foods Final Results Calculation Memorandum*.

Final Results of Review

We determine that the following weighted-average margin percentages exist:

| Manufacturer/exporter | Margin (percent) |
|-----------------------------------|------------------|
| Agro Dutch Industries Ltd | 0.62 |
| Premier Mushroom Farms | 41.67 |
| Flex Foods, Ltd. | 114.76 |
| Weikfield Agro Products Ltd. | 25.69 |

Assessment

The Department shall determine, and U.S. Customs and Border Protection (“CBP”) shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisal instructions for the companies subject to this review directly to CBP within 15 days of publication of these final results of review. In accordance with 19 CFR 351.106(c), we will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (i.e., is not less than 0.50 percent). With respect to Agro Dutch, Premier, and Weikfield, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins calculated for all the U.S. sales examined and dividing this amount by the total entered value of the sales examined. For Flex Foods, because it did not report the actual entered value of its sales, we calculated importer-specific assessment rates by aggregating the dumping margins calculated for all of the U.S. sales examined and dividing this amount by the total quantity of the sales examined. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* ratios based on export prices.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this review, except if the rate is less than 0.50 percent, and therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above,

the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.30 percent. This rate is the "All Others" rate from the LTFV 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 the subsequent assessment of doubled antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: June 24, 2005.

Joseph Spetrini,
Acting Assistant Secretary for Import Administration.

Appendix List of Issues

Company-Specific Comments:

Agro Dutch

Comment 1: *Currency Identification of Agro Dutch's Transportation Insurance Expenses*

Comment 2: *Currency Conversions in Agro Dutch's Comparison Market Computer Program*

Comment 3: *Agro Dutch's Third-Country Billing Adjustment*

Comment 4: *Omission of Third-Country Imputed Credit Expense in Normal Value Calculation*

Flex Foods

Comment 5: *Calculation of Flex Foods' Fresh Mushroom Costs*

Comment 6: *Calculation of Flex Foods' Financial Expense Ratio*

[FR Doc. E5-3443 Filed 6-29-05; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-845]

Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On April 11, 2005, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Japan with respect to Kawasaki Steel Corporation (KSC) and its alleged successor-in-interest JFE Steel Corporation (JFE). The period of review is July 1, 2003, through June 30, 2004. The petitioners submitted comments agreeing with the Department's preliminary results. No other interested party submitted comments and we have made no changes to our preliminary results. Therefore, the final results do not differ from the preliminary results. The final margin is listed below in the "Final Results of Review" section of this notice.

DATES: Effective June 30, 2005.

FOR FURTHER INFORMATION CONTACT: P. Lee Smith or Kate Johnson, AD/CVD Operations Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1655 and (202) 482-4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 11, 2005, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Japan (70 FR 18369) (*Preliminary Results*).

We invited parties to comment on the preliminary results of the review. On April 21, 2005, the petitioners submitted a letter in support of the Department's use of adverse facts

available in the preliminary results. No other interested party submitted comments. The Department has conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by this order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise

descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no

more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."¹

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."²

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile

strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."³

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).⁴ This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."⁵

Period of Review

The period of review covers the period July 1, 2003, through June 30, 2004.

Final Results of the Review

Our final results remain unchanged from the preliminary results. As discussed in the *Preliminary Results*, we applied total adverse facts (AFA) under

³ "Durphynox 17" is a trademark of Imphy, S.A.

⁴ This list of uses is illustrative and provided for descriptive purposes only.

⁵ "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

¹ "Arnokrome III" is a trademark of the Arnold Engineering Company.

² "Gilphy 36" is a trademark of Imphy, S.A.

section 776(b) of the Act because neither KSC nor its alleged successor-in-interest JFE responded to the Department's questionnaire and, therefore, failed to cooperate to the best of its ability.

Consistent with our decision to apply AFA to KSC and JFE for failure to respond to the Department's request for information, and because the interested parties had consistently referred to KSC as JFE in their various submissions on the record of this review, we stated our intention to apply the same (AFA) rate to both KSC and JFE for cash deposit and assessment purposes, without having conducted officially a successor-in-interest analysis, in order to capture all entries of the subject merchandise by either KSC or JFE. See *Preliminary Results* at 70 FR 18369, 18372. No party objected to the Department's preliminary decision. Thus, the following margin applies for the period July 1, 2003, through June 30, 2004:

| Manufacturer/exporter | Margin (percent) |
|--------------------------------------------------------|------------------|
| Kawasaki Steel Corporation/JFE Steel Corporation | 57.87 |

Assessment and Cash Deposit Instructions

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. We will issue assessment instructions directly to CBP within 15 days of publication of these final results of review.

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for KSC/JFE is 57.87 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 40.18 percent, the "All Others" rate made effective by the LTFV investigation. See *Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty*

Order: Stainless Steel Sheet and Strip in Coils from Japan, 64 FR 40565 (July 27, 1999). These 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 the subsequent assessment of doubled antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: June 24, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5-3442 Filed 6-29-05; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology

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

ACTION: Request for comments

SUMMARY: The Department of Commerce ("Department") has a long-standing practice of calculating expected non-market economy ("NME") wages for use as surrogate values in antidumping proceedings involving NME countries. These expected NME wages are calculated annually in accordance with § 351.408(c)(3) of the Department's regulations. This notice describes the Department's methodology for the calculation of expected NME wages and

provides the public with an opportunity to comment on this methodology in response to comments that have been submitted in several NME proceedings. For purposes of public comment, the Department has also calculated expected NME wages using currently available data for 2003 and the methodology described herein. This is a sample calculation based on 2003 data, and is subject to data updates and revisions.

DATES: Comments must be submitted no later than thirty days after publication of this Notice.

ADDRESSES: Written comments (original and six copies) should be sent to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, 14th Street and Pennsylvania Avenue N.W., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: John D. A. LaRose, Assistant to the Senior Enforcement Coordinator, Office of China/NME Compliance or Shauna Lee-Alaia, Policy Analyst, Office of Policy, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230, (202) 482-3794 or (202) 482-2793.

SUPPLEMENTARY INFORMATION:

Background

With regard to its calculation of expected NME wages, the Department stated in its November 17, 2004, Final Determination in the investigation of Wooden Bedroom Furniture from the People's Republic of China, that it would "invite comments from the general public on this matter in a proceeding separate from the {Furniture} investigation." *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313 (November 17, 2004) and accompanying *Issues and Decisions Memorandum* at 180 (Cmt. 23).

The NME Wage Rate Methodology

The Department's regulations generally describe the methodology by which the Department calculates expected NME wages:

For labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current

data, and will be made available to the public.

19 CFR 351.408(c)(3).

In accordance with § 351.408(c)(3), the Department annually calculates expected NME wages in two steps. First, the Department uses regression analysis¹ to estimate a linear relationship between per-capita gross national income (“GNI”) and hourly wages in market economy (“ME”) countries. Second, the Department uses the results of the regression and NME GNI data to estimate hourly wage rates for NME countries.

There is usually a two-year interval between the current year and the most recent reporting year of the data required for this methodology due to the practices of the respective data sources. The Department bases its regression analysis on this most recent reporting year, which the Department refers to as the “Base Year.” For example, the Department relied upon data from 2001 to calculate expected NME wages in 2003, *i.e.*, the “Base Year” for the 2003 calculation was 2001. In practice, the “Base Year,” *i.e.*, the year upon which the regression data are based, is two years prior to the year in which the Department conducts its regression analysis.

1. Regression Analysis

The Department’s regression analysis, which describes generally the relationship between wages and GNI, relies upon four separate data series: (A) country-specific wage data for 56 countries from Chapter 5B of the International Labour Organization’s (“ILO”) *Yearbook of Labour Statistics*; (B) country-specific consumer price index (“CPI”) data from the *International Financial Statistics* of the International Monetary Fund (“IMF”); (C) exchange rate data from the IMF’s *International Financial Statistics*; and (D) country-specific GNI data from the *World Development Indicators* of the World Bank (“WB”).

The wage rate data described above are converted to hourly wage rates and adjusted using CPI data to be representative of the current Base Year. The data are then converted to U.S. dollars using the appropriate exchange rate data. These adjusted wage rate data are ultimately regressed on GNI.

The following sections describe each data series and how it is used.

(A) Wage Data

For each of 56 countries, the Department chooses a single wage rate that represents a broad measure of

wages for that country that is most contemporaneous with the Base Year.

To arrive at a single wage rate for each country from among the many wage rates included in the ILO database for each country, the Department prioritizes the following ILO data parameters² in the following order:

1. “Sex,” *i.e.*, male/female coverage;
2. “Sub-Classification,” *i.e.*, coverage of different types of industry;
3. “Worker Coverage,” *i.e.*, coverage of different types of workers, such as wage earners or salaried employees;
4. “Type of Data,” *i.e.*, the unit of time for which the wage is reported, such as per hour or per month; and,
5. “Source ID,” *i.e.*, a code for the source of the data.

First, the Department looks to the parameter for gender. For the “Sex” parameter, the Department always chooses data that cover both men and women.³

Second, for the “Sub-Classification” parameter, the Department chooses in each instance data that cover all reported industries in a given country (indicated in the database by a value of “Total” for the “Sub-Classification” parameter).

When a wage rate that meets these two criteria (for “Sex” and “Sub-Classification”) is not available for the Base Year, the Department will use the most recently available data within five years of the Base Year, thereby considering a total of six years of data. For example, when the Base Year was 2001, the Department used the data reported for the most recent year between the years of 1996 and 2001.

The Department does not choose wage rate data that do not meet the requirements for “Sex” and “Sub-Classification” described above. If there is more than one record in the ILO database that meets those requirements, the Department looks to the remaining parameters. Once the Department’s requirements for these two parameters are satisfied, the Department then prioritizes data that are closest to the Base Year within the remaining ILO parameters discussed below.

For example, for the third parameter, the Department generally prioritizes “wage earners,” “employees” and “total

² Each data point in the ILO database is accompanied by values for each of a number of parameters that describe the characteristics of the data. These parameters include those enumerated above, and also include two other parameters: “Source,” *i.e.*, the original survey source of the data and “Classification,” *i.e.*, the industrial classification.

³ The Department does not consider values of “Indices, Men and Women” for this parameter.

employment,” in that order for the parameter “Worker Coverage.” However, the Department would choose more contemporaneous “employees” data over less contemporaneous “wage earner” data.

Fourth, when the values for all other parameters are equal, the Department prioritizes data reported on an hourly basis over that reported on a monthly or weekly basis for the parameter “Type of Data.”

Fifth, if necessary, the Department prioritizes data with a “Source ID” value of “1” over “2” or “3.”

Finally, it is the Department’s normal practice to eliminate aberrational values (*i.e.*, values that vary in either direction in the extreme from year to year) from the wage rate dataset.

The ILO data that are not reported on an hourly basis are converted to an hourly basis based on the premise that there are 44 working hours per week and 192 working hours per month.

(B) CPI Data

Once hourly figures have been calculated based on the wage rate data discussed above, the wages are adjusted to the Base Year on the basis of the Consumer Price Index for each country, as reported by the IMF’s *International Financial Statistics*. This adjustment is made for any wage rate data not reported for the Base Year.

(C) Exchange Rate Data

These inflation-adjusted wage data, which are denominated in the national currency of their country, are then converted to U.S. dollars using Base Year period-average exchange rates reported by the IMF’s *International Financial Statistics*.

Thus, using (A) wage data, (B) CPI data and (C) exchange rate data, discussed above, the Department arrives at hourly wages, denominated in U.S. dollars and adjusted for inflation for each of the 56 countries for which all the above data are available.

(D) GNI Data

The Department uses Base Year GNI data for each of the 56 countries in the Department’s analysis, as reported by the WB. GNI data are denominated in U.S. dollars current for the Base Year. The WB defines GNI per capita as gross national product (“GNP”) per capita, which is “the dollar value of a country’s final output of goods and services in a year divided by its population.” The WB further explains that this measure “reflects the average income of a country’s citizens.” See <http://www.worldbank.org/depweb/english/modules/glossary.html>.

¹ Ordinary least squares regression.

The Department conducts its regression analysis⁴ using the Base Year wages per hour in U.S. dollars discussed above and Base Year GNI per capita in U.S. dollars to arrive at the following equation: $Wage_i = Y\text{-intercept} + X\text{-coefficient} * GNI$. The X-coefficient describes the slope of the line estimated by the regression analysis, while the Y-intercept is the point on the Y-axis where the regression line intercepts the Y-axis. The results of this regression analysis describe generally the relationship between hourly wages and GNI.

2. Application of Regression Results to NME GNI Data

The Department applies the NME Base Year GNI to the equation presented above to arrive at an estimated wage rate for the NME. This is done for each NME.

Example of Methodology Applied to Base Year 2003 Data

Following the criteria and methodology discussed above, and using the data available to the

Department as of June 15, 2005, the Department has calculated sample expected NME wages.

The Dominican Republic, Algeria and Kenya, three of the 56 countries, have been excluded from the Department's regression analysis because ILO wage rate data were not available for these countries in the instant dataset.

As noted in the ILO database, the wage rates for Turkey and Korea, two of the 56 countries, are denominated in units of 1,000 of their respective national currency, and have been converted accordingly.

While the ILO database indicates that wage rate data for Greece and the Netherlands, two of the 56 countries, are denominated in euros, the notes to the ILO database indicate that these wage rates are denominated in drachmas and guilders, respectively.⁵ Because appropriate exchange rates were not available in the *International Financial Statistics* for Greece and the Netherlands, the Department relied on the exchange rate information that it regularly obtains from Dow Jones B.I.S.

and the Federal Reserve and posts on the Import Administration web site for these countries. Thus, the Department has calculated the annual 2003 average exchange rates for Greek drachmas and Dutch guilders, which were 0.00328 U.S. dollars per drachma and 0.51859 U.S. dollars per guilder.

2003 WB GNI data were not available for Zimbabwe, one of the 56 countries. Consequently, Zimbabwe has been excluded from the Department's regression analysis.

Following the data compilation and regression methodology described above, and using GNI and wage data for Base Year 2003, the regression results are: $Wage_i = 0.410466 + 0.000515 * GNI$. The r-square, which is a measure of the statistical validity of a regression analysis,⁶ is 0.91632 for the Department's regression analysis,⁷ indicating a statistically valid analysis.

Application of these regression results to 2003 NME GNI data yields the following sample 2005 schedule of expected NME wages for antidumping ("AD") purposes:

| Country | 2003 GNI | Expected NME Wage |
|---------------------------|----------|-------------------|
| Armenia | \$950 | \$0.90 |
| Azerbaijan | \$820 | \$0.83 |
| Belarus | \$1,600 | \$1.23 |
| Estonia† | \$5,380 | \$3.18 |
| Georgia | \$770 | \$0.81 |
| Kazakhstan† | \$1,780 | \$1.33 |
| Kyrgyz Republic | \$340 | \$0.59 |
| Lithuania† | \$4,500 | \$2.73 |
| Moldova | \$590 | \$0.71 |
| China | \$1,100 | \$0.98 |
| Romania† | \$2,260 | \$1.57 |
| Russian Federation† | \$2,610 | \$1.75 |
| Tajikistan | \$210 | \$0.52 |
| Turkmenistan | \$1,120 | \$0.99 |
| Ukraine | \$970 | \$0.91 |
| Uzbekistan | \$420 | \$0.63 |
| Vietnam‡ | \$480 | \$0.66 |

†Applicable only to review periods that pre-date the effective date of graduation to market-economy status (Estonia (01/01/03); Lithuania (01/01/03); Romania (01/01/03); and Russia (04/01/02); Kazakhstan (10/01/01)).

‡On November 8, 2002, the Department determined that Vietnam will be treated as a non-market economy country for purposes of anti-dumping duty and countervailing proceedings (see *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116, June 23, 2003).

In order to facilitate a full opportunity for comment, and because the underlying data is voluminous, the results and underlying data for this sample calculation have been posted on the Import Administration website (<http://ia.ita.doc.gov>), but will not be used for AD purposes.

Comments

Persons wishing to comment on the Department's methodology described above for the calculation of expected NME wages should file a signed original and six copies of each set of comments by the date specified above. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will

be considered, if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in development of any

⁴ Linear, ordinary least squares regression.

⁵ This correction has been made in previous years, and addresses an apparent discrepancy when using the euro exchange rate.

⁶ Linear, ordinary least squares regression.

⁷ Linear, ordinary least squares regression.

changes to its practice. All comments responding to this notice will be a matter of public record and will be available for public inspection and copying at Import Administration's Central Records Unit, Room B-099, between the hours of 8:30 a.m. and 5 p.m. on business days. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e-mail to the Webmaster below, or on CD-ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration website at the following address: <http://ia.ita.doc.gov/>.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482-0866, e-mail address: webmaster-support@ita.doc.gov.

Dated: June 23, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05-12862 Filed 6-29-05; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

Exemption of Foreign Air Carriers From Excise Taxes; Review of Finding of Reciprocity (Bolivia), 26 U.S.C. 4221

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Solicitation of public comments concerning a review of the existing exemption for aircraft registered in the Republic of Bolivia from certain internal revenue taxes on the purchase of supplies in the United States for such aircraft in connection with their international commercial operations.

SUMMARY: Notice is hereby given that the Department of Commerce is conducting a review to determine, pursuant to Section 4221 of the Internal Revenue Code, as amended (26 U.S.C. 4221), whether the Government of Bolivia has discontinued allowing substantially reciprocal tax exemptions to aircraft of U.S. registry in connection

with international commercial operations similar to those exemptions currently granted to aircraft of Bolivian registry by the United States under the aforementioned statute.

The above-cited statute provides exemptions for aircraft of foreign registry from payment of certain internal revenue taxes on the purchase of supplies in the United States for such aircraft in connection with their international commercial operations. These exemptions apply upon a finding by the Secretary of Commerce, or his designee, and communicated to the Department of the Treasury, that such country allows, or will allow, "substantially reciprocal privileges" to aircraft of U.S. registry with respect to purchases of such supplies in that country. If a foreign country discontinues the allowance of such substantially reciprocal exemption, the exemption allowed by the United States will not apply after the Secretary of the Treasury is notified by the Secretary of Commerce, or his designee, of the discontinuance.

Interested parties are invited to submit their views, comments and supporting documentation in writing concerning this matter to Mr. Douglas B. Baker, Deputy Assistant Secretary for Services, Room 1128, U.S. Department of Commerce, Washington, DC, 20230. Submissions should be sent electronically to OSImail@ita.doc.gov. All submissions should be received no later than forty-five days from the date of this notice.

Comments received, with the exception of information marked "business confidential," will be available for public inspection between Monday-Friday, 8:30 a.m. and 5:30 p.m. in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC. Information marked "business confidential" shall be protected from disclosure to the full extent permitted by law.

It is suggested that those desiring additional information contact Mr. Eugene Alford, Office of Service Industries, Room 1124, U.S. Department of Commerce, Washington, DC 20230, or telephone 202-482-5071.

Dated: June 27, 2005.

David F. Long,

Acting Deputy Assistant Secretary for Services.

[FR Doc. E5-3436 Filed 6-29-05; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

Duty Drawback Practice in Antidumping Proceedings

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

ACTION: Request for comments.

SUMMARY: The Department of Commerce (the Department) has a long-standing policy in antidumping proceedings, based on section 772(c)(1)(B) of the Tariff Act of 1930, as amended (the Act), of granting a duty drawback adjustment to export price where a respondent party establishes that: (1) the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to exportation); and (2) there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the manufactured product.

In a number of recent proceedings, the Department has received comments expressing concerns about its current duty drawback adjustment policy and practice. This notice describes various issues that have been raised concerning the Department's practice and provides the public with an opportunity to comment on whether any changes to the Department's current practice would be warranted and specifically what such changes would entail.

DATES: Comments must be submitted by July 25, 2005.

ADDRESSES: Written comments (original and six copies) should be sent to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, Pennsylvania Avenue and 14th Street NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: John C. Kalitka, Office of Policy, Import Administration, U.S. Department of Commerce, Room 3712, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230, (202) 482-2730.

SUPPLEMENTARY INFORMATION:

Background

With respect to the duty drawback adjustment, the Department is directed by section 772(c)(1)(B) of the Act, which states that "[t]he price used to establish export price and constructed export price shall be -- (1) increased by (B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the

exportation of the subject merchandise to the United States.”

Based upon this statutory language, the Department applies a two-prong test to determine entitlement to a duty drawback adjustment. That is, the party claiming such adjustment must establish that: (1) the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to exportation); and (2) there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the manufactured product. *See, e.g., Stainless Steel Wire Rods From India: Preliminary Results of Antidumping Duty Administrative Review, Intent To Revoke Order In Part, and Extension of Time for the Final Results of Review*, 70 FR 1413, 1420 (January 7, 2005); *Light-Walled Rectangular Pipe and Tube From Turkey: Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53675 (September 2, 2004) and accompanying Issues and Decision Memorandum at Comment 1 (*Pipe & Tube from Turkey*). Moreover, the courts have sustained the Department's traditional two-prong test. *See, e.g., Allied Tube & Conduit Corp. v. United States*, 05–56, slip op. at 16–17 (CIT, May 12, 2005); *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1093 (CIT 2001); *Far East Machinery Co., Ltd. v. United States*, 699 F. Supp. 309, 311 (CIT 1988); *Carlisle Tire & Rubber Co. v. United States*, 657 F. Supp. 1287, 1289–90 (CIT 1987).

One economic justification that parties have offered for the duty drawback adjustment is that the measure seeks to preserve accurate price comparability between home market and United States prices. *See, e.g., Pipe & Tube from Turkey* at Comment 1. Under this rationale, an adjustment is required for price differences created entirely by the imposition of import duties, which increase the cost of raw materials used to produce the product sold in the home market. Even where materials are sourced domestically and thus no import duties are paid on certain raw materials used in producing merchandise sold in the home market, an addition to United States price equal to the import duty is still appropriate to neutralize the effect of the increase in prices of domestically sourced raw material that is caused by the imposition of the duty. In these circumstances, it is argued, domestic suppliers of raw materials will raise the home market price of inputs as high as they can without facing competition from imported raw materials. For

example, home market suppliers of domestically produced raw material inputs used in the production of the foreign like product likely would price their material just short of or equal to the total duty-inclusive cost of imported raw material inputs. Thus, the duty drawback adjustment seeks to account for the difference between the price of imported and locally sourced raw material inputs created solely by the duty on imported raw material inputs. *Id.* Furthermore, parties have argued, the price of the foreign like product would still be influenced by a respondent's home market competition, which may have paid import duties on the raw material. *Id.*

The Department is considering whether changes to its practice, including the two-prong test detailed above, may be appropriate. For instance, some parties have argued that the Department's practice should be modified by requiring a respondent party seeking a duty drawback adjustment to demonstrate payment of import duties on raw material inputs used to produce merchandise sold in the home market. They argue that such a requirement is consistent with principles of price comparability and the implementation of Congressional intent with respect to the duty drawback adjustment. In addition, according to such parties, any duty drawback adjustment made should also be limited to the amount of duties actually paid on material inputs used to produce merchandise sold in the home market. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 69 FR 61649 (October 20, 2004); *Antidumping Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey*, 69 FR 48843 (August 11, 2004); *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 32492 (June 10, 2004). Certain parties have also argued that the Department should allocate the total pool of relevant drawback available under some systems to total exports of subject merchandise to ensure that the adjustment claimed on U.S. sales is not overstated. *See Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 70 FR 12443 (March 14, 2005) and accompanying Issues and Decision Memorandum at Comment 4.

Parties advocating a change in Department practice argue that in creating the duty drawback adjustment, Congress intended that an increase in the export price resulting from the duty drawback adjustment was designed to offset an increase in the home market price resulting from the payment of import duties on inputs. As a result, the duty drawback adjustment was designed to prevent dumping margins from arising simply because of the rebate (or non-collection) of import duties on the inputs resulting from the export of subject merchandise to the United States. Yet, these parties argue, to permit a drawback adjustment where home market sales do not include import duties leaves nothing for the rebate or exemption to offset.

In order to fully consider and address these claims as well as other concerns about the Department's practice regarding duty drawback, the Department is providing an opportunity for the public to comment. Such comments should be submitted by the date specified above. The Department is particularly interested in comments relating to questions and possible approaches set forth in the Appendix to this notice, including comments on the consistency with the statute and Congressional intent.

Comments

Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in development of any changes to its practice. All comments responding to this notice will be a matter of public record and will be available for public inspection and copying at Import Administration's Central Records Unit, Room B-099, between the hours of 8:30 a.m. and 5 p.m. on business days. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e-mail to

the webmaster below, or on CD-ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration Web site at the following address: <http://ia.ita.doc.gov/>.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482-0866, e-mail address: webmaster-support@ita.doc.gov.

Dated: June 24, 2005.

Joseph. A Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX

The following questions are for consideration in commentary on the duty drawback adjustment in antidumping duty proceedings. In particular, the Department is interested in comments regarding the legal, policy and commercial rationale for the duty drawback adjustment and any proposed modifications to the Department's practice.

- (1) What should the requirements be for making a duty drawback adjustment in an antidumping proceeding? For example, should a party seeking such adjustment be required to demonstrate that it actually paid import duties that were not rebated on some portion of raw material inputs during the relevant period, *i.e.*, that exports did not account for all of the imported material in question? Please explain, in detail, any changes to the Department's current practice that would be required to implement such a modification.
- (2) How do you propose the amount of the adjustment should be determined, assuming that some domestically sourced and some imported material was used?
- (3) If duty drawback (or exemption) is claimed for some, but not all, exports incorporating the material input in question, how do you propose the amount of any duty drawback adjustment should be determined?
- (4) Please provide any additional views on any other matter pertaining to the Department's practice regarding duty drawback

adjustments.

[FR Doc. E5-3441 Filed 6-29-05; 8:45 am]

BILLING CODE 3510-DS-5

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030602141-567-18; I.D. 061505A]

RIN 0648-ZB55

Availability of Grant Funds for Fiscal Year 2006

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Omnibus notice announcing the availability of grant funds for fiscal year 2006.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) announces the availability of grant funds for Fiscal Year 2006. The purpose of this notice is to provide the general public with a single source of program and application information related to the Agency's competitive grant offerings, and it contains the information about those programs required to be published in the **Federal Register**. This omnibus notice is designed to replace the multiple **Federal Register** notices that traditionally advertised the availability of NOAA's discretionary funds for its various programs. It should be noted that additional program initiatives unanticipated at the time of the publication of this notice may be announced through both subsequent **Federal Register** notices and the NOAA Web site. These announcements will also be available through [Grants.gov](http://www.grants.gov).

DATES: Proposals must be received by the date and time indicated under each program listing in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Proposals must be submitted to the addresses listed in the **SUPPLEMENTARY INFORMATION** section for each program. The FR notices may be found on the NOAA Web site at <http://www.ofa.noaa.gov/%7Egrants/funding.shtml>. The URL for [Grants.gov](http://www.grants.gov) is <http://www.grants.gov>.

FOR FURTHER INFORMATION CONTACT: For a copy of the full funding opportunity announcement and/or application kit, please contact the person listed as the information contact under each program.

SUPPLEMENTARY INFORMATION: This omnibus notice describes funding

opportunities for the following NOAA discretionary grant programs:

NOAA Project Competitions

National Environmental Satellite, Data, and Information Service

1. Research in Satellite Oceanography
2. Research in Satellite Data Assimilation for Numerical and Climate Prediction Models.
3. Research in Primary Vicarious Calibration of Ocean Color Satellite Sensors.

National Marine Fisheries Service

1. Protected Species Conservation and Recovery with States.
2. John H. Prescott Marine Mammal Rescue Assistance Grant Program.
3. Community-based Marine Debris Prevention and Removal Project Grants.
4. Projects to Improve or Amend Coral Reef Fishery Management Plans.
5. Community-based Habitat Restoration Project Grants.
6. Chesapeake Bay Watershed Education & Training (B-WET) Program.
7. FY06 Western Pacific Demonstration Projects.
8. MARFIN Fisheries Initiative Program (MARFIN) FY 2006.
9. Cooperative Research Program (CRP) FY 2006.
10. North Atlantic Right Whale Research Programs.
11. General Coral Reef Conservation.

National Ocean Service.

1. NOAA Coral Reef Conservation Grant Program—State and Territory Coral Reef Management.
2. NOAA Coral Reef Conservation Grant Program—State and Territory Coral Reef Ecosystem Monitoring.
3. South Florida Program.
4. Northern Gulf of Mexico Ecosystem Research Program (NGOMEX).
5. Ecological Forecasting.
6. NOAA Coral Reef Conservation Grant Program—International Coral Reef Conservation.
7. FY 2006 Bay Watershed Education & Training (B-WET) Program, Hawai'i.
8. Bay Watershed Education & Training (B-WET) Program, Monterey Bay Watershed.
9. National Estuarine Research Reserves System FY2006 Land Acquisition and Construction Competitive Program.
10. FY 2006 Coastal Services Center Environmental Characterization of a U.S. Coastal Region.
11. FY2006 Coastal Services Center Leadership Training for Coastal Managers and Scientists.
12. FY2006 Coastal Services Center Application of Spatial Technology for Coastal Management.

13. Coral Reef Ecosystem Studies (CRES) FY 2006.

14. FY2006 Coastal Services Center Performance Measurement Technical Assistance.

National Weather Service

1. AFWS—Automated Flood Warning Systems (AFWS) Program.
2. Hydrologic Research.

Oceans and Atmospheric Research

1. Ballast Water Technology Demonstration Program Competitive Funding Announcement (Research, Development, Testing and Evaluation Facility).
2. NOAA Office of Ocean Exploration Announcement of Opportunity, FY 2006.

3. Ballast Water Technology Demonstration Program Competitive Funding Announcement (Treatment Technology Demonstration Projects).

NOAA Fellowship, Scholarship and Internship Programs

National Ocean Service

1. Dr. Nancy Foster Scholarship Program; Financial Assistance for Graduate Students.

2. National Estuarine Research Reserve (NERR) Graduate Research Fellowship Program (GRF).

Oceans and Atmospheric Research

1. GradFell 2006 C NMFS/Sea Grant Joint Graduate Fellowship Program in Marine Resource Economics.

2. Dean John A. Knauss Marine Policy Fellowship (Knauss Fellowship Program).

3. Sea Grant—Industry Fellowship Program.

4. GradFell 2006 NMFS/Sea Grant Joint Graduate Fellowship Program in Population Dynamics.

Electronic Access

The full funding announcement for each program is available via the Grants.gov Web site: <http://www.grants.gov>. These announcements will also be available at the NOAA Web site <http://www.ofa.noaa.gov/%7Egrants/funding.shtml> or by contacting the program official identified below. You will be able to access, download and submit electronic grant applications for NOAA Programs in this announcement at <http://www.grants.gov>. The closing dates will be the same as for the paper submissions noted in this announcement. NOAA strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov. Getting started with

Grants.gov is easy! Go to <http://www.Grants.gov>. There are two key features on the site: Find Grant Opportunities and Apply for Grants. Everything else on the site is designed to support these two features and your use of them. While you can begin searching for grant opportunities for which you would like to apply immediately, it is recommended that you complete the remaining Get Started steps sooner rather than later, so that when you find an opportunity for which you would like to apply, you are ready to go. Individuals who plan to submit a grant application using Grants.gov are required to *register with the Credential Provider* and *register with Grants.gov*. In order for you to apply as an individual, the grant application must be open to individuals and be published on the Grants.gov Web site.

Individuals do not need a DUNS number to register to submit applications. The system will generate a default value in that field.

Individuals who plan to submit a grant application using Grants.gov are required to *register with the Credential Provider* (Step 3 B and *register with Grants.gov* (Step 4 B).

Get Started Step 1 B Find Grant Opportunity for Which You Would Like To Apply

Start your search for Federal government-wide grant opportunities and register to receive automatic e-mail notifications of new grant opportunities or any modifications to grant opportunities as they are posted to the site by clicking the Find Grant Opportunities tab at the top of the page.

Get Started Step 2 B Organizations Must Register With Central Contractor Registry (CCR)

Your organization will also need to be registered with Central Contractor Registry. You can register with them online. This will take about 30 minutes. You should receive your CCR registration within 3 business days. Important: You must have a DUNS number from Dun & Bradstreet before you register with CCR. Many organizations already have a DUNS number. To determine if your organization already has a DUNS number or to obtain a DUNS number, contact Dun & Bradstreet at 1-866-705-5711. This will take about 10 minutes and is free of charge. Be sure to complete the Marketing Partner ID (MPIN) and Electronic Business Primary Point of Contact fields during the CCR registration process. These are mandatory fields that are required when

submitting grant applications through Grants.gov.

Get Started Step 3 B Register With the Credential Provider

You must register with a Credential Provider to receive a username and password. This will be required to securely submit your grant application.

Get Started Step 4 B Register With Grants.gov

The final step in the Get Started process is to register with Grants.gov. This will be required to submit grant applications on behalf of your organization. After you have completed the registration process, you will receive e-mail notification confirming that you are able to submit applications through Grants.gov.

Get Started Step 5 B Log on to Grants.gov

After you have registered with Grants.gov, you can log on to Grants.gov to verify if you have registered successfully, to check application status, and to update information in your applicant profile, such as your name, telephone number, e-mail address, and title. In the future, you will have the ability to determine if you are authorized to submit applications through Grants.gov on behalf of your organization.

Evaluation Criteria & Selection Procedures

NOAA standardized the evaluation and selection process for its competitive assistance programs. All proposals submitted in response to this notice shall be evaluated and selected in accordance with the following procedures. There are two sets of evaluation criteria and selection procedures, one for project proposals, and the other for fellowship, scholarship, and internship programs. These evaluation criteria and selection procedures apply to all of the programs included below.

Proposal Review and Selection Process for Projects

Some programs may include a pre-application process which provides an initial review and feedback to the applicants that have responded to a call for letters of intent or pre-proposals; however, not all programs will include such a process. If a pre-application process is used by a program, it shall be described in the Summary Description and the deadline shall be provided in the Application Deadline section. Upon receipt of a full application by NOAA, an initial administrative review is

conducted to determine compliance with requirements and completeness of the application. Merit review is conducted by mail reviewers and/or peer panel reviewers.

Each reviewer will individually evaluate and rank proposals using the evaluation criteria provided below. A minimum of three merit reviewers per proposal is required. The merit reviewer's ratings are used to produce a rank order of the proposals. The NOAA Program Officer may review the ranking of the proposals and make recommendations to the Selecting Official based on the mail and/or panel review(s) and selection factors listed below. The Selecting Official selects proposals after considering the mail and/or peer panel review(s) and recommendations of the Program Officer. In making the final selections, the Selecting Official will award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the selection factors below. The Program Officer and/or Selecting Official may negotiate the funding level of the proposal. The Selecting Official makes final recommendations for award to the Grants Officer who is authorized to obligate the funds.

Evaluation Criteria for Projects

1. Importance and/or relevance and applicability of proposed project to the program goals: This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, State, or local activities.
2. Technical/scientific merit: This assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives.
3. Overall qualifications of applicants: This ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project.
4. Project costs: The Budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame.
5. Outreach and education: NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources.

Selection Factors for Projects

The merit review ratings shall provide a rank order to the Selecting Official for final funding recommendations. A

program officer may first make recommendations to the Selecting Official applying the selection factors below. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

1. Availability of funding.
2. Balance/distribution of funds:
 - a. Geographically.
 - b. By type of institutions.
 - c. By type of partners.
 - d. By research areas.
 - e. By project types.
3. Whether this project duplicates other projects funded or considered for funding by NOAA or other Federal agencies.
4. Program priorities and policy factors.
5. Applicant's prior award performance.
6. Partnerships and/or Participation of targeted groups.
7. Adequacy of information necessary for NOAA staff to make a NEPA determination and draft necessary documentation before recommendations for funding are made to the Grants Officer.

Proposal Review and Selection Process for NOAA Fellowship, Scholarship and Internship Programs

Some programs may include a pre-application process which provides an initial review and feedback to the applicants that have responded to a call for letters of intent or pre-proposals; however not all programs will include such a process. If a pre-application process is used by a program, it shall be described in the Summary Description and the deadline shall be provided in the Application Deadline section. An initial administrative review of full applications is conducted to determine compliance with requirements and completeness of applications. A merit review is conducted to individually evaluate, score, and rank applications using the evaluation criteria. A second merit review may be conducted on the applicants that meet the program's threshold (based on scores from the first merit review) to make selections using the selection factors provided below. The Program Officer may conduct a review of the rank order and make recommendations to the Selecting Official based on the panel ratings and the selection factors listed below. The Selecting Official considers merit reviews and recommendations. The Selecting Official will award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the selection factors

below. The Selecting Official makes final recommendations for award to the Grants Officer who is authorized to obligate the funds.

Evaluation Criteria for Fellowship/Scholarships/Internships

1. Academic record and statement of career goals and objectives of student.
2. Quality of project and applicability to program priorities.
3. Recommendations and/or endorsements of student.
4. Additional relevant experience related to diversity of education; extra-curricular activities; honors and awards; interpersonal, written, and oral communications skills.
5. Financial need of student.

Selection Factors for Fellowship/Scholarships/Internships

1. Balance/Distribution of funds:
 - a. Across academic disciplines.
 - b. By types of institutions.
 - c. Geographically.
2. Availability of funds.
3. Program-specific objectives.
4. Degree in scientific area and type of degree sought NOAA Project Competitions.

National Environmental Satellite, Data, and Information Service

1. Research in Satellite Oceanography

Summary Description: The National Environmental Satellite, Data, and Information Service (NESDIS), Office of Research and Applications (ORA), announces the availability of Federal assistance in the area of satellite oceanography. This program responds to a need for research and activities that expand the use of satellite oceanographic data. Funded proposals will help build capabilities nationwide in the application of satellite oceanographic data for environmental monitoring, prediction, and coastal management. Program priorities include research in ocean color, sea ice, ocean vector winds, sea surface height, sea surface temperature, and sea surface roughness.

Funding Availability: The total amount available for proposals is anticipated to be approximately \$375,000 per year. Individual annual awards in the form of grants or cooperative agreements are expected to range from \$50,000 per year to a maximum of \$125,000 per year for no more than two years.

Statutory Authority: Statutory authority for this program is provided under 33 U.S.C. 883d, 33 U.S.C. 1442, and 49 U.S.C. 44720(b).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.440,

Environmental Sciences, Applications, Data, and Education.

Application Deadline: Proposals must be received no later than 4 p.m. eastern daylight time, September 23, 2005.

Address for Submitting Proposals:

Proposals must be submitted electronically via <http://www.grants.gov>, or as hard copy (by postal mail, commercial delivery service, or hand delivery) to the Office of Research and Applications of NESDIS. Hard copy proposals must be submitted to: ATTN: William Pichel, NOAA/NESDIS/ORA; WWB Room 601, 5200 Auth Road, Camp Springs, MD 20746. Tel: 301-763-8231 X166.

Information Contacts: Administrative questions: Kathy LeFevre, by phone at 301-763-8127 ext. 103, fax: 301-763-8108, or e-mail: Kathy.LeFevre@noaa.gov. Technical questions: William Pichel (NOAA Program Officer), by phone at 301-763-8231 ext. 166, or fax to 301-763-8020, or via e-mail: William.G.Pichel@noaa.gov.

Eligibility: Eligible applications can be from U.S. institutions of higher education, other non-profits, commercial organizations, and State, local and Indian tribal governments. U.S. Federal agencies or institutions are eligible to receive Federal assistance under this Notice as sub-awardees only and are limited in the amount of assistance to be received to not more than 25% of the total budget (direct plus indirect costs) requested in the proposal.

Cost Sharing Requirements: None.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

2. Research in Satellite Data

Assimilation for Numerical and Climate Prediction Models

Summary Description: The Joint Center for Satellite Data Assimilation (JCSDA) announces the availability of Federal assistance for research in the area of satellite data assimilation in numerical weather and climate prediction models. The goal of the JCSDA is to accelerate the use of observations from earth-orbiting satellites in operational numerical prediction models for the purpose of improving weather forecasts, improving seasonal to interannual climate forecasts, and increasing the physical accuracy of climate data sets. The advanced instruments of current and planned NOAA, NASA, DoD, and international agency satellite missions will provide large volumes of data on

atmospheric, oceanic, and land surface conditions with accuracies and spatial resolutions never before achieved. The JCSDA will ensure that the nation realizes the maximum benefit of its investment in space as part of an advanced global observing system. Funded proposals will help accelerate the use of satellite data from both operational and experimental spacecraft in operational and product driven weather and climate prediction environments, develop community radiative transfer models, develop improved surface emissivity models, and advance data assimilation science. This Federal Funding Opportunity is being managed by NOAA on behalf of the JCSDA. Applicants are encouraged to submit a Letter of Intent (LOI) describing the proposed work and its relevance to targeted priority project areas. The purpose of the LOI process is to provide information to potential applicants on the relevance of their proposed project to JCSDA and the likelihood of it being funded in advance of preparing a full proposal.

Funding Availability: Total funding available is anticipated to be approximately \$1 million. Individual annual awards in the form of grants or cooperative agreements are expected to range from \$50,000 to \$150,000.

Statutory Authority: Statutory authorities for this program are provided under 15 U.S.C. 313, 49 U.S.C. 44720(b); 15 U.S.C. 2901 *et seq.*

Catalog of Federal Domestic Assistance (CFDA) Number: 11.440, Environmental Sciences, Applications, Data, and Education.

Preapplication/Application Deadline: Letters of Intent (LOIs) must be received by NOAA/NESDIS no later than 5 p.m. eastern daylight time, August 1, 2005, and full proposals must be received no later than 5 p.m. eastern daylight time, October 3, 2005.

Address for Submitting Letters of Intent and Proposals: LOIs must be mailed or e-mailed to James G. Yoe, Deputy Director, Joint Center for Satellite Data Assimilation, 5200 Auth Road, Room 701, Camp Springs, MD 20746-4304, e-mail to: James.G.Yoe@noaa.gov. Full proposals should be submitted through <http://www.grants.gov/> unless the applicant does not have Internet access. In that case hard copies may be sent to the above address.

Information Contact(s): James G. Yoe, JCSDA, NOAA/NESDIS, 5200 Auth Road, Room 810; Camp Springs, Maryland 20746, or by phone at 301-763-8172 ext. 186, or fax to 301-763-8149, or via Internet at James.G.Yoe@noaa.gov or Kathy

LeFevre, NOAA/NESDIS; 5200 Auth Road, Room 701; Camp Springs, Maryland 20746, or by phone at 301-763-8127 ext. 107, or fax to 301-763-8108, or via Internet at Kathy.LeFevre@noaa.gov.

Eligibility: Eligible applicants are institutions of higher education, other nonprofits, commercial organizations, international organizations, and state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

Cost Sharing Requirements: None.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

3. Research in Primary Vicarious Calibration of Ocean Color Satellite Sensors

Summary Description: The Office of Research and Applications (ORA) announces the availability of Federal assistance in the research area of ocean color satellite sensor calibration and validation. ORA is committed to improving the vicarious calibration capabilities of a Marine Optical Buoy (MOBY) system located in Hawaii, with an ultimate goal of a continuous, climate-quality time-series of normalized water-leaving spectral radiances across multiple agency missions and ocean color satellite sensors. Research efforts are focused on the reduction of the total uncertainty budget in the determination of the normalized water-leaving radiances from MOBY measurements, improvements in the process used with the MOBY system for validation of ocean color satellite sensor retrievals of water-leaving spectral radiances, and the development of new MOBY system components which would increase measurement integrity. These advances in vicarious calibration capabilities would improve the quality and accuracy of ocean color satellite sensor bio-optical product retrievals.

Funding Availability: Funding is anticipated to range from a minimum of \$900,000 to a maximum of \$1,100,000 per year for no more than two years. Only one applicant will receive an award.

Statutory Authority: Statutory authority for this program is provided under 33 U.S.C. 883d and 33 U.S.C. 1442.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.440, Environmental Sciences, Applications, Data, and Education.

Application Deadline: Proposals must be received by 4 p.m. eastern daylight time on September 1, 2005. For proposals submitted through <http://www.grants.gov>, a date and time receipt indication is included and will be the basis of determining timeliness. Hard copy proposals will be date and time stamped when they are received in the program office.

Address for Submitting Proposals: Hard copy proposals should be sent to Marilyn Yuen-Murphy; DOC/NOAA/NESDIS/ORR; 5200 Auth Rd., Rm. 104; Camp Springs, MD 20746. Electronic applications should be submitted through Grants.gov.

Information Contact(s): Marilyn Yuen-Murphy by telephone (301-763-8102 x159), fax (301-763-8020), or e-mail (Marilyn.Yuen.Murphy@noaa.gov); or Kathy LeFevre by telephone (301-763-8127 x103), fax (301-763-8108), or e-mail (Kathy.Lefevre@noaa.gov).

Eligibility: Eligible applicants are U.S. institutions of higher education, other non-profits, commercial organizations, and state, local and Indian tribal governments.

Cost Sharing Requirements: None.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

National Marine Fisheries Service

1. Protected Species Conservation and Recovery With States

Summary Description: The National Marine Fisheries Service (NMFS) announces the availability of Federal assistance to support the conservation of threatened and endangered species, recently de-listed species, candidate species, and species of concern under the jurisdiction of the NMFS or under the joint jurisdiction of the NMFS and the U.S. Fish and Wildlife Service (e.g., sea turtles). Any state that has entered into an agreement with the NMFS and maintains an adequate and active program for the conservation of endangered and threatened species pursuant to section 6(c) of the Endangered Species Act of 1973 (ESA) is eligible to apply. These financial assistance awards can be used to support management, research, monitoring, or outreach activities that provide direct conservation benefits to listed species, recently de-listed species, candidate species, or species of concern that reside within that state. Projects involving North Atlantic right whales will not be considered for funding under this grant program; such projects

may be funded under the North Atlantic Right Whale Research Program.

Funding Availability: Approximately \$1.0M in funding may be available for grants in FY 2006. Award periods may extend up to 3 years with annual funding contingent on the availability of Federal appropriations. There are no restrictions on maximum or minimum award amounts.

Statutory Authority: Under section 6 of the ESA, the NMFS is authorized to provide Federal assistance to eligible states for the purpose of conserving marine and anadromous species that reside within that state (16 U.S.C. 1535).

Catalog of Federal Domestic Assistance: 11.472, Unallied Science Programs.

Application Deadline: Proposals must be received by 5 p.m. eastern time on September 9, 2005.

Address for Submitting Proposals: Applicants are encouraged to submit proposals online through Grants.gov. If online submission is not possible, applications may also be submitted to NOAA/NMFS/Office of Protected Resources, Attn: Lisa Manning, 1315 East-West Highway, room 13633, Silver Spring, MD 20910; e-mail: lisa.manning@noaa.gov.

Information Contacts: Lisa Manning, 1315 East-West Highway, Silver Spring, MD 20910; e-mail: lisa.manning@noaa.gov; phone: 301-713-1401.

Eligibility: Eligible applicants are states or their respective state agencies that have entered into an agreement with the NMFS pursuant to section 6(c) of the ESA. The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands. The term "State agency" means any State agency, department, board, commission, or other governmental entity that is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

Cost Sharing Requirements: In accordance with section 6(d) of the ESA, all proposals submitted must include a minimum non-Federal cost share of 25 percent of the total budget if the proposal involves a single state. If a proposal involves collaboration of two or more states, the minimum non-Federal cost share decreases to 10 percent of the total project budget.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

2. John H. Prescott Marine Mammal Rescue Assistance Grant Program

Summary Description: NMFS is inviting eligible marine mammal stranding network participants to submit proposals to fund the recovery or treatment (i.e., rescue and rehabilitation) of live stranded marine mammals, data collection from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operations directly related to the recovery or treatment of stranded marine mammals and collection of data from living or dead stranded marine mammals. The Prescott Grant Program is administered through the NMFS Marine Mammal Health and Stranding Response Program (MMHSRP). It is anticipated that awards funded through the Prescott Grant Program will facilitate achievement of MMHSRP goals and objectives by providing financial assistance to eligible stranding network participants. Proposals selected for funding through this solicitation will be implemented through either a grant or cooperative agreement.

Funding Availability: Funding of up to \$4,000,000 is expected to be available in FY 2006. The maximum Federal award for each grant cannot exceed \$100,000, as stated in the legislative language (16 U.S.C. 1421f-1). Applicants are hereby given notice that these funds have not yet been appropriated for this program and therefore exact dollar amounts cannot be given.

Statutory Authority: The Marine Mammal Rescue Assistance Act of 2000 amended the Marine Mammal Protection Act (MMPA) to establish the John H. Prescott Marine Mammal Rescue Assistance Grant Program (16 U.S.C. 1421f-1).

Catalog of Federal Domestic Assistance: 11.439 Marine Mammal Data Program.

Application Deadline: Applications for funding under the Prescott program must be received by or postmarked by 11:59 p.m. eastern daylight time on August 15, 2005.

Address for Submitting Proposals: Applications should either be submitted online at <http://www.grants.gov> or sent to: NOAA/NMFS/Office of Protected Resources, Marine Mammal Health and Stranding Response Program, Attn: Michelle Ordonez, 1315 East-West Highway, Room 12604, Silver Spring, MD 20910-3283, phone 301-713-2322 ext 177.

Information Contact(s): Janet Whaley, Michelle Ordonez, or Sarah Wilkin at (301) 713-2322, by fax at (301) 713-

0376, or by e-mail at Janet.Whaley@noaa.gov, Michelle.Ordone@noaa.gov, or Sarah.Wilkin@noaa.gov.

Eligibility: There are 5 categories of eligible stranding network participants that may apply for funds under this Program: (1) Letter of Agreement (LOA) holders; (2) LOA designee organizations; (3) researchers; (4) official Northwest Region participants; and, (5) State, local, eligible Federal government employees or tribal employees or personnel. In order for these organizations and individuals to apply for award funds under the Prescott Grant Program, they must meet eligibility criteria specific to their category of participation.

Cost Sharing Requirements: All proposals submitted must provide a minimum non-Federal cost share of 25 percent of the total budget (i.e., .25 x total project costs = total non-Federal share).

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

3. Community-Based Marine Debris Prevention and Removal Project Grants

Summary Description: NMFS is inviting the public to submit proposals for funding available through the NOAA Marine Debris Program (MDP) to implement grass-roots projects to prevent or remove marine debris that will benefit living marine resource habitats and navigational waterways. Projects funded through the NOAA Community-based Marine Debris Prevention and Removal Project Grants competition will be expected to have strong on-the-ground marine debris prevention or removal components that provide educational and social benefits for people and their communities in addition to long-term ecological habitat improvements for NOAA trust resources. Proposals selected for funding through this solicitation will be implemented through cooperative agreements. Marine debris removal may include, but is not limited to:

- Detection and removal of derelict fishing gear;
- Removal of solid waste material in coastal habitats including marshes, bays, mangroves, and coral reefs;
- Shoreline clean-ups including a targeted outreach/education component;
- Removal of debris from marine, estuarine or beach environments resulting from hurricanes or other natural disasters;
- Detection and removal of derelict pilings, bulkheads and similar obsolete

materials that pose a hazard to navigation or diminish habitat quality.

Marine debris prevention may include, but is not limited to:

- Training for the safe removal of derelict fishing gear, ghost nets, and other debris adversely impacting coastal habitats;
- Monitoring cleaned areas to determine re-accumulation rates;
- Prevention activities related to reception facilities at marinas and fishing ports including recycling initiatives for monofilament fishing line and other types of fishing gear, or debris; and
- The development of debris reduction incentives for prevention, removal, and safe disposal of plastics and derelict fishing gear.

Funding Availability: Funding of up to \$2,000,000 is expected to be available for Community-based Marine Debris Prevention and Removal Projects in FY 2006. The NOAA Restoration Center anticipates that typical project awards will range from \$15,000 to \$100,000.

Statutory Authority: The Secretary of Commerce is authorized under the Marine Plastic Pollution Research and Control Act, 33 U.S.C. 1901 *et seq.*, to award grants, enter into cooperative agreements with appropriate officials of other Federal agencies and agencies of States and political subdivisions of States and with public and private entities, and provide other financial assistance to eligible recipients to educate the public (including recreational boaters, fishermen, and other users of the marine environment) regarding the harmful effects of plastic pollution; the need to reduce such pollution; the need to recycle plastic materials.

Catalog of Federal Domestic Assistance: 11.463 Habitat Conservation.

Application Deadline: Applications for project funding under the MDP must be submitted via grants.gov by 11:59 p.m. e.s.t. on October 12, 2005 or if mailed, postmarked by 11:59 p.m. e.s.t. on October 12, 2005.

Address for Submitting Proposals: Applicants should apply through <http://www.grants.gov>. If Internet access is unavailable, paper applications should be sent to Christopher D. Doley, Director, NOAA Restoration Center, National Marine Fisheries Service, 1315 East West Highway (F/HC3), Silver Spring, MD 20910; ATTN: MDP Project Applications.

Information Contact(s): For further information contact Elizabeth Fairey (Liz.Fairey@noaa.gov or 301-713-3459) or Robin Bruckner

(Robin.Bruckner@noaa.gov or 301-713-0174).

Eligibility: Eligible applicants are institutions of higher education, hospitals, other non-profits, commercial (for profit) organizations, organizations under the jurisdiction of foreign governments, international organizations, State, local and Indian tribal governments. Applications from Federal agencies or employees of Federal agencies will not be considered.

Cost Sharing Requirements: 1:1 non-Federal match is encouraged and will be considered in the review process, but applicants with less than 1:1 match will not be disqualified.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

4. Projects To Improve or Amend Coral Reef Fishery Management Plans

Summary Description: The NOAA Coral Reef Conservation Program is soliciting applications from the Regional Fishery Management Councils for projects to conserve and manage coral reef fishery resources. The objectives of this program are to reduce the adverse impacts of fishing and other extractive uses within coral reef ecosystems, and incorporate conservation and sustainable management measures into existing or new Federal fishery management plans (FMPs) for coral reef species. Projects must address one or more of the following 7 categories: (1) Identification, mapping and characterization of EFH, HAPC, or reef fish spawning aggregation sites; (2) monitoring reef fish stocks; (3) efforts to reduce overfishing of coral reef resources; (4) identification and reduction of adverse effects of fishing gear, including the elimination of destructive and habitat-damaging fishing practices; (5) assessment of the adequacy of current coral reef fishing regulations; (6) education and outreach efforts to recreational and commercial fishers; and (7) ecosystem-scale studies and inclusion of ecosystem approaches into coral reef FMPs. Priority will be given for coral reef activities in the Council's jurisdiction, although complementary activities of high conservation value within state waters that are fully coordinated with appropriate state, territory or commonwealth management authorities are also acceptable. This program is part of the Coral Reef Conservation Program under the Coral Reef Conservation Act of 2000 and is not intended to support normal Council activities or responsibilities. Proposals can include

the support for a maximum of one full-time equivalent working exclusively on Council coral reef conservation activities. Councils may submit an application of up to 25 pages that includes a cover sheet, project summary, narrative project description, narrative budget summary and Federal forms. Selected applicants may be asked to revise award objectives, work plans or budgets prior to submission of a final application.

Funding Availability: The total anticipated available funding is \$1,050,000 with a maximum of \$525,000 available for activities in the Western Pacific, and a maximum of \$525,000 available for activities in the South Atlantic, Gulf of Mexico, and Caribbean. Funding will be subject to the availability of Federal appropriations.

Statutory Authority: 16 U.S.C. 6403. *Catalog of Federal Domestic Assistance (CFDA) Number:* 11.441 Regional Fishery Management Councils.

Application Deadlines: Applications must be received before midnight, eastern standard time, on November 15, 2005. Final revised applications must be received before midnight, eastern standard time on March 3, 2006.

Address for Submitting Proposals: Applications should be submitted electronically to <http://www.grants.gov>, or by surface mail to David Kennedy, NOAA Coral Reef Conservation Program, Office of Response and Restoration, N/ORR, Room 10102, NOAA National Ocean Service, 1305 East-West Highway, Silver Spring, MD 20910.

Information Contact(s): Andy Bruckner, Office of Habitat Conservation, F/HC1, Room 15836, NOAA Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, phone 301-713-3459 extension 190, e-mail at andy.bruckner@noaa.gov.

Eligibility: Applicants are limited to the Western Pacific Regional Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council.

Cost Sharing Requirements: None.

Intergovernmental Review:

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

5. Community-based Habitat Restoration Project Grants

Summary Description: NMFS is inviting the public to submit proposals for available funding to implement grass-roots habitat restoration projects

that will benefit living marine resources, including anadromous fish, under the NOAA Community-based Restoration Program (CRP). Projects funded through the CRP will be expected to have strong on-the-ground habitat restoration components that provide long-term ecological habitat improvements for NOAA trust resources as well as educational and social benefits for people and their communities. Proposals selected for funding through this solicitation will be implemented through cooperative agreements.

Funding Availability: Funding of up to \$3,000,000 is expected to be available for Community-based Habitat Restoration Project Grants in FY 2006. The NOAA Restoration Center (RC) anticipates that typical project awards will range from \$50,000 to \$200,000.

Statutory Authority: The Secretary of Commerce is authorized under the Fish and Wildlife Coordination Act, 16 U.S.C. 661, as amended by the Reorganization Plan No. 4 of 1970, to provide grants or cooperative agreements for fisheries habitat restoration.

Catalog of Federal Domestic Assistance: 11.463 Habitat Conservation.

Application Deadline: Applications for project funding under the CRP must be submitted via [grants.gov](http://www.grants.gov) by 11:59 PM EST, October 12, 2005 or if mailed, postmarked by 11:59 p.m. e.s.t., October 12, 2005.

Address for Submitting Proposals: Applicants should apply through <http://www.grants.gov>. If internet access is unavailable, paper applications should be sent to Christopher D. Doley, Director, NOAA Restoration Center, National Marine Fisheries Service, 1315 East West Highway (F/HC3), Silver Spring, MD 20910-3282; ATTN: CRP Project Applications.

Information Contact(s): Melanie Gange or Robin Bruckner at (301) 713-0174, or by fax at (301) 713-0184, or by e-mail at Melanie.Gange@noaa.gov or Robin.Bruckner@noaa.gov.

Eligibility: Eligible applicants are institutions of higher education, hospitals, other non-profits, commercial (for profit) organizations, organizations under the jurisdiction of foreign governments, international organizations, State, local and Indian tribal governments. Applications from Federal agencies or employees of Federal agencies will not be considered.

Cost Sharing Requirements: 1:1 non-Federal match is encouraged, but applicants with less than 1:1 match will not be disqualified. The nature of the contribution (cash versus in-kind) and

the amount/value will be considered in the review process.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

6. Chesapeake Bay Watershed Education & Training (B-WET) Program

Summary Description: The Chesapeake B-WET grant program is a competitively based program that supports existing environmental education programs, fosters the growth of new programs, and encourages the development of partnerships among environmental education programs throughout the entire Chesapeake Bay watershed. Funded projects assist in meeting the Stewardship and Community Engagement goals of the Chesapeake 2000 Agreement. Projects support organizations that provide students "meaningful" Chesapeake Bay or stream outdoor experiences and teachers professional development opportunities in the area of environmental education related to the Chesapeake Bay watershed.

Funding Availability: This solicitation announces that approximately \$2.2M may be available in FY 2006 in award amounts to be determined by the proposals and available funds. Annual funding is anticipated to maintain partnerships for up to 3 years duration, but is dependant on funding made available by Congress. Applicants are hereby given notice that funds have not yet been appropriated for this program.

1. About \$1.0M will be for exemplar programs that successfully integrate teacher professional development in the Chesapeake Bay watershed with in-depth classroom study and outdoor experiences for their students.

2. About \$600K will be for proposals that provide opportunities for students (K through 12) to participate in "Meaningful" Watershed Educational Experiences related to Chesapeake Bay.

3. About \$600K will be for proposals that provide opportunities for Professional Development in the area of Chesapeake Bay watershed education for teachers.

The NOAA Chesapeake Bay Office anticipates that typical awards for B-WET Exemplar Programs that successfully integrate teacher professional development with in-depth classroom student and outdoor experiences for their students will range from \$50,000 to \$200,000. Projects that represent either meaningful watershed educational experiences for students or teacher professional development in

watershed education will range from \$10,000 to \$100,000.

Statutory Authority: 16 U.S.C. 661; 15 U.S.C. 1540.

Catalog of Federal Domestic Assistance: 11.457; Chesapeake Bay Studies, Education.

Application Deadline: Proposals must be received by 5 p.m. eastern time on October 24, 2005.

Address for Submitting Proposal: Electronic submission: <http://www.grants.gov/>. Search using the following Federal Funding Opportunity Number: [XXXXXX]. Hard copies may be submitted by postal mail, commercial delivery service, or hand-delivery. Proposals being submitted in hard copy must be sent to: NOAA Chesapeake Bay Office; Education Coordinator; 410 Severn Avenue, Suite 107A; Annapolis, Maryland 21403.

Information Contact(s): Shannon W. Sprague, NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 2140.

Shannon.Sprague@noaa.gov or 410-267-5664.

Eligibility: Eligible applicants are K-through-12 public and independent schools and school systems, institutions of higher education, community-based and nonprofit organizations, State or local government agencies, interstate agencies, and Indian tribal governments in the Chesapeake Bay watershed.

Cost Sharing Requirements: No cost sharing is required under this program, however, the NCBO strongly encourages applicants applying for either area of interest to share as much of the costs of the award as possible. Funds from other Federal awards may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the review process. Priority selection will be given to proposals that propose cash rather than in-kind contributions.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

7. FY06 Western Pacific Demonstration Projects

Project Summary: NMFS is soliciting applications for financial assistance for Western Pacific Demonstration Projects. Eligible applicants are encouraged to submit projects intended to foster and promote use of traditional indigenous fishing practices and/or develop or enhance Western Pacific community-based fishing opportunities benefiting the island communities in American Samoa, Guam, Hawaii, and the Northern

Mariana Islands. Projects may also request support for research and the acquisition of materials and equipment necessary to carry out such project proposals.

Funding Availability: Total funding available is anticipated to be approximately \$500,000. It is anticipated that 3 to 5 awards will be made for each fiscal year covered by this notice.

Statutory Authority: The Secretary is authorized to make direct grants to eligible western Pacific communities pursuant to Section 111(b) of Pub. L. 104-297, as amended, and published within 16 U.S.C. 1855 note.

Catalog of Federal Domestic Assistance: 11.452, Unallied Industry Projects.

Application Deadline: Project proposals and completed grant applications must be postmarked or received by 5 p.m. Hawaii standard time on October 28, 2005. Applicants are strongly encouraged to apply electronically at <http://www.grants.gov>.

Address for Submitting Proposals: Project proposals and grant applications must be sent to: the Federal Program Officer for Western Pacific Demonstration Projects, Pacific Islands Region, National Marine Fisheries Service, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, Hawaii 96814.

Information Contacts: Scott W.S. Bloom (NMFS) at 808-973-2937, or by e-mail at Scott.Bloom@noaa.gov; or Charles Ka'ai'ai (Council), 808-522-8220 or by e-mail at Charles.Kaai'ai@noaa.gov.

Eligibility: Eligible applicants are limited to communities in the Western Pacific Regional Fishery Management Area, as defined at section 305(i)(2)(D) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1855(i)(2)(D); and meet the standards for determining eligibility set forth in section 305(i)(2)(B) of the Act, 16 U.S.C. 1855(i)(2)(B). The eligibility criteria developed by the Council and approved by the Secretary to participate in western Pacific community development programs was published in the **Federal Register** on April 16, 2002 (67 FR 18512, 18513).

Cost Sharing Requirements: None.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

8. MARFIN Fisheries Initiative Program (MARFIN) FY 2006

Summary Description: The NMFS Southeast Regional Office is inviting the

public to submit research and development projects that will optimize the use of fisheries in the Gulf of Mexico and off the South Atlantic states of North Carolina, South Carolina, Georgia, and Florida involving the U.S. fishing industry (recreational and commercial), including fishery biology, resource assessment, socioeconomic assessment, management and conservation, selected harvesting methods, and fish handling and processing. Proposals may be selected for funding for up to three years through a cooperative agreement.

Funding Availability: Approximately \$2.5 million may be available in fiscal year (FY) 2006 for projects. This amount includes possible in-house projects. The NMFS Southeast Regional Office anticipates that typical project awards will range from \$35,000 to \$300,000. The average award is \$108,000.

Statutory Authority: 15 U.S.C. 713c-3(d).

Catalog of Federal Domestic Assistance: 11.433 Marine Fisheries Initiative.

Application Deadline: We must receive your application by close of business (5 p.m. eastern daylight time) on August 15, 2005. Applications received after that time will not be considered for funding.

Address for Submitting Proposals: Applications should be submitted through <http://www.grants.gov>. If an applicant does not have Internet access, hard copies should be sent to the National Marine Fisheries Service, State/Federal Liaison Branch, 263 13th Avenue South, St. Petersburg, FL 33701.

Information Contact: Scot Plank, State/Federal Liaison Branch at (727) 824-5324.

Eligibility: Eligible applicants include Institutions of higher education, other nonprofits, commercial organizations, State, local and Indian tribal governments. Federal agencies or institutions are not eligible. Foreign governments, organizations under the jurisdiction of foreign governments, and international organizations are excluded for purposes of this solicitation since the objective of the MARFIN program is to optimize research and development benefits from U.S. marine fishery resources.

Cost Sharing Requirements: Cost-sharing is not required.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

9. Cooperative Research Program (CRP) FY 2006

Summary Description: The NMFS Southeast Regional Office is inviting the public to submit research and development projects that seek to increase and improve the working relationship between researchers from the NMFS, state fishery agencies, universities, and fishermen. The program is a means of involving commercial and recreational fishermen in the collection of fundamental fisheries information. Collection efforts support the development and evaluation of management and regulatory options. Projects accepted for funding will need to be completed within 24 months.

Funding Availability: Approximately \$2.0 million may be available in fiscal year 2006 for projects. The NMFS Southeast Regional Office anticipates that typical project awards will range from \$40,000 to \$475,000. The average award is \$190,000.

Statutory Authority: 15 U.S.C. 713c-3(d).

Catalog of Federal Domestic Assistance: 11.454 Unallied Management Projects.

Application Deadline: We must receive your application by 5 p.m. eastern daylight time on August 29, 2005. Applications received after that time will not be considered for funding.

Address for Submitting Proposals: Applications should be submitted through <http://www.grants.gov>. If an applicant does not have Internet access, hard copies should be sent to the National Marine Fisheries Service, State/Federal Liaison Branch, 263 13th Avenue South, St. Petersburg, FL 33701.

Information Contact: Scot Plank, State/Federal Liaison Branch at (727) 824-5324.

Eligibility: Eligible applicants include Institutions of higher education, other nonprofits, commercial organizations, state, local and Indian tribal governments and individuals. Federal agencies or institutions are not eligible. Foreign governments, organizations under the jurisdiction of foreign governments, and international organizations are excluded for purposes of this solicitation since the objective of the CRP is to optimize research and development benefits from U.S. marine fishery resources. Applicants who are not commercial or recreational fisherman must have commercial or recreational fishermen participating in their project. There must be a written agreement with a fisherman describing the involvement in the project activity. All applicants must include a written agreement with a person employed by

the National Marine Fisheries Service (NMFS), who will act as a partner in the proposed research project. The NMFS partner will assist the applicant to develop a design (statistical or analytical) for the project to assure that the outcome will provide suitable, scientific data and results to support needed fisheries management information.

Cost Sharing Requirements: Cost-sharing is not required.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

10. North Atlantic Right Whale Research Programs

Summary Description: The National Marine Fisheries Service (NMFS) is soliciting applications for Federal assistance under the North Atlantic Right Whale Grant Program (RWGP). Under the RWGP, NMFS provides financial assistance to eligible researchers working within waters inhabited by North Atlantic right whales and submitting applications pertaining only to this species. Applications must fall within at least one of the following 9 categories: (1) Detection and tracking of right whales; (2) Behavior of right whales in relation to ships; (3) Relationships between vessel speed, size or design with whale collisions; (4) Modeling of ship traffic along the Atlantic coast; (5) Population monitoring and assessment studies; (6) Reproduction, health and genetic studies; (7) Development of a Geographic Information System database or other system designed to investigate predictive modeling of right whale distribution in relation to environmental variables; (8) Habitat quality studies including food quality and pollutant levels; and (9) Any other work relevant to the recovery of North Atlantic right whales.

Funding Availability: This solicitation announces that a maximum of \$1.0M may be available for distribution under the FY 2006 RWRGP. Applicants are hereby given notice that funds have not yet been appropriated for this program. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. There is no set minimum or maximum amount for any award, and there is no limit on the number of applications that can be submitted by the same researcher during the 2006

competitive grant cycle. Note that in FY 2004, the last year in which there was a competition in this program, 15 awards were made, with a range of \$35,000 to \$200,000 per year. If an application for a financial assistance award is selected for funding, NOAA/NMFS has no obligation to provide any additional funding in connection with that award in subsequent years.

Statutory Authority: 16 U.S.C. 1380.

Catalog of Federal Domestic Assistance: 11.472, Unallied Science Program.

Application Deadline: The application package must be postmarked by 5 p.m. EST August 1, 2005.

Address for Submitting Proposals: Proposals should be submitted through <http://www.grants.gov>. Search using the following funding opportunity # NMFS-NEFSC-2005-2000252. Applicants without Internet access can submit proposals to Kelly Taranto, NMFS, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543. Mark the proposal: "Attention-Right Whale Research Grant Program."

Information Contact(s): Dr. Richard Pace, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543, 508 495-2316, e-mail rightwhalegrants@noaa.gov.

Eligibility: Eligible applicants are individuals, institutions of higher education, other nonprofits, commercial organizations, international organizations, foreign governments, organizations under the jurisdiction of foreign governments, and state, local and Indian tribal governments. Federal agencies, or employees of Federal agencies are not eligible to apply.

Cost Sharing Requirements: None.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

11. General Coral Reef Conservation

Summary Description: The NOAA Coral Reef Conservation Program is soliciting proposals to support conservation projects for coral reef ecosystems of the United States and the Freely Associated States in the Pacific (Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia). This program is part of the Coral Reef Conservation Program under the Coral Reef Conservation Act of 2000, which provides matching grants of financial assistance for coral reef conservation projects that: (1) Help preserve, sustain and restore the condition of coral reef ecosystems, (2) promote the wise

management and sustainable use of coral reef resources, (3) increase public knowledge and awareness of coral reef ecosystems and issues regarding their conservation and (4) develop sound scientific information on the condition of coral reef ecosystems and the threats to such ecosystems. Projects must address one of the following 7 categories: Coral reef monitoring and assessment; socio-economic assessments and resource valuation; marine protected areas and associated management activities; coral reef fisheries management and enforcement; coral reef restoration; public education and outreach; and local action strategy implementation. Research activities are eligible only if they directly relate to management or are listed as a project within a local action strategy. Interested applicants should submit an application of up to 25 pages that includes a cover sheet, project summary, narrative project description, narrative budget summary, CV, letter(s) of support and Federal forms.

Funding Availability: Total anticipated available funding is \$600,000, of which up to \$100,000 is for specific local action strategy projects with the remainder divided approximately equally among the other 6 categories. Individual awards in the form of grants can range from \$15,000 to a maximum of \$50,000. Applications for awards for more than \$50,000 will not be accepted. Funding will be subject to the availability of federal appropriations.

Statutory Authority: 16 U.S.C. 6403. *Catalog of Federal Domestic Assistance (CFDA) Number:* 11.463 Habitat Conservation.

Application Deadline: Applications are due to NOAA before midnight, eastern standard time, November 15, 2005. Final revised applications must be received no later than midnight, eastern standard time, March 3, 2006. Proposals received after these deadlines will not be accepted.

Address for Submitting Proposals: Applications should be submitted electronically to <http://www.grants.gov>, or by surface mail to David Kennedy, NOAA Coral Reef Conservation Program, Office of Response and Restoration, N/ORR, Room 10102, NOAA National Ocean Service, 1305 East West Highway, Silver Spring, MD 20910.

Information Contact(s): Andy Bruckner, Office of Habitat Conservation, F/HC1, Room 15836, NOAA Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910, phone 301-713-3459 extension 190, e-mail at andy.bruckner@noaa.gov.

Eligibility: Eligible applicants include institutions of higher education, non-profit organizations, commercial organizations, Freely Associated State government agencies, and local and Indian tribal governments. U.S. Federal, State, Territory, and Commonwealth government agencies are not eligible under this program.

Cost Sharing Requirements: 1:1 non-federal match is required. The NOAA Administrator may waive all or part of the matching requirement if the Administrator determines that the project meets the following two requirements: (1) No reasonable means are available through which an applicant can meet the matching requirement, and (2) The probable benefit of such project outweighs the public interest in such matching requirement. In the case of a waiver request, the applicant must provide a detailed justification explaining the need for the waiver.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

National Ocean Service

1. NOAA Coral Reef Conservation Grant Program—State and Territory Coral Reef Management

Summary Description: This program is soliciting proposals to support comprehensive projects for the conservation and management of coral reefs and associated fisheries in the jurisdictions of Puerto Rico, the U.S. Virgin Islands, Florida, Hawaii, Guam, the Commonwealth of the Northern Mariana Islands and American Samoa. Funding will also support jurisdictional participation in national coral reef planning activities, such as U.S. Coral Reef Task Force meetings. This program is part of the NOAA Coral Reef Conservation Grant Program under the Coral Reef Conservation Act of 2000 which provides matching grants of financial assistance for coral reef conservation projects. NOS will accept pre-applications for peer review. Selected applicants may be asked to revise award objectives, work plans or budgets prior to submittal of a final application, including required Federal financial assistance forms, to NOS.

Funding Availability: Approximately \$4,000,000 may be available in FY 2006 to support awards under this program. Each eligible jurisdiction can apply for a maximum of \$685,000. A minimum of 40% of the final award amount must be dedicated to the implementation and support of the Local Action Strategy

initiative in each jurisdiction. Funding is subject to the availability of federal appropriations.

The amount of funding awarded to each jurisdiction will be subject to the eligibility and evaluation requirements described in this announcement.

Statutory Authority: 16 U.S.C. 6403. *Catalog of Federal Domestic Assistance:* 11.419, Coastal Zone Management Program.

Application Deadline: Initial Application/Final Application Deadline: Pre-applications are due to NOAA by 11:59 p.m. eastern time on November 15, 2005. Final applications are due to NOAA by 11:59 p.m. eastern time on March 3, 2006.

Address for Submitting Proposals: Address for submitting pre-applications: David Kennedy, NOAA Coral Reef Conservation Program, Office of Response and Restoration, NOAA National Ocean Service, N/ORR, Room 10102, 1305 East West Highway, Silver Spring, MD 20910 or coral.grants@noaa.gov. Submissions by e-mail are preferred.

Address for submitting final applications: <http://www.grants.gov>, the Federal grants portal. If Internet access is unavailable, hard copies can be submitted to David Kennedy, NOAA Coral Reef Conservation Program, Office of Response and Restoration, N/ORR, Room 10102, NOAA National Ocean Service, 1305 East West Highway, Silver Spring, MD 20910. Applicants are required to include one original and two copies of the signed, hard/paper of the Federal financial assistance forms for each final application package that is not submitted through <http://www.grants.gov>.

Information Contact(s): Dana Wusinich-Mendez, 1305 East West Highway, 11th Floor, N/ORR3, Silver Spring, MD 20910, phone 301-713-3155 extension 159, e-mail at dana.wusinich-mendez@noaa.gov.

Eligibility: Eligible applicants are the governor-appointed point of contact agencies for coral reef coordination in each of the jurisdictions of American Samoa, Florida, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Puerto Rico, and U.S. Virgin Islands.

Cost Sharing Requirements: Any coral conservation project funded under this program requires a 1:1 match. Matching funds must be from non-Federal sources and can include in-kind contributions and other non-cash support. The NOAA Administrator may waive all or part of the matching requirement if the Administrator determines that the project meets the following two requirements: (1) No reasonable means

are available through which an applicant can meet the matching requirement, and (2) The probable benefit of such project outweighs the public interest in such matching requirement. The Program shall waive any requirement for local matching funds for any project under \$200,000 (including in-kind contribution) to the governments of Insular Areas, defined as the jurisdictions of the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Intergovernmental Review:

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

2. NOAA Coral Reef Conservation Grant Program—State and Territory Coral Reef Ecosystem Monitoring

Summary Description: This program is soliciting proposals to support implementation of a nationally coordinated, comprehensive, long-term monitoring program to assess the condition of U.S. coral reef ecosystems, and to evaluate the efficacy of coral ecosystem management. This program is part of the NOAA Coral Reef Conservation Grant Program under the Coral Reef Conservation Act of 2000 which provides matching grants of financial assistance for coral reef monitoring projects. NOS will accept pre-applications for peer review. Selected applicants may be asked to revise award objectives, work plans or budgets prior to submittal of a final application, including required Federal financial assistance forms, to NOS.

Funding Availability: Approximately \$1,100,000 may be available in FY 2006 to support awards under this program. Each eligible jurisdiction can apply for a maximum \$130,000, with the exception of the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands which can apply for a maximum of \$30,000. The amount of funding awarded to each jurisdiction will be subject to the eligibility and evaluation requirements described in this announcement. Funding is subject to the availability of Federal appropriations.

Statutory Authority: 16 U.S.C. 6403.

Catalog of Federal Domestic Assistance: 11.419, Coastal Zone Management Program.

Application Deadline: Initial Application/Final Application Deadline: Pre-applications are due to NOAA by 11:59 p.m. eastern time on November 15, 2005. Final applications are due to NOAA by 11:59 p.m. eastern time on March 3, 2006.

Address for Submitting Proposals:

Address for submitting pre-applications: David Kennedy, NOAA Coral Reef Conservation Program, Office of Response and Restoration, NOAA National Ocean Service, N/ORR, Room 10102, 1305 East West Highway, Silver Spring, MD 20910 or coral.grants@noaa.gov. Submissions by e-mail are preferred.

Address for submitting final applications: <http://www.grants.gov>, the Federal grants portal. If Internet access is unavailable, hard copies can be submitted David Kennedy, NOAA Coral Reef Conservation Program, Office of Response and Restoration, N/ORR, Room 10102, NOAA National Ocean Service, 1305 East West Highway, Silver Spring, MD 20910. Applicants are required to include one original and two copies of the signed, hard/paper of the Federal financial assistance forms for each final application package that is not submitted through <http://www.grants.gov>.

Information Contact(s): John Christensen, 1305 East West Highway, 9th Floor, N/SC11, Silver Spring, MD 20910, phone 301-713-3028 extension 153, e-mail at john.christensen@noaa.gov.

Eligibility: Eligible applicants are the governor-appointed point of contact agencies for coral reef coordination in each of the jurisdictions of American Samoa, Florida, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, the Republic of Palau, the Federated States of Micronesia (including Kosrae, Pohnpei, Yap, and Chuuk), the Republic of the Marshall Islands, Puerto Rico, and U.S. Virgin Islands.

Cost Sharing Requirements: Any coral conservation project funded under this program requires a 1:1 match. Matching funds must be from non-Federal sources and can include in-kind contributions and other non-cash support. The NOAA Administrator may waive all or part of the matching requirement if the Administrator determines that the project meets the following two requirements: (1) No reasonable means are available through which an applicant can meet the matching requirement, and (2) The probable benefit of such project outweighs the public interest in such matching requirement. The Program shall waive any requirement for local matching funds for any project under \$200,000 (including in-kind contribution) to the governments of Insular Areas, defined as the jurisdictions of the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Intergovernmental Review:

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

3. South Florida Program

Summary Description: NCCOS/CSCOR is soliciting 1-year and 2-year proposals to support coastal ecosystem studies in South Florida including Florida Bay, Florida Keys, the Florida Keys National Marine Sanctuary (FKNMS), and adjacent coastal waters. It will provide support for the NOAA South Florida Program (SFP) and the FKNMS. The overall goal of this announcement is to fund high priority research and long term observational data collection needed to model and predict the impacts of Everglades restoration on the South Florida coastal ecosystem and to fulfill NOAA commitments to the South Florida Ecosystem Restoration effort and the Comprehensive Everglades Restoration Plan (CERP).

Funding Availability: Award amounts will be determined by the proposals and available funds, typically not to exceed \$400,000 per project per year with project durations from one to two years. It is anticipated that 4 to 10 total projects will be funded. Support in out years after FY 2006 is contingent upon the availability of funds. Applicants are hereby given notice that funds have not yet been appropriated for this program.

Statutory Authority: Statutory Authority: 33 U.S.C. 1442 C.

Catalog of Federal Domestic Assistance: 11.478 Center for Sponsored Coastal Ocean Research, Coastal Ocean Program CSCOR/COP).

Application Deadline: The deadline for receipt of proposals at the NCCOS/CSCOR office is 3 p.m., eastern time on September 29, 2005.

Address for Submitting Proposals: Applications submitted in response to this announcement are strongly encouraged to be submitted through the Grants.gov Web site. Electronic Access to the full funding announcement for this program is available via the Grants.gov Web site: <http://www.grants.gov>. The announcement will also be available at the NOAA Web site <http://www.ofa.noaa.gov/%7Egrants/funding.shtml> or by contacting the program official identified below. If Internet access is unavailable, paper applications (a signed original and two copies) should be submitted to the Center for Sponsored Coastal Ocean Research, Coastal Ocean Program (CSCOR/COP), National Oceanic and Atmospheric Administration, (NOAA), 1305 East

West Highway, Room 8243, SSMC Building 4, Silver Spring, MD 20910.

Information Contacts: Technical Information. Larry Pugh, South Florida Program Manager, 301-713-3338 ext 160, Internet: Larry.Pugh@noaa.gov. Business Management Information. Laurie Golden, NCCOS/CSCOR Grants Administrator, 301-713-3338 ext 151, Internet: Laurie.Golden@noaa.gov.

Eligibility: Eligible applicants are institutions of higher education, other non-profits, State, local, Indian tribal governments, and Federal agencies that possess the statutory authority to receive financial assistance. NCCOS/CSCOR will not fund any Federal FTE salaries, but will fund travel, equipment, supplies, and contractual personnel costs associated with the proposed work. Furthermore, no expenses of any kind will be provided for NOS researchers.

(1) Researchers must be employees of an eligible institution listed above; and proposals must be submitted through that institution. Non-Federal researchers should comply with their institutional requirements for proposal submission.

(2) Non-NOAA Federal applicants will be required to submit certifications or documentation showing that they have specific legal authority to receive funds from the Department of Commerce (DOC) for this research.

(3) NCCOS/CSCOR will accept proposals that include foreign researchers as collaborators with a researcher, who has met the above stated eligibility requirements; and who also is an employee of an eligible institution listed above.

(4) Non-Federal researchers affiliated with NOAA-University Joint Institutes should comply with joint institutional requirements; they will be funded through grants either to their institutions or to joint institutes.

Cost Sharing Requirements: None.

Intergovernmental Review:

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

4. Northern Gulf of Mexico Ecosystem Research Program (NGOMEX)

Summary Description: NCCOS/CSCOR is soliciting proposals to support 1 to 3 year studies of coastal ecosystem research related to hypoxia over the Louisiana continental shelf in the northern Gulf of Mexico. Through these multi year, interdisciplinary research projects, NCCOS/CSCOR seeks to develop a fundamental understanding of the northern Gulf of Mexico ecosystem in the region affected by Mississippi River inputs with a focus on

the causes and effects of the hypoxic zone over the Louisiana continental shelf and the prediction of its future extent and impacts to ecologically and commercially important aquatic species.

Funding Availability: Funding is contingent upon availability of Federal appropriations. It is anticipated that 4 to 8 total projects will be funded and that \$2,000,000 to \$4,000,000 per year will be available for projects. CSCOR anticipates that awards will not exceed \$500,000 per project per year with project durations from 1 to 3 years. Support in FY 2006 and future years is contingent upon the availability of funds. Applicants are hereby given notice that funds have not yet been appropriated for this program.

Statutory Authority: 33 U.S.C. 1442.

CFDA: 11.478 Center for Sponsored Coastal Ocean Research, Coastal Ocean Program.

Application Deadline: The deadline for receipt of proposals at the CSCOR office is 3 p.m., eastern time, August 24, 2005.

Address for Submitting Proposals: Applications submitted in response to this announcement are strongly encouraged to be submitted through the Grants.gov Web site. Electronic Access to the full funding announcement for this program is available via the Grants.gov Web site: <http://www.grants.gov>. The announcement will also be available at the NOAA Web site <http://www.ofa.noaa.gov/%7Egrants/funding.shtml> or by contacting the program official identified below. If Internet access is unavailable, paper applications (a signed original and two copies) should be submitted to the Center for Sponsored Coastal Ocean Research, Coastal Ocean Program (CSCOR/COP), National Oceanic and Atmospheric Administration, (NOAA), 1305 East West Highway, Room 8243, SSMC Building 4, Silver Spring, MD 20910.

Information Contacts: For overall information regarding Technical Information, Larry Pugh, NGOMEX 2006 Program Manager, NCCOS/CSCOR, 301-713-3338/ext 160, Internet: Larry.Pugh@noaa.gov. Business Management Information, Laurie Golden, NCCOS/CSCOR/COP Grants Administrator, 301-713-3338/ext 151, Internet: Laurie.Golden@noaa.gov.

Eligibility: Eligible applicants are institutions of higher education, other non-profits, State, local, Indian tribal governments, and Federal agencies that possess the statutory authority to receive financial assistance.

NCCOS/CSCOR will not fund any Federal FTE salaries, but will fund travel, equipment, supplies, and

contractual personnel costs associated with the proposed work. Furthermore, no expenses of any kind will be provided for NOS researchers.

(1) Researchers must be employees of an eligible institution listed above; and proposals must be submitted through that institution. Non-Federal researchers should comply with their institutional requirements for proposal submission.

(2) Non-NOAA Federal applicants will be required to submit certifications or documentation showing that they have specific legal authority to receive funds from the Department of Commerce (DOC) for this research.

(3) NCCOS/CSCOR will accept proposals that include foreign researchers as collaborators with a researcher, who has met the above stated eligibility requirements; and who also is an employee of an eligible institution listed above.

(4) Non-Federal researchers affiliated with NOAA-University Joint Institutes should comply with joint institutional requirements; they will be funded through grants either to their institutions or to joint institutes.

Cost Sharing Requirements: None.

Intergovernmental Review:

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

5. Ecological Forecasting

Summary Description: The NOAA/NOS/NCCOS/CSCOR is soliciting proposals for projects of 2 to 5 years in duration for the development of new ecological forecasting capabilities and the transition of existing ecological forecasts to operational status. These ecological forecasts are to support critical management decisions for the management of the Nation's Great Lake, estuarine, coastal and ocean ecosystems. The need for multidisciplinary coastal ecosystem studies to improve our understanding of the physical, biological, and chemical processes in these complex systems has only grown in recent years as management of coastal regions moves toward greater consideration of ecosystem principles, including connections with terrestrial and atmospheric systems. CSCOR and COP have been committed to producing data and information products such as technical reports, peer-reviewed publications, databases, and numerical and conceptual models so that they will be accessible to users of this information. However, the delivery of comprehensive information products and technologies to the appropriate management community for application to specific coastal management issues

remains a challenge; the EcoFore program, in part, is meant to address this challenge.

Funding Availability: Award amounts will be determined by the proposals and available funds, typically not to exceed \$500,000 per project per year with project durations from 2–5 years. It is anticipated that 3 to 6 total projects will be funded. Support in out years after FY 2006 is contingent upon the availability of funds. Applicants are hereby given notice that funds have not yet been appropriated for this program.

Statutory Authority: 16 U.S.C. 1456c.

Catalog of Federal Domestic Assistance: 11.478 Center for Sponsored Coastal Ocean Research, Coastal Ocean Program (CSCOR/COP).

Application Deadline: The deadline for receipt of proposals at the CSCOR office is 3 p.m., eastern time on October 25, 2005.

Address for Submitting Proposals: Applications submitted in response to this announcement are strongly encouraged to be submitted through the Grants.gov Web site. Electronic Access to the full funding announcement for this program is available via the Grants.gov Web site: <http://www.grants.gov>. The announcement will also be available at the NOAA Web site <http://www.ofa.noaa.gov/%7Egrants/funding.shtml> or by contacting the program official identified below. If Internet access is unavailable, paper applications (a signed original and two copies) should be submitted to the Center for Sponsored Coastal Ocean Research, Coastal Ocean Program (CSCOR/COP), National Oceanic and Atmospheric Administration, (NOAA), 1305 East West Highway, Room 8243, SSMC Building 4, Silver Spring, MD 20910.

Information Contacts: For overall information regarding Technical Information, Elizabeth Turner, 603–862–4680, E-mail: elizabeth.turner@noaa.gov. Business Management Information, Laurie Golden, NCCOS/CSCOR/COP Grants Administrator, 301–713–3338/ext 151, Internet: Laurie.Golden@noaa.gov.

Eligibility: Eligible applicants are institutions of higher education, other non-profits, State, local, Indian tribal governments, and Federal agencies that possess the statutory authority to receive financial assistance.

NCCOS/CSCOR will not fund any Federal FTE salaries, but will fund travel, equipment, supplies, and contractual personnel costs associated with the proposed work. Furthermore, no expenses of any kind will be provided for NOS researchers.

(1) Researchers must be employees of an eligible institution listed above; and proposals must be submitted through that institution. Non-Federal researchers should comply with their institutional requirements for proposal submission.

(2) Non-NOAA Federal applicants will be required to submit certifications or documentation showing that they have specific legal authority to receive funds from the Department of Commerce (DOC) for this research.

(3) NCCOS/CSCOR will accept proposals that include foreign researchers as collaborators with a researcher, who has met the above stated eligibility requirements; and who also is an employee of an eligible institution listed above.

(4) Non-Federal researchers affiliated with NOAA-University Joint Institutes should comply with joint institutional requirements; they will be funded through grants either to their institutions or to joint institutes.

Cost Sharing Requirements: None.

Intergovernmental Review:

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

6. NOAA Coral Reef Conservation Grant Program—International Coral Reef Conservation

Summary Description: This Program solicits proposals under four funding categories: (1) Promote watershed management in the wider Caribbean, Brazil, and Bermuda; (2) regional enhancement of marine protected area management effectiveness; (3) encourage the development of national systems of marine protected areas in the wider Caribbean, Bermuda, Brazil, and Southeast Asia; and (4) promote regional socio-economic training and monitoring in coral reef management in the wider Caribbean, Brazil, Bermuda, East Africa, South Pacific, and Southeast Asia. Each funding category has specific applicant and project eligibility criteria.

This program is part of the NOAA Coral Reef Conservation Grant Program under the Coral Reef Conservation Act of 2000 which provides matching grants of financial assistance for coral reef conservation projects. NOS will accept pre-applications for peer review. Selected applicants may be asked to revise award objectives, work plans or budgets prior to submittal of a final application, including required Federal financial assistance forms, to NOS.

Funding Availability: Approximately \$400,000 may be available in FY 2006 to support awards under this program. Each eligible applicant can apply for the

following maximum amounts: Watershed Management \$40,000; Management Effectiveness: Regional Capacity Building Projects \$80,000; Marine Protected Area National Systems: \$50,000; Socio-economic Monitoring Regional Projects \$35,000. The amount of funding awarded to each applicant will be subject to the eligibility and evaluation requirements described in this announcement. Funding will be subject to the availability of Federal appropriations.

Statutory Authority: 16 U.S.C. 6403.

Catalog of Federal Domestic Assistance Number: 11.463—Habitat Conservation.

Pre-Application/Final Application Deadlines: Pre-applications are due to NOAA by 11:59 p.m. eastern time on November 15, 2005. Final applications by invitation only are due to NOAA by 11:59 p.m. eastern time on March 3, 2006.

Address for Submitting Applications: Address for submitting pre-applications: David Kennedy, NOAA Coral Reef Conservation Program, Office of Response and Restoration, NOAA National Ocean Service, N/ORR, Room 10102, 1305 East West Highway, Silver Spring, MD 20910 or coral.grants@noaa.gov. Submissions by e-mail are preferred.

Address for submitting final applications: <http://www.grants.gov>, the Federal grants portal. If Internet access is unavailable, hard copies can be submitted David Kennedy, NOAA Coral Reef Conservation Program, Office of Response and Restoration, N/ORR, Room 10102, NOAA National Ocean Service, 1305 East West Highway, Silver Spring, MD 20910. Applicants are required to include one original and two copies of the signed, hard/paper of the Federal financial assistance forms for each final application package that is not submitted through <http://www.grants.gov>.

Information Contact: Arthur Paterson, 1315 East-West Highway, 5th Floor, N/IP, Room 5627, Silver Spring, MD 20910. Phone: 301–713–3078, extension 217; e-mail:

arthur.e.paterson@noaa.gov.

Eligibility: Eligible applicants include all international, governmental (except U.S. Federal agencies), and non-governmental organizations. For specific country eligibility per category, please refer to individual category descriptions in Section V of the full Federal Funding Opportunity. The proposed work must be conducted at a non-U.S. site. Eligible countries are defined as follows: The Wider Caribbean includes the 37 States and territories that border the marine environment of the Gulf of Mexico, the

Caribbean Sea, and the areas of the Atlantic Ocean adjacent thereto, and Brazil and Bermuda, but excluding areas under U.S. jurisdiction. The South Pacific Region includes South Pacific Regional Environment Program's 19 Pacific island countries and territories, including the Federated States of Micronesia, Republic of Palau, and the Republic of the Marshall Islands, but excluding U.S. territories and four developed country members. Southeast Asia Region includes Brunei, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, and Vietnam. East Africa includes Comoros, France (La Reunion), Kenya, Madagascar, Mauritius, Mozambique, Seychelles, Somalia, the United Republic of Tanzania and South Africa.

Cost Sharing Requirements: Any coral conservation project funded under this program requires a 1:1 match. Matching funds must be from non-Federal sources and can include in-kind contributions and other non-cash support. The NOAA Administrator may waive all or part of the matching requirement if the Administrator determines that the project meets the following two requirements: (1) No reasonable means are available through which an applicant can meet the matching requirement, and (2) The probable benefit of such project outweighs the public interest in such matching requirement. The Program shall waive any requirement for local matching funds for any project under \$200,000 (including in-kind contribution) to the governments of Insular Areas, defined as the jurisdictions of the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

7. FY 2006 Bay Watershed Education & Training (B-WET) Program, Hawai'i

Summary Description: The B-WET grant program is a competitively based program that supports existing environmental education programs, fosters the growth of new programs, and encourages the development of partnerships among environmental education programs throughout Hawai'i. Funded projects provide "meaningful" outdoor experiences for students and professional development opportunities for teachers in the area of environmental education.

Funding Availability: This solicitation announces that approximately \$1,000,000 may be available in Fiscal

Year 2006 in award amounts to be determined by the proposals and available funds. It is anticipated that approximately 15-20 grants will be awarded with these funds. Proposals may request a duration of up to 3 years. However, funds will be made available for only a 12-month award period and any continuation of the award period will depend on submission of a successful proposal subject to technical and panel reviews, adequate progress on previous award(s), and available funding to continue the award. The Pacific Services Center may continue funding existing grants that were funded in the previous application process. Grants will be awarded to continue these projects under this announcement pending successful review of new application packages, and adequate progress reports and/or site visits.

Statutory Authority: 33 U.S.C. 883d, 15 U.S.C. 1540.

Catalog of Federal Domestic Assistance: 11.473, Coastal Services Center.

Application Deadline: Proposals must be received by 5 p.m. Pacific daylight savings time on October 14, 2005.

Address for Submitting Proposals: Applicants are strongly encouraged to apply through <http://www.Grants.gov>. If an applicant cannot submit a proposal through <http://www.Grants.gov>, then the application must be submitted in hard copy to the NOAA Pacific Services Center, 737 Bishop Street, Suite 2250, Honolulu, Hawai'i 96813. Facsimile transmissions and electronic mail submission of proposals will not be accepted.

Information Contact: Divina Corpuz, phone 808-522-7481, fax (808) 532-3224, electronic mail at Divina.Corpuz@noaa.gov.

Eligibility: Eligible applicants for both areas of interest ("Meaningful Outdoor Experiences" and Professional Development in the Area of Environmental Education for Teachers) are K-through-12 public and independent schools and school systems, institutions of higher education, commercial and nonprofit organizations, state or local government agencies, and Indian tribal governments. Applicants that are not eligible are individuals and Federal agencies.

Cost Sharing Requirements: No cost sharing is required under this program, however, the Pacific Services Center strongly encourages applicants to share as much of the costs of the award as possible. Funds from other Federal awards may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into

consideration in the review process with cash being the preferred method of contribution.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

8. Bay Watershed Education & Training (B-WET) Program, Monterey Bay Watershed

Summary Description: The B-WET grant program is a competitively based program that supports existing environmental education programs, fosters the growth of new programs, and encourages the development of partnerships among environmental education programs throughout the Monterey Bay watershed. Funded projects provide Meaningful outdoor experiences for students and professional development opportunities for teachers in the area of environmental education.

Funding Availability: This solicitation announces that approximately \$475,000 may be available in FY 2006 in award amounts to be determined by the proposals and available funds. It is anticipated that approximately 15 grants will be awarded with these funds. About \$250,000 will be for proposals that provide opportunities for students to participate in a Meaningful Outdoor Experience. About \$225,000 will be for proposals that provide opportunities for Professional Development in the area of Environmental Education for Teachers. Proposals may request a duration of up to 3 years. However, funds will be made available for only a 12-month award period and any continuation of the award period will depend on submission of a successful proposal subject to technical and panel reviews, adequate progress on previous award(s), and available funding to continue the award. The National Marine Sanctuary Program may continue funding existing grants that were funded in the previous application process. New grants will be awarded to continue these projects under this announcement pending successful review of a new application package, and adequate progress reports and/or site visits.

Statutory Authority: 16 U.S.C. 1440, 15 U.S.C. 1540.

Catalog of Federal Domestic Assistance: 11.429, Marine Sanctuary Program.

Application Deadline: Proposals must be received by 5 p.m. Pacific time on October 15, 2005. Proposals will not be accepted before August 15, 2005. Any proposals received before this date will be returned to the applicant.

Address for Submitting Proposals: Seaberry Nachbar, Monterey Bay National Marine Sanctuary Office; 299 Foam Street, Monterey, CA 93940. Facsimile transmissions and electronic mail submission of proposals will not be accepted.

Information Contact: Seaberry Nachbar, phone 831-647-4204, fax 831-647-4250, Internet at seaberry.nachbar@noaa.gov.

Eligibility: Eligible applicants for both areas of interest (Meaningful Outdoor Experiences and Professional Development in the Area of Environmental Education for Teachers) are K-through-12 public and independent schools and school systems, institutions of higher education, commercial and nonprofit organizations, state or local government agencies, and Indian tribal governments. Applicants that are not eligible are individuals and Federal agencies.

Cost Sharing Requirements: No cost sharing is required under this program however, the National Marine Sanctuary Program strongly encourages applicants to share as much of the costs of the award as possible. Funds from other Federal awards may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the review process with cash being the preferred method of contribution.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

9. National Estuarine Research Reserves System FY2006 Land Acquisition and Construction Competitive Program

Summary Description: The Estuarine Reserves Division (ERD) of NOAA is soliciting proposals from the National Estuarine Research Reserve System (NERRS) for land acquisition and construction funding. The National Estuarine Research Reserve system consists of estuarine areas of the United States and its territories which are designated and managed for research and educational purposes. Each reserve within the system is chosen to represent different biogeographic regions and to include a variety of ecosystem types. Through the funding of designated reserve agencies and universities to undertake land acquisition and construction projects that support the NERRS purpose, NOAA will strengthen protection of key land and water areas; enhance long-term protection of the area for research and education, and provide for facility and exhibit construction.

Funding Availability: The ERD anticipates that approximately \$7.25 million, pending availability of funds, will be competitively awarded to qualified National Estuarine Research Reserves that meet the funding priorities and selection criteria. Approximately 5-15 awards will be made.

Statutory Authority: 16 U.S.C. 1461 (e)(1)(A)(i),(ii), and (iii)

Catalog of Federal Domestic Assistance: 11.420, Coastal Zone Management Estuarine Research Reserves

Application Deadline: Proposals must be received no later than 11 p.m. eastern standard time on February 1, 2006.

Address for Submitting Proposals: Applicants are strongly encouraged to submit proposals electronically through Grants.gov. Paper applications should be submitted to NOAA/NOS; 1305 East West Highway, Room 10509; Silver Spring, Maryland 20910.

Information Contact(s): Doris Grimm, NOAA/NOS; 1305 East-West Highway, Room 10509; Silver Spring, Maryland 20910, or by phone at 301-713-3155 ext. 107, or fax to 301-713-4012, Internet at doris.grimm@noaa.gov.

Eligibility: Eligible applicants are coastal states in which the NERRs are located and are directed to the Reserves' lead state agencies or universities.

Cost Sharing Requirements: Matching requirements include 50 percent match of the total grant project for land acquisition and 30 percent match of the total grant project for construction.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

10. FY 2006 Coastal Services Center Environmental Characterization of a U.S. Coastal Region.

Summary Description: NOS is soliciting projects for the Coastal Services Center (CSC) Landscape Characterization and Restoration (LCR) and Outreach Programs, with an anticipated start date of March 1, 2006. The Center's LCR and Outreach programs seek proposals for a two-year cooperative agreement under which a cooperator and the Center will jointly develop an environmental characterization of a coastal region designed for use by coastal resource managers within multiple jurisdictions to address a single management issue related to coastal development, this issue to be selected by the cooperator.

Funding Availability: Total anticipated funding for a two year project is between \$250,000 and

\$350,000 and no more than one award is expected.

Statutory Authority: 16 U.S.C. 1456c and 33 U.S.C. 1442.

Catalog of Federal Domestic Assistance: 11.473, Coastal Services Center.

Application Deadline: Proposals are due by 5 p.m. EDT, October 3, 2005.

Address for Submitting Proposals: Applications should be submitted through Grants.gov. For applicants without Internet access, send applications to 2234 South Hobson Avenue, Charleston, South Carolina 29405-2413.

Information Contact(s): For administrative issues, contact Violet Legette at 843-740-1222 (phone) or 843-740-1232 (fax) or e-mail her at Violet.Legette@noaa.gov. For technical questions, either contact Jeffery Adkins by telephone at 843-740-1244 or by e-mail at Jeffery.Adkins@noaa.gov or Ginger Hinchcliff by telephone at 843-740-1184 or by e-mail at Ginger.Hinchcliff@noaa.gov.

Eligibility: Eligible applicants are institutions of higher education, hospitals, other non-profits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this announcement, but may be project partners.

Cost Sharing Requirements: None.

Intergovernmental Review: Applications under this program is subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

11. FY2006 Coastal Services Center Leadership Training for Coastal Managers and Scientists

Summary Description: NOS is soliciting projects for the Coastal Services Center (CSC) Coastal Learning Services (CLS) program with an anticipated start date of March 1, 2006. The CLS program seeks proposals for a two-year cooperative agreement on developing and implementing a leadership training program for coastal managers and scientists. The Center's goal is to aid coastal resource managers and scientists in developing their leadership skills and capabilities. Under the cooperative agreement, the Center will work in coordination with the cooperator to integrate the results of a leadership needs assessment that was recently conducted for the Center and develop a training program that addresses the needs and concerns of the

coastal community. The leadership training should be targeted to mid-level managers that will soon be stepping into leadership roles within their agency or organization. The training should be clear in the distinction between management and leadership by emphasizing the following leadership principles; building trust, articulating a vision, developing public relations skills, and collaborating to build effective communities. The training should focus on skill building using interactive, multi-media and other communication processes. All methods must be grounded in credible leadership theories.

Funding Availability: Total anticipated funding for cooperative agreements is up to \$150,000 and is subject to the availability of FY 2006 appropriations. One award is anticipated from this announcement. The nature of the cooperative agreement is such that the Center will provide substantial involvement in the project. General areas of responsibilities that the Center has had in past projects include: meeting planning and facilitation, instructional design, familiarity of coastal issues and access to potential customers of the training.

Statutory Authority: 16 U.S.C. 1456c.

Catalog of Federal Domestic Assistance: 11.473, Coastal Services Center.

Application Deadline: Proposals are due by 5 p.m. EDT, October 3, 2005.

Address for Submitting Proposals: Applicants are strongly encouraged to submit applications through <http://www.Grants.gov>. Applications sent via U.S. Postal Service, express delivery, or hand-delivered may be sent to Coastal Services Center, 2234 South Hobson Avenue, Charleston, South Carolina 29405-2413 to the attention of Lisa Holmes, room 119.

Information Contact(s): For administrative questions, contact Violet Legette, NOAA CSC; 2234 South Hobson Avenue, Room 218; Charleston, South Carolina 29405-2413, or by phone at 843-740-1222, or by fax 843-740-1232, or via Internet at Violet.Legette@noaa.gov. For technical questions, contact Ginger Hinchcliff, NOAA CSC; 2234 South Hobson Avenue, Room 135; Charleston, South Carolina 29405-2413, or by phone at 843-740-1184, or by fax 843-740-1313, or via Internet at Ginger.Hinchcliff@noaa.gov.

Eligibility: Eligible applicants are state, local, Indian tribal governments, private or nonprofit organizations, and institutions of higher education. Applicants must be familiar with the coastal community and the issues faced

by coastal managers and scientists. Federal agencies or institutions are not eligible to receive Federal assistance under this announcement, but may also be project partners. **Note:** Federal agencies or institutions who are project partners must demonstrate that they have legal authority to receive funds in excess of their appropriation.

Cost Sharing Requirements: None.

Intergovernmental Review:

Applications under this program is subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

12. FY2006 Coastal Services Center Application of Spatial Technology for Coastal Management

Summary Description: NOS is soliciting projects for the Coastal Services Center (CSC) Geographic Information Systems (GIS) Integration and Development (I&D) program, with an anticipated start date of April 1, 2006. The GIS I&D program seeks proposals for one to two-year cooperative agreements under which cooperators and the Center will jointly develop technical projects related to the goal of the GIS I&D program, which is to provide relevant, easily accessible spatial data, tools, and support services to the coastal resource management community. The GIS I&D program is especially interested in nationally networked organizations proposing geospatial solutions to issues related to coastal hazards.

Funding Availability: Total anticipated funding is estimated to be \$250,000, subject to appropriation. The GIS I&D program intends to fund one to two projects with awards ranging from about \$100,000 to \$125,000 each.

Statutory Authority: 33 U.S.C. 883a; 33 U.S.C. 883c; and 16 U.S.C. 1456c.

Catalog of Federal Domestic Assistance: 11.473, Coastal Services Center.

Application Deadline: Proposals are due by 5 p.m. EDT, October 3, 2005.

Address for Submitting Proposals: Applications should be submitted through <http://www.grants.gov> unless an applicant does not have Internet access. In that case, hard copy applications can be sent to Coastal Services Center, 2234 South Hobson Avenue, Charleston, South Carolina 29405-2413 to the attention of Hamilton Smillie, room 237C.

Information Contact(s): For administrative questions, contact Violet Legette, NOAA CSC; 2234 South Hobson Avenue, Room 218; Charleston, South Carolina 29405-2413, or by phone at 843-740-1222, or by fax 843-740-1232, or via Internet at

Violet.Legette@noaa.gov. For technical questions, contact Hamilton Smillie, NOAA CSC; 2234 South Hobson Avenue, Room 237C; Charleston, South Carolina 29405-2413, or by phone at 843-740-1192, or via Internet at Hamilton.Smillie@noaa.gov.

Eligibility: Eligible applicants are institutions of higher education, hospitals, other non-profits, commercial organizations, foreign government, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this announcement, but may be project partners.

Cost Sharing Requirements: None.

Intergovernmental Review:

Applications under this program is subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

13. Coral Reef Ecosystem Studies (CRES) 2006

Summary Description: CSCOR solicits proposals that address causes of regional declines in coral abundance and degradation of coral ecosystems. CSCOR's interest is to provide timely and high-quality scientific results that can be used to develop alternative management strategies to restore and protect coral reef ecosystems. CSCOR solicits proposals that seek a better understanding of the underlying processes that regulate coral reefs and associated ecosystems. Findings from this research will be used to directly support resource management decisions to protect healthy coral reef ecosystems and to reverse decline in degraded ones. This solicitation will focus on several geographic regions and two depth ranges: (1) typical, shallow water (0-50m) coral reef ecosystems in the locations prioritized below, and (2) deep water (50-100m) hermatypic, light-dependent coral reef ecosystems. CSCOR's interest is to provide timely and high-quality scientific results that can be used to develop alternative management strategies to restore and protect coral reef ecosystems.

Funding Availability: CSCOR anticipates selection of one proposal not to exceed \$1,000,000 per year with project duration from 3-5 years for the West Florida Shelf; one comprehensive project not to exceed \$1,000,000 per year with project duration from 3-5 years for the Pacific islands; and up to three separate projects not to exceed \$500,000 per project per year with project durations of 1-3 years for the deep hermatypic coral reef studies. It is

anticipated that 3–5 total projects will be funded. Support in out years after FY 2006 is contingent upon the availability of funds.

Applicants are hereby given notice that funds have not yet been appropriated for this program.

Statutory Authority: 16 U.S.C. 6403.

Catalog of Federal Domestic

Assistance: 11.478 Center for Sponsored Coastal Ocean Research, Coastal Ocean Program CSCOR/COP.

Application Deadline: Proposals must be received by CSCOR/COP no later than 3 p.m., eastern time, September 1, 2005.

Address for Submitting Proposals: Applications submitted in response to this announcement are strongly encouraged to be submitted through Grants.gov. Electronic Access to the full funding announcement for this program is available via the Grants.gov Web site: <http://www.grants.gov>. The announcement will also be available at the NOAA Web site <http://www.ofa.noaa.gov/%7Egrants/funding.shtml> or by contacting the program official identified below. If Internet access is unavailable, paper applications (a signed original and two copies) should be submitted to the Center for Sponsored Coastal Ocean Research, Coastal Ocean Program (CSCOR/COP), National Oceanic and Atmospheric Administration, (NOAA), 1305 East West Highway, Room 8243, SSMC Building 4, Silver Spring, MD 20910.

Information Contacts: For overall information regarding the Deep-CRES program contact: Michael Dowgiallo, CSCOR, 301–703–3338, extension 161 or e-mail at Michael.Dowgiallo@noaa.gov. Business Management Information, Laurie Golden, CSCOR Grants Administrator, 301 713 3338/ext 155, Internet: Laurie.Golden@noaa.gov.

Eligibility: Eligible applicants are institutions of higher education, other non-profits, state, local, Indian tribal governments, and Federal agencies that possess the statutory authority to receive financial assistance. Minority Serving Institutions are encouraged to apply.

NCCOS/CSCOR will not fund any Federal FTE salaries, but will fund travel, equipment, supplies, and contractual personnel costs associated with the proposed work. Furthermore, no expenses of any kind will be provided for NOS researchers.

(1) Researchers must be employees of an eligible institution listed above; and proposals must be submitted through that institution. Non-Federal researchers

should comply with their institutional requirements for proposal submission.

(2) Non-NOAA Federal applicants will be required to submit certifications or documentation showing that they have specific legal authority to receive funds from the Department of Commerce (DOC) for this research.

(3) NCCOS/CSCOR will accept proposals that include foreign researchers as collaborators with a researcher, who has met the above stated eligibility requirements; and who also is an employee of an eligible institution listed above.

(4) Non-Federal researchers affiliated with NOAA University Joint Institutes should comply with joint institutional requirements; they will be funded through grants either to their institutions or to joint institutes.

Cost Sharing Requirements: None.

Intergovernmental Review:

Applications under this program are not subject to Executive Order 12372, “Intergovernmental Review of Federal Programs.”

14. FY2006 Coastal Services Center Performance Measurement Technical Assistance

Summary Description: NOS is soliciting projects for the Coastal Services Center (CSC) Coastal Learning Services (CLS) program with an anticipated start date of March 1, 2006. The Center’s CLS program seeks proposals for a two-year cooperative agreement under which the cooperator will collect and analyze physical, social, and environmental indicator data and the Center will provide technical assistance and training on performance measures. A number of institutions and agencies at local, state and regional levels are monitoring their progress in achieving programmatic goals using performance measures. For example, to fulfill the requirements under the National Coastal Management Performance Measurement System, National Coastal Management Programs and National Estuarine Research Reserves are collecting indicator data to measure effectiveness in achieving Coastal Zone Management Act goals at the national level. The performance measurement system will identify and assess the act’s national impact through various indicator categories. All proposals under this announcement must show relevance to state or local coastal resource management efforts.

Funding Availability: Total anticipated funding for these cooperative agreements is up to \$300,000 and is subject to the availability of FY 2006 appropriations. Two to four awards are anticipated from

this announcement. The nature of the cooperative agreement is such that the Center will provide substantial involvement in the project. General areas of responsibilities that the Center has had in past projects include training and one-to-one technical assistance to cooperator and their partners on project design and evaluation, logic model development, and performance metrics.

Statutory Authority: 16 U.S.C. 1456c.

CFDA: 11.473, Coastal Services Center.

Application Deadline: Proposals are due by 5 p.m. EDT, October 3, 2005.

Address for Submitting Proposals: Proposals should be submitted through <http://www.Grants.gov>. For applicants without Internet access, hard copies can be mailed to Coastal Services Center, 2234 South Hobson Avenue, Charleston, South Carolina 29405–2413 to the attention of Lisa Holmes, room 119.

Information Contact(s): For administrative questions, contact Violet Legette, NOAA CSC; 2234 South Hobson Avenue, Room 218; Charleston, South Carolina 29405–2413, or by phone at 843–740–1222, or by fax 843–740–1232, or via Internet at Violet.Legette@noaa.gov. For technical questions, contact Jan Kucklick, NOAA CSC; 2234 South Hobson Avenue, Room 142; Charleston, South Carolina 29405–2413, or by phone at 843–740–1279, or by fax 843–740–1313, or via Internet at Jan.Kucklick@noaa.gov.

Eligibility: Eligible applicants are state, local, Indian tribal governments, private or nonprofit organizations, and institutions of higher education. Federal agencies or institutions are not eligible to receive Federal assistance under this announcement, but may be project partners. Note: Federal agencies or institutions who are project partners must demonstrate that they have legal authority to receive funds in excess of their appropriation.

Cost Sharing Requirements: None.

Intergovernmental Review:

Applications under this program is subject to Executive Order 12372, “Intergovernmental Review of Federal Programs.”

National Weather Service

1. AFWS—Automated Flood Warning Systems (AFWS) Program

Summary Description: The National Weather Service (NWS) is soliciting applications provide capital funds for the creation, renovation, or enhancement of rain and stream gage networks that are locally operated and maintained with non-NOAA resources. The expected period of performance is for one year with an anticipated start

date of April 1, 2006. The NWS seeks to form a partnership with entities that can demonstrate a long-term ability to operate and maintain an AFWS and provide the data to the NWS.

Funding Availability: Approximately \$500,000 will be available through this announcement for fiscal year 2006. Proposals should be prepared assuming an annual budget of no more than \$100,000.

Statutory Authority: 15 U.S.C. 313 and 33 U.S.C. 883d.

Catalog of Federal Domestic Assistance: 11.450, Automated Flood Warning System.

Application Deadline: Proposals must be received by the NWS no later than 5 p.m., EDT, October 27, 2005.

Address for Submitting Proposals: Applications should be submitted through <http://www.grants.gov>. For applicants without Internet access, they should be sent to John Bradley, NOAA/NWS; 1325 East-West Highway, Room 13396; Silver Spring, Maryland 20910-3283.

Information Contact(s): John Bradley, NOAA/NWS; 1325 East-West Highway, Room 13396; Silver Spring, Maryland 20910-3283, or by phone at 301-713-0624 ext. 154, or fax to 301-713-1520, or via Internet at john.bradley@noaa.gov.

Eligibility: Eligible applicants are non-profit organizations, state, local and Indian tribal governments.

Cost Sharing Requirements: None. However, applicant resource commitment will be considered in the competitive selection process.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "An Intergovernmental Review of Federal Programs."

2. Hydrologic Research

Summary Description: This program represents an NOAA/NWS effort to create a cost-effective continuum of basic and applied research through collaborative research between the Hydrology Laboratory of the NWS Office of Hydrologic Development and academic communities or other private or public agencies which have expertise in the hydrometeorologic, hydrologic, and hydraulic routing sciences. These activities will engage researchers and students in basic and applied research to improve the scientific understanding of river forecasting. Ultimately these efforts will improve the accuracy of forecasts and warnings of rivers and flash floods by applying scientific knowledge and information to NWS research methods and techniques, resulting in a benefit to the public.

NOAA's program is designed to complement other agency contributions to that national effort. This program announcement is for projects to be conducted by research investigators for a 1-year, 2-year, or 3-year period. June 1, 2006, should be used as the proposed start date on proposals.

Funding Availability: Because of funding uncertainty, the Office of Hydrologic Development requests that interested organizations prepare a two-page pre-proposal. Once funding availability is confirmed, the Office of Hydrologic Development will invite the authors of the best pre-proposals to submit full proposals. Proposals should be prepared assuming an annual budget of no more than \$125,000. It is expected that approximately four awards will be made, depending on availability of funds.

Statutory Authority: 15 U.S.C. 313.

Catalog of Federal Domestic Assistance: 11.462, Hydrologic Research.

Application Deadline: Pre-proposals are due no later than 3 p.m. eastern standard time on November 18, 2005. Invitations for full-proposal submittal will be sent on December 30th, 2005. Full-proposals are due no later than 3 p.m. eastern standard time on January 31st, 2006.

Addresses for Submitting Pre-Proposals and Full Proposals: Pre-proposals should be submitted by e-mail to Pedro.Restrepo@noaa.gov. For applicants without Internet access, they should be sent to NOAA/NWS; 1325 East-West Highway, Room 8346; Silver Spring, Maryland 20910-3283. Full proposals should be submitted through <http://www.grants.gov>. For applicants without Internet access, they may be sent to NOAA/NWS; 1325 East-West Highway, Room 8346; Silver Spring, Maryland 20910-3283.

Information Contact(s): Dr. Pedro Restrepo by phone at 301-713-0640 ext. 210, or fax to 301-713-0963, or via Internet at Pedro.Restrepo@noaa.gov.

Eligibility: Eligible applicants are Federal agencies, institutions of higher education, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations, state, local and Indian tribal governments.

Cost Sharing Requirements: None.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Oceans and Atmospheric Research

1. Ballast Water Technology Demonstration Program Competitive Funding Announcement (Research, Development, Testing and Evaluation Facility)

Summary Description: NOAA and the U.S. Fish and Wildlife Service (FWS) solicit proposals to develop a Cooperative Agreement to establish a Research, Development, Testing and Evaluation (RDTE) facility in the Great Lakes that will support progress in the development of commercially viable ballast water treatment technologies. NOAA and FWS also solicit proposals to support planning activities which could lead to additional ballast water RDTE facilities in the future.

Funding Availability: Depending on FY 2006 appropriations, NOAA expects to make available up to \$950,000 in funds for one proposal that produces a multi-year cooperative agreement between Federal, State and private entities to create and operate a ballast water RDTE facility in the Great Lakes.

Depending on availability of funds and the number and quality of applications received, additional startup grants of up to \$50,000 each may be awarded to foster the future development of additional ballast water RDTE facilities. It is anticipated that eight or fewer startup grants may be awarded.

Statutory Authority: Statutory authority for this program is provided under 16 U.S.C. 4701 *et seq.*; 33 U.S.C. 1121-1131; 46 U.S.C. App 1211 (2000); 50 U.S.C. App 1744 (2000).

Catalog of Federal Domestic Assistance: 11.417, Sea Grant Support.

Application Deadline: Preliminary proposals must be received by the National Sea Grant Office by 4 p.m. EDT on Friday, September 23, 2005. Full proposals must be received by 4 p.m. EST on Friday, January 6, 2005.

Address for Submitting Proposals: Preliminary proposals must be submitted to the National Sea Grant Office, Attn: Mrs. Geraldine Taylor, SG-Ballast Water, 1315 East-West Highway, R/SG, Rm. 11732, Silver Spring, MD 20910. Telephone number for express mail applications is 301-713-2445. Full proposals should be submitted through [Grants.gov](http://www.grants.gov). For those applicants without Internet access, hard copy proposals may be sent to the above address.

Information Contact(s): For information on the competitive funding announcement, contact Dorn Carlson, NOAA National Sea Grant Office, 301-713-2435; via Internet at Dorn.Carlson@noaa.gov; or Pamela Thibodeaux, U.S. Fish and Wildlife

Service, 703-358-2493; via Internet at Pamela_Thibodeaux@fws.gov. Further background information can be obtained from the above information contacts, or on the Ballast Water Program Web site, <http://www.nsgo.seagrant.org/research/nonindigenous/ballast>.

Eligibility: Individuals, institutions of higher education, nonprofit organizations, commercial organizations, Federal, State, local and Indian tribal governments, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations are eligible. Only those who submit preliminary proposals by the deadline are eligible to submit full proposals.

Cost Sharing Requirements: Applications for RDTE facility cooperative agreements must include additional matching funds equal to at least 20% of the NOAA funds requested. Other federal funds and in-kind services are eligible to satisfy the match requirement. Applications for startup grants have no cost sharing requirement.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

2. NOAA Office of Ocean Exploration Announcement of Opportunity, FY 2006

Summary Description: The NOAA Office of Ocean Exploration (OE) is seeking pre-proposals and full proposals to support its mission to search, investigate, and document unknown and poorly known areas of the ocean and Great Lakes through interdisciplinary exploration, and to advance and disseminate knowledge of the ocean environment and its physical, chemical, biological, and historical resources. Successful OE proposals will be relatively high-risk, innovative and broad-based in terms of their approach and objectives. OE is soliciting proposals whose objectives fall within one of the following categories: General Exploration, Marine Archaeology, and Education.

Funding Availability: NOAA OE anticipates that approximately \$14,000,000, including ship and submersible costs, will be available through this announcement. Submissions focusing solely on technology development will not be accepted. Total funding estimates are: General Exploration \$13,000,000; Archaeology \$600,000; and Education \$400,000. Subsequent to this announcement, OE plans to publish another Announcement of Opportunity for a reduced amount of FY06 funds to enable the office to timely and

effectively respond to unforeseen opportunities or events occurring after the submission deadline below.

Statutory Authority: 33 U.S.C. 883d.
Catalog of Federal Domestic Assistance: 11.460, Special Oceanic and Atmospheric Projects.

Application Deadline: Pre-proposals are required for all categories and must be received by August 5, 2005. Full proposals are also required for all categories and must be received by October 3, 2005. No e-mail or facsimile pre-proposal or proposal submissions will be accepted.

Address for Submitting Proposals: Pre-proposals are required for all categories and must be submitted as a paper application to: ATTN: Proposal Manager, NOAA Office of Ocean Exploration, 1315 East-West Highway, SSMC3, 10th Floor, Silver Spring, MD 20910, 301-713-9444. For full proposals, applicants should apply online (<http://www.grants.gov/>) but paper submissions to the address above are acceptable if there is no Internet access available. No e-mail or facsimile pre-proposals will be accepted.

Information Contact(s): For further information contact the NOAA Office of Ocean Exploration at 301-713-9444 or submit inquiries via e-mail to the Frequently Asked Questions address: oar.oefaq@noaa.gov. E-mail inquiries should include the Principal Investigator's name in the subject heading.

Eligibility: Eligible applicants are institutions of higher education, other nonprofits, commercial organizations, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments. Applications from Federal agencies will be considered. Please Note: Before non-NOAA federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

Cost Sharing Requirements: Though cost-sharing is not required, it is encouraged.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." Applicants must contact their State's Single Point of Contact (SPOC) to find out about and comply with the State's process under EO 12372. The names and addresses of the SPOCs are listed in the Office of

Management and Budget's Web site: <http://www.whitehouse.gov/omb/grants/spoc.html>.

3. Ballast Water Technology Demonstration Program Competitive Funding Announcement (Treatment Technology Demonstration Projects)

Summary Description: NOAA, the U.S. Fish and Wildlife Service, and the U.S. Maritime Administration expect to entertain proposals to conduct ballast water treatment technology testing and demonstration projects. The Ballast Water Technology Demonstration Program supports projects to develop, test, and demonstrate technologies that treat ships' ballast water in order to reduce the threat of introduction of aquatic invasive species to U.S. waters through the discharge of ballast water.

Funding Availability: Depending on FY 2006 appropriations, NOAA and the U.S. Fish and Wildlife Service (FWS) expect to make available up to about \$2 million, and the U.S. Maritime Administration (MARAD) expects to make available several vessels for use as test platforms, to support ballast water treatment technology demonstration projects. The maximum amount of award will vary with the scale of the proposed project. Depending on the funding available and the number and quality of proposals received, approximately 8 grants with a median value of about \$200,000 are anticipated to be awarded.

Statutory Authority: Statutory Authority for this program is provided under 16 U.S.C. 4701 *et seq.*; 33 U.S.C. 1121-1131; 46 U.S.C. App 1211 (2000); 50 U.S.C. App 1744 (2000).

Catalog of Federal Domestic Assistance Number: 11.417, Sea Grant Support; 15.FFA Fish and Wildlife Management Assistance.

Application Deadline: Pre-proposals must be received by the National Sea Grant Office by 4 p.m. EDT on Friday, August 26, 2005. Full proposals must be received 4 p.m. EST on Friday, December 2, 2005.

Address for Submitting Proposals: Pre-proposals must be submitted to the National Sea Grant Office, Attn: Mrs. Geraldine Taylor, SG-Ballast Water, 1315 East-West Highway, R/SG, Rm 11732, Silver Spring, MD 20910. Telephone number for express mail applications is 301-713-2445. Full proposals should be submitted through Grants.gov. For those applicants without Internet access, hard copy proposals may be sent to the above address.

Information Contact(s): Dorn Carlson, NOAA National Sea Grant Office, 301-713-2435; via Internet at Dorn.Carlson@noaa.gov; or Pamela

Thibodeaux, U.S. Fish and Wildlife Service, 703-358-2493; via Internet at Pamela_Thibodeaux@fws.gov; or Carolyn Junemann, U.S. Maritime Administration, 202-366-1920; via Internet at Carolyn.Junemann@marad.dot.gov. Further background information can be obtained from the above information contacts, or on the Ballast Water Program Web site, <http://www.nsgo.seagrant.org/research/nonindigenous/ballast>.

Eligibility: Individuals, institutions of higher education, nonprofit organizations, commercial organizations, Federal, State, local and Indian tribal governments, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations are eligible. Only those who submit pre-proposals by the deadline are eligible to submit full proposals.

Cost Sharing Requirements: None.

Intergovernmental Review:

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." NOAA Fellowship, Scholarship and Internship Programs.

National Ocean Service

1. Dr. Nancy Foster Scholarship Program; Financial Assistance for Graduate Students

Summary Description: The National Oceanic and Atmospheric Administration (NOAA) is announcing Funding Availability for graduate students pursuing masters or doctoral level degrees in oceanography, marine biology, or maritime archaeology through the Dr. Nancy Foster Scholarship Program and is inviting applications for such scholarships. Approximately \$160,000 will be available through this announcement for fiscal year 2006. It is expected that approximately five awards will be made, depending on the availability of funds. The intent of this program is to recognize outstanding scholarship and encourage independent graduate level research in the above mentioned fields.

Statutory Authority: 16 U.S.C. 1445c-1.

CFDA: 11.429 National Marine Sanctuary Program.

Application Deadline: Applications must be received between February 13, 2006 and April 18, 2006 no later than 5 p.m. eastern daylight time. Applications received before February 13 or after April 18 will be returned.

Address for Submitting Proposals: Applications should be submitted via grants.gov. Applicants who do not have

access to the Internet should send paper applications, or any part thereof, to the Dr. Nancy Foster Scholarship Program, Attention: Office of the Assistant Administrator, 13th Floor, National Ocean Service, 1305 East-West Highway, Silver Spring, MD 20910.

Information Contact(s): Send your request for information to the Program Manager at the address shown above, by telephone (301) 713-3074, or by Internet to <http://fosterscholars.noaa.gov>.

Eligibility: Only individuals who are United States citizens currently pursuing or accepted to pursue a masters or doctoral level degree in oceanography, marine biology, or maritime archaeology, including the curation, preservation, and display of maritime artifacts, are eligible for an award under this scholarship program. Universities or other organizations may not apply on behalf of an individual. Prospective scholars do not need to be enrolled, but must be admitted to a graduate level program in order to apply for this scholarship. Recipients of scholarship awards may be employed at the time of the award if it is a requirement of their degree program or directly related to their research effort. Other forms of employment will not be allowed and scholars will be required to submit a letter certifying that they are in compliance with this requirement. Eligibility must be maintained for each succeeding year of support and annual reporting requirements, to be specified at a later date, will apply.

Cost Sharing Requirements: None.

Intergovernmental Review:

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs".

2. National Estuarine Research Reserve (NERR) Graduate Research Fellowship Program (GRF)

Summary Description: The Estuarine Reserves Division of NOAA is soliciting applications for graduate fellowship funding within the National Estuarine Research Reserve System. The Estuarine Reserves Division anticipates that 26 Graduate Research Fellowships will be competitively awarded to qualified graduate students whose research occurs within the boundaries of at least one reserve. The National Estuarine Research Reserve Graduate Research Fellowship program is designed to fund high quality research focused on enhancing coastal zone management while providing students with an opportunity to contribute to the research or monitoring program at a particular reserve site. Students are required to work with the research coordinator or

reserve manager to develop a plan to participate in the research or monitoring program for up to 15 hours per week. These management-related research projects will enhance scientific understanding of the Reserve ecosystem, provide information needed by Reserve management and coastal management decision-makers, and improve public awareness and understanding of estuarine ecosystems and estuarine management issues. Research projects must address one of the following scientific areas of support: non-point source pollution, biodiversity, invasive species, habitat restoration, sustaining resources in estuarine ecosystems, and socioeconomic research applicable to estuarine ecosystem management.

Funding Availability: The amount of the fellowship is anticipated to be \$20,000; at least 30% of total project cost match is required by the applicant (*i.e.*, \$8,572 match for \$20,000 in federal funds for a total project cost of \$28,572). Applicants may apply for one to three years of funding.

Statutory Authority: 16 U.S.C. 1461(e)(1)(B).

CFDA: 11.420 Coastal Zone Management.

Application Deadline: Applicants are strongly encouraged to submit all materials through <http://www.Grants.gov> no later than 11 p.m. (EST) on November 1, 2005. Proposals will be blocked from submission through this online system after 11 p.m. (EST) on November 1, 2005. If Internet access is unavailable, paper applications should be postmarked or received by NOAA no later than 11 (EST) on November 1, 2005. Paper applications should be sent to: Susan White, Program Coordinator at NOAA/Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, SSMC4, Station 10500, Silver Spring, MD 20910.

Information Contact: Susan White, NOAA's Estuarine Reserves Division; 1305 East-West Highway; SSMC4, Station 10500, N/ORM5; Silver Spring, MD 20912, or by phone at 301-713-3155 extension 224, or fax to 301-713-4363, e-mail at susan.white@noaa.gov or <http://www.nerrs.noaa.gov/fellowship>. If Dr. White is unavailable, please contact Erica Seiden at 301-713-3155 ext. 172 or via e-mail at erica.seiden@noaa.gov.

Eligibility: Institutions eligible to receive awards include institutions of higher education, other non-profits, commercial organizations, state, and local governments. Minority students are encouraged to apply to eligible institutions.

Cost Sharing Requirements: Requested federal funds must be matched by at least 30 percent of the

total cost of the project, not a portion of only the federal share, (e.g. \$8,572 match for \$20,000 in federal funds for a total project cost of \$28,572).

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Oceans and Atmospheric Research

1. GradFell 2006 NMFS/Sea Grant Joint Graduate Fellowship Program in Marine Resource Economics

Summary Description: The National Sea Grant College Program (Sea Grant) within OAR is seeking applications for one of its fellowship programs to fulfill its broad educational responsibilities and to strengthen the collaboration between Sea Grant and NMFS. Fellows will work on thesis problems of public interest and relevance to NMFS under the guidance of NMFS mentors.

Funding Availability: The NMFS/Sea Grant Joint Graduate Fellowship Program in Marine Resource Economics expects to support at least two new Fellows for 2 years beginning in FY 2006. The award for each fellowship will be a cooperative agreement of \$38,000 per year, with an anticipated start date of June 1, 2006.

Statutory Authority: 33 U.S.C. 1127(a).

Catalog of Federal Domestic Assistance Number: 11.417, Sea Grant Support.

Application Deadline: Applications must be received by 4 p.m. (local time) on February 10, 2006, by a state Sea Grant Program [or by the National Sea Grant Office (NSGO) if the application is from an institution of higher education in a non-Sea Grant state]. Applications received by a state Sea Grant program are to be forwarded, unchanged, to the NSGO and received no later than 4 p.m. EST on February 17, 2006. For applications submitted through Grants.gov, a date and time receipt indication is included and will be the basis of determining timeliness. Hard copy proposals will be date and time stamped when they are received in the program office. Hard copy applications arriving after the closing dates given above will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery prior to the specified closing date and time; in any event, hard copy applications received by the NSGO later than two business days following the closing date will not be accepted.

Address for Submitting Applications: Applications from Sea Grant programs should be submitted through <http://www.Grants.gov>, unless an applicant does not have Internet access. In that case, paper applications may be submitted to the NSGO at the following address: National Sea Grant Office, R/SG, Attn: Fellowship Program Manager, Room 11718, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (Telephone number for express mail applications is 301-713-2431). Facsimile transmissions and electronic mail submission of applications will not be accepted.

Information Contact: National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 713-2431; any state Sea Grant Program; or any participating NMFS facility.

Eligibility: Prospective Fellows must be United States citizens. At the time of application, prospective Marine Resource Economics Fellows must be in the process of completing at least two years of course work in a PhD. degree program in marine resource economics, natural resource economics, or environmental economics at an institution of higher education in the United States or its territories. Applications must be submitted by the institution of higher education, which may be any such institution in the United States or its territories.

Cost Sharing Requirements: Required 50 percent match of the NSGO funds by the academic institution (i.e., \$6,333).

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

2. Dean John A. Knauss, Marine Policy Fellowship (Knauss Fellowship Program)

Summary Description: The Dean John A. Knauss Marine Policy Fellowship matches graduate students who have an interest in ocean, coastal and Great Lakes resources and in the national policy decisions affecting these resources with hosts in the legislative and executive branches of government for a one year paid fellowship.

Funding Availability: Not less than 30 applicants will be selected, of which the selected applicants assigned to the Congress will be limited to 10. The overall cooperative agreement is \$41,500 per student.

Statutory Authority: 33 U.S.C. 1127(b).

Catalog of Federal Domestic Assistance Number: 11.417, Sea Grant Support.

Application Deadline: Eligible graduate students must submit applications to state Sea Grant college programs, whose deadlines vary (contact individual states for due dates). Selected applications from the sponsoring Sea Grant program are to be received in the National Sea Grant Office no later than 5 p.m. eastern time on April 6, 2006. Hard copy applications that arrive after the closing date will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery prior to the specified closing date and time; in any event, hard copy applications received by the NSGO later than two business days following the closing date will not be accepted.

Address for Submitting Proposals: Applications from Sea Grant programs should be submitted through <http://www.Grants.gov>, unless an applicant does not have Internet access. In that case, hard copy may be submitted to the NSGO and should be addressed to: National Sea Grant Office, R/SG, Attn: Knauss Program Manager, Room 11718, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (telephone number for express mail applications is 301-713-2431). Facsimile transmissions and electronic mail submission of applications will not be accepted.

Information Contact: National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 713-2431 ext. 124; or any state Sea Grant Program.

Eligibility: Any student, regardless of citizenship, who, on April 6, 2006, is in a graduate or professional program in a marine or aquatic-related field at a United States accredited institution of higher education in the United States may apply.

Cost Sharing Requirements: There will be the one-third required cost share for those applicants selected as legislative fellows.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

3. Sea Grant—Industry Fellowship Program

Summary Description: The Sea Grant—Industry Fellowship is available to graduate students enrolled in either MS or PhD degree programs in institutions of higher education in the United States and its territories, with required matching funds from private industrial sponsors. Industry Fellows will work on research and development projects on topics of interest to a

particular industry/company. In a true partnership, the student, the faculty advisor, the Sea Grant College or institute, and the industry representative will work together, sharing research facilities and the cost of the activity.

Funding Availability: Sea Grant anticipates supporting up to five new Industry Fellows. The award is in the form of a grant of up to \$30,000 per year with an anticipated start date of June 1, 2006.

Statutory Authority: 33 U.S.C. 1127(a).

Federal Domestic Assistance Number: 11.417, Sea Grant Support.

Application Deadline: Applications must be received by 4 p.m. (local time) on February 10, 2006, by a state Sea Grant Program [or by the National Sea Grant Office (NSGO) in the case of an institution of higher education in a non-Sea Grant state]. Applications are to be forwarded, unchanged, to the NSGO by the state Sea Grant Programs and received by midnight (EDT) on February 17, 2006. For applications submitted through Grants.gov, a date and time receipt indication is included and will be the basis of determining timeliness. Hard copy proposals will be date and time stamped when they are received in the program office. Hard copy applications arriving after the closing dates given above will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery prior to the specified closing date and time; in any event, hard copy applications received by the NSGO later than two business days following the closing date will not be accepted.

Address for Submitting Proposals: Applications from Sea Grant programs should be submitted through <http://www.Grants.gov>, unless an applicant does not have Internet access. In that case, a paper application may be submitted to the NSGO at the following address: National Sea Grant Office, R/SG, Attn: Dr. Nikola Garber, Knauss Program Manager, Room 11718, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (telephone number for express mail applications is 301-713-2431). Facsimile transmissions and electronic mail submission of applications will not be accepted.

Information Contact: Dr. Nikola Garber, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 713-2431 ext. 124; e-mail: nikola.garber@noaa.gov; or any state Sea Grant Program.

Eligibility: At the time of application, any prospective student, regardless of citizenship, must be admitted to a MS or PhD degree program at an institution of higher education in the United States or its territories, or submit a signed letter from the institution indicating provisional acceptance to a MS or PhD degree program conditional on obtaining financial support such as this fellowship. Applications must be submitted by the institution of higher education.

Cost Sharing Requirements: Required 50 percent match of the Federal funds by the industrial partner.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

4. GradFell 2006 NMFS/Sea Grant Joint Graduate Fellowship Program in Population Dynamics

Summary Description: The National Sea Grant College Program (Sea Grant) within OAR is seeking applications for one of its fellowship programs to fulfill its broad educational responsibilities and to strengthen the collaboration between Sea Grant and NMFS. Fellows will work on thesis problems of public interest and relevance to NMFS under the guidance of NMFS mentors.

Funding Availability: The NMFS—Sea Grant Joint Graduate Fellowship Program in Population Dynamics expects to support at least two new Fellows for 3 years beginning in FY 2006. The award for each fellowship will be a cooperative agreement of \$38,000 per year, with an anticipated start date of June 1, 2006.

Statutory Authority: 33 U.S.C. 1127(a).

Catalog of Federal Domestic Assistance Number: 11.417, Sea Grant Support.

Application Deadline: Applications must be received by 4 p.m. (local time) on February 10, 2006, by a state Sea Grant Program [or by the National Sea Grant Office (NSGO) in the case of an institution of higher education in a non-Sea Grant state]. Applications received by the state Sea Grant Programs are to be forwarded, unchanged, to the NSGO and received by 4 p.m. eastern time on February 17, 2006. For applications submitted through Grants.gov, a date and time receipt indication is included and will be the basis of determining timeliness. Hard copy proposals will be date and time stamped when they are received in the program office. Hard copy applications arriving after the closing dates given above will be accepted for review only if the applicant

can document that the application was provided to a delivery service that guaranteed delivery prior to the specified closing date and time; in any event, hard copy applications received by the NSGO later than two business days following the closing date will not be accepted.

Address for Submitting Proposals: Applications from Sea Grant programs should be submitted through <http://www.Grants.gov>, unless an applicant does not have Internet access. In that case, hard copy may be submitted to the NSGO and should be addressed to: National Sea Grant Office, R/SG, Attn: Fellowship Program Manager, Room 11718, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (telephone number for express mail applications is 301-713-2431). Facsimile transmissions and electronic mail submission of applications will not be accepted.

Information Contact: National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 713-2431; any state Sea Grant Program; or any participating NMFS facility.

Eligibility: Prospective Fellows must be United States citizens. At the time of application, prospective Population Dynamics Fellows must be admitted to a PhD degree program in population dynamics or a related field such as applied mathematics, statistics, or quantitative ecology at an institution of higher education in the United States or its territories, or submit a signed letter from the institution indicating provisional acceptance to a PhD degree program conditional on obtaining financial support such as this fellowship. Applications must be submitted by the institution of higher education, which may be any such institution in the United States or its territories.

Cost Sharing Requirements: Required 50 percent match of the NSGO funds by the academic institution (*i.e.*, \$6,333).

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Limitation of Liability

Funding for programs listed in this notice is contingent upon the availability of Fiscal Year 2005 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for the programs listed in this notice. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of

other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Universal Identifier

Applicants should be aware that, they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 **Federal Register**, Vol. 67, No. 210, pp. 66177B66178 for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1-866-705-5711 or via the Internet (<http://www.dunandbradstreet.com>).

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: <http://www.nepa.noaa.gov/>, including our NOAA Administrative Order 216-6 for NEPA, <http://www.nepa.noaa.gov/NAO216-6-TOC.pdf>, and the Council on Environmental Quality implementation regulations, http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a

special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389), are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF-LLL, and CD-346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348-0043, 0348-0044, 0348-0040, 0348-0046, and 0605-0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: June 27, 2005.

Helen Hurcombe,

*Director Acquisition and Grants Office,
National Oceanic and Atmospheric Administration.*

[FR Doc. 05-12927 Filed 6-29-05; 8:45 am]

BILLING CODE 3510-12-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062405A]

NOAA Recreational Fisheries Action Team Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: NMFS is hosting a public meeting in July 2005, in Santa Ana, California. The purpose of the meeting is to identify programs and projects to be implemented as part of the NOAA Recreational Fisheries Strategic Plan 2005-2010, and to gather input from the public.

DATES: The meeting will be held on Wednesday, July 13, and Thursday, July 14, 2005. Wednesday's meeting is scheduled to start at 10 a.m. and end at 6 p.m. Pacific standard time (P.s.t.). Thursday's meeting is scheduled to start at 8:30 a.m. and end at 3:30 p.m. P.s.t.

ADDRESSES: The meeting will be held at the Holiday Inn Orange County Airport, 2726 South Grand Ave., Santa Ana, CA 92705; phone: (714) 481-6300.

Copies of the NOAA Recreational Fisheries Strategic Plan are available on the Internet at: <http://www.nmfs.noaa.gov/ocs/recfish/getinvolved.htm>, or can be obtained by contacting Marty Golden (see **FOR FURTHER INFORMATION CONTACT**).

Directions: The reference point for these directions is the John Wayne (Orange County) Airport. Exit the airport to Macarthur Blvd., North bound - go about 1½ miles.

Take Costa Mesa Fwy. (Hwy 55) North - go about ¾ of a mile.

Take first exit, Dyer Road - go West (Left), under the Fwy.

Take first right on South Grand Ave. and travel half a block to the hotel.

The reference point for these directions is the San Diego Fwy. (I-405). Exit to the Costa Mesa Fwy. (Hwy 55) North - go about 1½ miles. Exit to Dyer Road - go West (Left), under the Fwy.

Take first right on South Grand Ave. and travel half a block to the hotel.

The reference point for these directions is the Costa Mesa Fwy. (Hwy 55) South bound.

Exit at South Grand Ave (Exit 8B).

Take a left at the end of the exit ramp onto South Grand Ave. and travel half a block to the hotel.

FOR FURTHER INFORMATION CONTACT: Marty Golden, Pacific Recreational

Fisheries Coordinator Staff; phone (562) 980-4004.

SUPPLEMENTARY INFORMATION:

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michael Kelly at (301) 713-9504 at least 5 days prior to the meeting date.

Dated: June 24, 2005.

Michael Kelly

Division Chief, Office of Constituent Services, National Marine Fisheries Service.

[FR Doc. 05-12934 Filed 6-29-05; 8:45 am]

BILLING CODE 3510-22-S

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Change to the Agenda of a Previously Announced Open Meeting (Atlanta, GA); Correction

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice.

SUMMARY: The Defense Base Closure and Realignment Commission published a document in the **Federal Register** of June 21, 2005, concerning an open meeting to receive comments from the Department of Homeland Security and the Governors and Adjutants General of various states on base realignment and closure actions recommended by the Department of Defense (DoD) that have an impact on the Department of Homeland Security and the militia of the various states. The agenda for the meeting has changed. The Adjutants General Association of the United States, rather than the National Governors' Association, will present comments on base realignment and closure actions recommended by the Department of Defense (DoD) that have an impact on the militia of the various states.

The delay of this change notice resulted from a recent change to the agenda and the short time-frame established by statute for the operations of the Defense Base Closure and Realignment Commission. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, <http://www.brac.gov>, for updates.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, <http://www.brac.gov>. The

Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street Suite 600, Arlington, Virginia 22202-3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703-699-2950 or 2708.

Correction

In the **Federal Register** of June 21, 2005, in FR Doc. 05-12084, on page 35642, in the first and second columns, correct the "Summary" caption to read:

SUMMARY: Notice is hereby given that a delegation of Commissioners of the Defense Base Closure and Realignment Commission will hold an open meeting on June 30, 2005 from 1:30 p.m. to 5:30 p.m. at the Georgia Tech Hotel and Conference Center, 800 Spring Street Northwest, Atlanta, Georgia 30308. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, <http://www.brac.gov>, for updates.

The Commission delegation will meet to receive comment from the Department of Homeland Security and the Adjutants General of various states on base realignment and closure actions recommended by the Department of Defense (DoD) that have an impact on the Department of Homeland Security and the militia of the various states. The purpose of this open meeting is to allow the Department of Homeland Security and representative Adjutants General, selected by the Adjutants General Association of the United States, an opportunity to voice their concerns, counter-arguments, and opinions in a live public forum. This meeting will be open to the public, subject to the availability of space. Sign language interpretation will be provided. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

Dated: June 27, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05-13002 Filed 6-28-05; 11:50 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities—Model Demonstration Centers on Progress Monitoring; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.326M.

DATES: Applications Available: June 30, 2005.

Deadline for Transmittal of Applications: August 8, 2005.

Deadline for Intergovernmental Review: August 24, 2005.

Eligible Applicants: Institutions of higher education (IHEs).

Estimated Available Funds: \$1,200,000.

Estimated Average Size of Awards: \$400,000.

Maximum Award: The Secretary does not intend to fund an application that proposes a budget exceeding \$400,000 for a single budget period of 12 months.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months. We will consider 48 months if a compelling case is made for extending the project.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to promote academic achievement and improve results for children with disabilities by supporting technical assistance, model demonstration projects, dissemination of useful information, and implementation activities that are supported by scientifically based research.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 663 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2005 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities—Model Demonstration Centers on Progress Monitoring

Background

Progress monitoring offers an economical and efficient strategy for measuring student performance and growth and, consistent with the No Child Left Behind Act and IDEA, for improving the achievement of children with disabilities. For school-age children, progress monitoring includes the establishment of academic goals for all students in a classroom, the determination of methods for measuring progress towards these goals, and reports of progress that are easily understood by educators, parents, and students. Data obtained through frequent progress monitoring indicate whether students' academic performance has improved as compared to their previous performance and the performance of their peers. The data also indicate whether instructional changes are needed on a class-wide or individual student basis.

Research indicates the positive impact that progress monitoring has on performance. Fuchs, Fuchs, and Hamlett (1993) found that teachers who use a type of progress monitoring called Curriculum-Based Measurement (CBM) plan more effective instruction. In addition, CBM enables students to feel more responsible for their learning and be more aware of their academic performance (Davis, Fuchs, Fuchs, & Whinnery, 1995). Finally, students whose teachers use CBM for modifying instruction have higher levels of achievement than students whose teachers do not implement CBM (Fuchs, Butterworth, & Fuchs, 1989).

Progress monitoring is also a critical component of Response to Intervention (RTI) models, which can be used in identifying children with learning disabilities (LD). This use of progress monitoring provides information to determine if a child is responding to class-wide instruction or, if not, to remedial interventions. Children who do not respond sufficiently to high quality class-wide instruction or evidence based remedial interventions may be considered for special education services as children with specific learning disabilities. Progress monitoring as a component of RTI may provide for earlier identification of children with learning disabilities than using the traditional discrepancy model for identification of children with learning disabilities. Earlier identification may, in turn, result in

reduction of special education services needed or the intensity of services required throughout a child's school years. Progress monitoring, along with early intervening services, can even reduce the likelihood that a child will need special education services.

Progress monitoring can also be used to build effective individualized education programs (IEPs). It provides a way to document clear, meaningful, and measurable IEP goals and the methods used for measuring progress; and provides for periodic reports indicating a child's progress towards meeting these individual goals. Research indicates that, when progress monitoring is used in determining and measuring IEP goals, school-age students with disabilities have improved academic outcomes (*e.g.*, Fuchs, Fuchs, Hamlett, & Allinder, 1991; Fuchs, Fuchs, Hamlett, & Ferguson, 1992).

Given the growing body of evidence around the importance of school readiness skills and intervening early, progress monitoring for preschool-age children is emerging as an appropriate focus for research. The recognition of the preschool years as a critical period in developing the skills needed for later school success is evident in recent reports from the National Research Council (Eager to Learn, 2001; From Neurons to Neighborhoods, 2002; and Preventing Reading Difficulties in Young Children, 1998). Several recent Federal initiatives (*e.g.*, Early Reading First; Good Start Grow Smart; White House Summit on Early Childhood Cognitive Development in 2001) have highlighted the need for research-based practices and models that promote the development of school readiness skills. For preschool-age children, progress monitoring would involve a process targeting readiness goals: establishing readiness goals for all children in a classroom, determining the method for measuring progress towards these goals, and reporting data outcomes in a way that is easily understood by educators, parents, and children.

Thus far, most progress monitoring research and assessment development have occurred within the content areas of language and reading development and readiness. In addition, grantees under Early Reading First and Reading First have experimented with the use of progress monitoring strategies for improving reading-related outcomes, including reading readiness skills under Early Reading First. Research is also being conducted on progress monitoring as a component of RTI models for identifying children with learning disabilities. With the emergence of progress monitoring research that

focuses on reading skills for elementary-age children and reading readiness skills for preschool-age children (three through five year olds), there is a clear need for the development of models that connect the two areas of research—the early elementary research and the emerging preschool research. A seamless progress monitoring system would allow educators to track systematically students' performance and progress as students move from one skill to the next, one year to the next, one curriculum to the next, and one setting to the next (Espin & Wallace, 2005). By connecting progress monitoring models from the preschool years to elementary school, readiness skills can be monitored more closely. More importantly, the progress of children who struggle in meeting readiness goals can be monitored from preschool into elementary and the interventions and strategies that are found to be successful for these children can be carried over into the early elementary years, ensuring that they continue to be successful, despite the change in grade, school, teacher, curriculum, etc. In addition, this progress monitoring research must be integrated within everyday practice in order to assess whether it is useful, effective, and applicable within typical early childhood and elementary school settings.

Priority

The purpose of this priority is to support three (3) centers to develop models that incorporate scientifically based research related to progress monitoring and that: (1) Use class-wide progress monitoring systems for all students, preschool (age three and above) through grade four, in regular and special education classrooms for instructional decision making; (2) use progress monitoring for accountability in special education, for example, by measuring a child's progress on achieving IFSP or IEP goals; and (3) use progress monitoring as a component of a RTI model for identifying children with learning disabilities. These progress monitoring models must apply and test research findings in typical settings where children with disabilities receive services to determine their usefulness, effectiveness, and general applicability to these typical settings. To meet this priority, the Centers must design and implement progress monitoring models that (i) focus on reading, language development, and readiness skills; (ii) include frequent instructional modifications and responses to intervention and pre-referral strategies; (iii) implement

methods for measuring progress toward IFSP or IEP goals and reporting this progress to parents and (iv) implement methods for using RTI as a component of identification of children with learning disabilities. OSEP will award, through a contract, a separate center that will coordinate implementation and the determination of the effectiveness of the models. This Model Demonstration Coordination Center (MDCC) will develop a data coordination plan and cross site data collection instruments, generate common evaluation questions, synthesize and analyze data collection, monitor fidelity of implementation, ensure reliability of data, and foster dissemination of information.

Each Center must establish at least one model in at least three sites. A site must consist of an elementary school plus at least one preschool setting that feeds into the elementary school (e.g., Head Start, pre-K, early childhood special education).

In order to be considered for funding under this priority, an IHE must demonstrate that it has proven expertise in progress monitoring research, assessment development, or implementation. In addition, the IHE must establish a partnership with a Local Education Agency (LEA). This partnership will facilitate the implementation of scientifically-based models in typical early childhood and elementary settings and increase the likelihood that school personnel will sustain the models.

The start date for the projects funded under this competition is January 1, 2006. A meeting of all Centers as well as the MDCC will be held one month after the awards are made. The purposes of this meeting are to review and, as necessary, modify proposals and discuss collaboration among the Centers and the MDCC. Models will not be implemented during a planning and organizational period, which shall extend for a seven to nine month period after the awards are made.

An applicant for this competition must describe, in its application, the sites where models will be implemented and the methods used to recruit and select these sites.

To meet the requirements of this priority, each Center, at a minimum, must—

(a) Implement a model and a data collection plan that address both class-wide and individual child progress as well as outcomes in terms of multiple measures, including, but not limited to: State achievement assessments, norm-referenced assessments, and curriculum-based measures that are

standardized and have alternate forms of equivalent difficulty;

(b) Provide and document initial and continuing professional development to administrators, regular educators, and special educators on the use of progress monitoring and its use in special and regular education settings to: improve readiness and academic outcomes for all children, promote instructional change, and develop IEPs;

(c) Collect data related to the fidelity of the implementation of the model and describe the methods of fidelity evaluation, as well as how these methods relate to continuing professional development and feedback provided to teachers and administrators;

(d) Identify methods for effectively reporting child progress to parents and for increasing communication and collaboration among parents and school/center staff;

(e) Collaborate with the other funded Centers under this priority and the MDCC in order to determine a plan for evaluating the impact of these models on children's readiness and academic progress and outcomes;

(f) Develop regular communication with OSEP's National Student Progress Monitoring Center to share information regarding topics such as successful strategies and less successful approaches for implementing progress monitoring in school and early childhood settings;

(g) Develop regular communication with the Research Institute on Progress Monitoring, the National Center on Learning Disabilities, and the Interagency School Readiness Consortium so that information regarding topics such as measurement and the use of progress monitoring as it relates to response to intervention may be exchanged;

(h) Develop and apply strategies for the dissemination of information to specific audiences, including teachers, families, administrators, policymakers, and researchers. Such strategies must involve collaboration with other technical assistance providers, organizations, and researchers;

(i) Prior to developing any new product, whether paper or electronic, submit for approval a proposal describing the content and purpose of the product to a project officer to be designated by OSEP and the document review board of OSEP's Dissemination Center;

(j) Budget for a two-day Project Directors' meeting in Washington, DC during each year of the project; and

(k) Maintain a Web site that includes relevant information and documents in a format that meets a government or

industry-recognized standard for accessibility.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on a proposed priority. However, section 681(d) of IDEA makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1463 and 1481(d).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: \$1,200,000.

Estimated Average Size of Awards: \$400,000.

Maximum Award: The Secretary does not intend to fund an application that proposes a budget exceeding \$400,000 for a single budget period of 12 months.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months. We will consider 48 months if a compelling case is made for extending the project.

III. Eligibility Information

1. *Eligible Applicants:* IHEs.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements—* (a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of the IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of the IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD

20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: <http://www.ed.gov/pubs/edpubs.html> or you may contact ED Pubs at its e-mail address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.326M.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. Content and Form of Application Submission: Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides;
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs; and
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. Submission Dates and Times:
Applications Available: June 30, 2005.

Deadline for Transmittal of Applications: August 15, 2005.

Applications for grants under this competition may be submitted electronically using the Grants.gov

Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: August 24, 2005.

4. Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. Funding Restrictions: We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. Other Submission Requirements: Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications.

We have been accepting applications electronically through the Department’s e-Application system since FY 2000. In order to expand on those efforts and comply with the President’s Management Agenda, we are continuing to participate as a partner in the new government-wide Grants.gov Apply site in FY 2005. Model Demonstration Centers on Progress Monitoring—CFDA Number 84.326M is one of the competitions included in this project.

If you choose to submit your application electronically, you must use the Grants.gov Apply site (Grants.gov). Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us. We request your participation in Grants.gov.

You may access the electronic grant application for the Model Demonstration Centers on Progress Monitoring—CFDA Number 84.326M competition at: <http://www.grants.gov>. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number’s alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about

submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted with a date/time received by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. We will not consider your application if it was received by the Grants.gov system later than 4:30 p.m. on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was submitted after 4:30 p.m. on the application deadline date.

- If you experience technical difficulties on the application deadline date and are unable to meet the 4:30 p.m., Washington, DC time, deadline, print out your application and follow the instructions in this notice for the submission of paper applications by mail or hand delivery.

- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that your application is submitted timely to the Grants.gov system.

- To use Grants.gov, you, as the applicant, must have a D-U-N-S Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five business days to complete the CCR registration.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Any narrative sections of your application must be attached as files in a .DOC (document), .RTF (rich text) or .PDF (portable document) format.

- Your electronic application must comply with any page limit requirements described in this notice.

- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

b. Submission of Paper Applications by Mail.

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.326M),
400 Maryland Avenue, SW.,
Washington, DC 20202-4260;
or

By mail through a commercial carrier:

U.S. Department of Education,
Application Control Center—Stop
4260, Attention: (CFDA Number
84.326M), 7100 Old Landover Road,
Landover, MD 20785-1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark;

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

(3) A dated shipping label, invoice, or receipt from a commercial carrier; or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark; or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery.

If you submit your application in paper format by hand delivery, you (or

a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.326M), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application; and

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial

information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing measures that will yield information on various aspects of the quality of the Technical Assistance to Improve Services and Results for Children with Disabilities program. The measures will focus on: The extent to which projects provide high quality products and services; the relevance of project products and services to educational and early intervention policy and practice; and the use of products and services to improve educational and early intervention policy and practice.

Once the measures are developed, we will notify grantees if they will be required to provide any information related to these measures.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Grace Duran, U.S. Department of Education, 400 Maryland Avenue, SW., room 4088, Potomac Center Plaza, Washington, DC 20202-2600. Telephone: (202) 245-7328.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202-2550. Telephone: (202) 245-7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free of charge at this site. If you have questions about using PDF, call the U.S.

Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: June 24, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05-12949 Filed 6-29-05; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Assistive Technology Act of 1998, as Amended—Assistive Technology Alternative Financing Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.224C.

DATES: Applications Available: June 30, 2005.

Deadline for Transmittal of Applications: August 1, 2005.

Deadline for Intergovernmental Review: September 28, 2005.

Eligible Applicants: States that received grants under section 101 of the Assistive Technology Act of 1998 as in effect on the day before the date of enactment of the Assistive Technology Act of 2004 (old AT Act).

Estimated Available Funds: \$3,900,000.

Estimated Range of Awards: \$100,000 to \$3,900,000.

Estimated Average Size of Awards: \$1,000,000.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Assistive Technology Act of 1998, as amended (AT Act), authorizes support for activities that increase the availability of, funding for, access to, provision of, and training about assistive technology (AT) devices and AT services. Under section 4(e)(2) of the AT Act, the Secretary is authorized to provide support for States to develop, support, expand, or administer alternative

financing programs (AFPs) to allow individuals with disabilities and their family members, guardians, advocates, and authorized representatives to purchase AT devices and services. For FY 2005, section 4(b)(2)(D) of the AT Act allows the Rehabilitation Services Administration (RSA) to award grants to States or outlying areas on a competitive basis for periods of one year in accordance with the requirements of title III of the old AT Act, as modified by the FY 2005 appropriations bill, to pay for the Federal share—not more than 75 percent—of the cost of AFPs featuring one or more alternative financing mechanisms.

Priorities: We are establishing these priorities for the FY 2005 grant competition only, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA).

Absolute Priority: For FY 2005 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Assistive Technology Alternative Financing Program

Under section 301(b) of the old AT Act, a State must establish or expand one or more of the following types of AFPs:

- (1) A low-interest loan fund.
- (2) An interest buy-down program.
- (3) A revolving loan fund.
- (4) A loan guarantee or insurance program.
- (5) A program operated by a partnership among private entities for the purchase, lease, or other acquisition of AT devices or AT services.
- (6) Another mechanism that meets the requirements of title III of the old AT Act and is approved by the Secretary.

The AFPs are designed to allow individuals with disabilities and their family members, guardians, advocates, and authorized representatives to purchase AT devices or services. If family members, guardians, advocates, and authorized representatives (including employers who have been designated by an individual with a disability as an authorized representative) receive AFP support to purchase AT devices or services, the purchase must be on behalf of an individual with a disability, i.e., the AT device or service that is purchased must be solely for the benefit of that individual.

An applicant must identify the type or types of AFP to be supported by the grant and must submit the following assurances:

- (1) *Nature of the Match:* An assurance that the State will provide the non-

Federal share (not less than 25 percent) of the cost of the AFP in cash, from State, local, or private sources (sections 301(d) and 303(b)(1) of the old AT Act, as modified by the 2005 appropriations bill). An applicant must identify the amount of Federal funds the State is requesting, the amount of cash that the State will provide as a match, and the source of the cash.

(2) *Permanent Separate Account:* An assurance that the State will ensure that—

(a) All funds that support the AFP, including funds repaid during the life of the program, will be placed in a permanent separate account and identified and accounted for separately from any other fund;

(b) If the organization administering the program invests funds within this account, the organization will invest the funds in low-risk securities in which a regulated insurance company may invest under the law of the State; and

(c) The organization will administer the funds with the same judgment and care that a person of prudence, discretion, and intelligence would exercise in the management of the financial affairs of that person (section 303(b)(5) of the old AT Act).

During the first 12-month budget period, a grantee must deposit its matching funds and its Federal award funds in the permanent and separate account.

(3) *Permanence of the Program:* An assurance that the AFP will continue on a permanent basis (section 303(b)(2) of the old AT Act).

A State's obligation to implement the AFP consistent with all of the requirements, including reporting requirements, continues until there are no longer any funds available to operate the AFP and all outstanding loans have been repaid. If a State decides to terminate its AFP while there are still funds available to operate the program, the State must return the Federal share of the funds remaining in the permanent separate account to RSA (e.g., 75 percent if the original State to Federal match was 1 to 3) except for funds being used for grant purposes, such as loan guarantees for outstanding loans. However, before closing out its grant, the State also must return the Federal share of any principal and interest remitted to it on outstanding loans and any other funds remaining in the permanent separate account, such as funds being used as loan guarantees for those loans.

(4) *Consumer Choice and Control:* An assurance that, and information describing the manner in which, the AFP will expand and emphasize

consumer choice and control (section 303(b)(3) of the old AT Act).

(5) *Supplement Not Supplant*: An assurance that the funds made available through the grant to support the AFP will be used to supplement and not supplant other Federal, State, and local public funds expended to provide alternative financing mechanisms (section 303(b)(4) of the old AT Act).

(6) *Contract With a Community-Based Organization*: An assurance that the State will enter into a contract with a community-based organization (CBO) (including a group of CBOs) that has individuals with disabilities involved in organizational decisionmaking at all organizational levels, to administer the AFP. The contract must—

(a) Include a provision requiring that the program funds, including the Federal and non-Federal shares of the cost of the program, be administered in a manner consistent with the provisions of title III of the old AT Act;

(b) Include any provision the Secretary requires concerning oversight and evaluation necessary to protect Federal financial interests; and

(c) Require the CBO to enter into a contract, to expand opportunities under title III of the old AT Act and facilitate administration of the AFP, with commercial lending institutions or organizations or State financing agencies (section 304 of the old AT Act).

During the first 12-month budget period, a grantee must enter into the contract with a CBO and ensure that the CBO has entered into the contract with the commercial lending institutions or organizations or State financing agencies.

(7) *Use and Control of Funds*: An assurance that—

(a) Funds comprised of the principal and interest from the account described in paragraph (2) *Permanent Separate Account* of this priority will be available to support the AFP; and

(b) Any interest or investment income that accrues on or derives from those funds after the funds have been placed under the control of the organization administering the AFP, but before the funds are distributed for purposes of supporting the program, will be the property of the organization administering the program (section 303(b)(6) of the old AT Act).

This assurance regarding the use and control of funds applies to all funds derived from the AFP including the original Federal award, the State matching funds, AFP funds generated by either interest bearing accounts or investments, and all principal and interest paid by borrowers of the AFP

who are extended loans from the permanent separate account.

(8) *Indirect Costs*: An assurance that the percentage of the funds made available through the grant that is used for indirect costs will not exceed 10 percent (section 303(b)(7) of the old AT Act).

For each 12-month budget period, grantees must recalculate their allowable indirect cost rate, which may not exceed 10 percent of the amount of funds in the permanent and separate account and any outstanding loans from that account.

(9) *Administrative Policies and Procedures*: An assurance that the State and any CBO that enters into a contract with the State under title III of the old AT Act will submit to the Secretary the following policies and procedures for administration of the AFP:

(a) A procedure to review and process in a timely manner requests for financial assistance for immediate and potential technology needs, including consideration of methods to reduce paperwork and duplication of effort, particularly relating to need, eligibility, and determination of the specific AT device or service to be financed through the program.

(b) A policy and procedure to ensure that access to the AFP must be given to consumers regardless of type of disability, age, income level, location of residence in the State, or type of AT device or AT service for which financing is requested through the program.

(c) A procedure to ensure consumer-controlled oversight of the program (section 305 of the old AT Act).

Grantees must submit the administrative policies and procedures required in this assurance within 12 months of the start of the grant.

(10) *Data Collection*: An assurance that the State will collect and report data requested by the Secretary in the format, with the frequency, and using the method established by the Secretary until there are no longer any funds available to operate the AFP and all outstanding loans have been repaid.

(11) *Collaboration With the Statewide AT Program*: An assurance that the AFP will enter into a written agreement with that State's statewide AT program supported under section 4 of the AT Act to coordinate activities appropriately.

Competitive Preference Priorities: Within this absolute priority, we give competitive preference to applications that address the following priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 7 points to an application, depending on how well the application meets these priorities.

These priorities are:

Need to Establish an AFP (5 additional points). This applies to a State that has not previously received a grant under title III of the old AT Act.

Need to Expand an AFP (3 additional points). This applies to a State that has previously received a grant or grants under title III of the old AT Act but has received less than a total of \$1 million in grant funds for the operation of its AFP.

Commitment of Matching Funds (2 additional points). This applies to States that submit with their application a letter of commitment from a State, local, or private source that pledges to provide the non-Federal share (25 percent) of the cost of the AFP in cash within 12 months of the receipt of the grant award.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. Ordinarily, this practice would have applied to the absolute and competitive preference priorities for the Assistive Technology Alternative Financing Program. Section 437(d)(1) of GEPA (20 U.S.C. 1232(d)(1)), however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under the AT Act since it was amended by the 2004 amendments and modified by the FY 2005 appropriations bill and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the proposed absolute and competitive preference priorities under section 437(d)(1). The absolute and competitive preference priorities will apply to the FY 2005 grant competition only.

Program Authority: 29 U.S.C. 3001 *et seq.*

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: \$3,900,000.

Estimated Range of Awards: \$100,000 to \$3,900,000.

Estimated Average Size of Awards: \$1,000,000.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

III. Eligibility Information

1. *Eligible Applicants:* States that received grants under section 101 of the Assistive Technology Act of 1998 as in effect on the day before the date of enactment of the Assistive Technology Act of 2004 (old AT Act).

2. *Cost Sharing or Matching:* The Federal share of the cost of the AFP must not be more than 75 percent (sections 301(d) and 303(b)(1) of the old AT Act, as modified by the 2005 appropriations bill).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794-1398. Telephone (toll free): 1-877-433-7827. FAX: (301) 470-1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1-877-576-7734.

You may also contact ED Pubs at its Web site: <http://www.ed.gov/pubs/edpubs.html> or you may contact ED Pubs at its e-mail address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.224C.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202-2550. Telephone: (202) 245-7363. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 20 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:* *Applications Available:* June 30, 2005. *Deadline for Transmittal of Applications:* August 1, 2005.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: September 28, 2005.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:*

Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: <http://e-grants.ed.gov>.

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an

electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- Any narrative sections of your application must be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.

- Your electronic application must comply with any page limit requirements described in this notice.

- Prior to submitting your electronic application, you may wish to print a copy of it for your records.

- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245-6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1-888-336-8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. Submission of Paper Applications by Mail.

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.224C), 400 Maryland

Avenue, SW., Washington, DC 20202-4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.224C), 7100 Old Landover Road, Landover, MD 20785-1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery.

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.224C), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt

acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

V. Application Review Information

1. **Selection Criteria:** In evaluating an application for a grant under this competition, RSA will determine if an applicant has submitted the required assurances and if an applicant qualifies for competitive preference points.

2. **Review and Selection Process:** RSA will use an internal application review process to determine whether all the necessary assurances and required program information have been submitted.

VI. Award Administration Information

1. **Award Notices:** If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. **Administrative and National Policy Requirements:** We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. **Reporting:** At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. Until there are no longer funds available to operate the AFP and all outstanding loans have been repaid, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118 and collect and report data as requested by the Secretary.

4. **Performance Measures:** The Government Performance and Results Act (GPRA) of 1993 directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. The goal of the AFP is to reduce cost barriers to obtaining AT devices and services by providing alternative

financing mechanisms that allow individuals with disabilities and their family members, guardians, advocates, and authorized representatives to purchase AT devices and services. The following two measures have been developed for evaluating the overall effectiveness of the AFP: (1) The percent of individuals with disabilities receiving loans who would have been denied conventional financing. (2) The amount loaned to individuals with disabilities per \$1 million in Federal investment. Grantees will report data for use in calculating these measures through the data collection system required by the Secretary as stated in paragraph (10) in the list of required assurances in the absolute priority in this notice.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT:

Jeremy Buzzell, U.S. Department of Education, 400 Maryland Avenue, SW., room 5025, Potomac Center Plaza, Washington, DC 20202-2800. Telephone: (202) 245-7319 or by e-mail: jeremy.buzzell@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiocassette, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: June 24, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05-12954 Filed 6-29-05; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on:

- A revised Form EIA-1605, "Voluntary Reporting of Greenhouse Gases" and instructions;
- A three year extension of Office of Management and Budget (OMB) approval in order for EIA to implement the revised Form EIA-1605; and
- The discontinuation of the Form EIA-1605EZ.

DATES: Comments must be submitted by August 29, 2005 to the address listed below.

ADDRESSES: Send all comments to the attention of Stephen E. Calopedis. To ensure receipt of the comments by the due date, submission by e-mail (stephen.calopedis@eia.doe.gov) or FAX (202-586-3045) is recommended. Comments submitted by mail should be sent to Stephen E. Calopedis, U.S. Department of Energy, Energy Information Administration, EI-81, 1000 Independence Avenue, SW., Washington, DC 20585. Questions on this action should be directed to Stephen E. Calopedis at 202-586-1156 or stephen.calopedis@eia.doe.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revised reporting form and instructions should be directed to Stephen E. Calopedis at 202-586-1156 or stephen.calopedis@eia.doe.gov. The revised version of the Form EIA-1605, "Voluntary Reporting of Greenhouse Gases," and instructions, can also be downloaded from the Program's Current Developments Web site at <http://www.eia.doe.gov/oiaf/1605/aboutcurrent.html>.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Current Actions
- III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93-275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95-91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a

centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval from the OMB under Section 3507(a) of the Paperwork Reduction Act of 1995 to collect data under the revised form EIA-1605.

The Voluntary Reporting of Greenhouse Gases Program information collection is conducted pursuant to Section 1605(b) of the Energy Policy Act of 1992 (Pub. L. 102-486, 42 U.S.C. 13385). The Program is currently operated under General Guidelines issued in October 1994 (59 FR 52769) by the DOE's Office of Policy and International Affairs (<http://www.eia.doe.gov/oiaf/1605/guidelns.html>). The existing EIA-1605 and EIA-1605EZ forms were designed to collect voluntarily reported data on greenhouse gas emissions, reductions of these emissions, and increased carbon fixation, as well as information on commitments to reduce greenhouse gas emissions and sequester carbon in future years (<http://www.eia.doe.gov/oiaf/1605/Forms.html>).

The results of the Voluntary Reporting of Greenhouse Gases Program are summarized in the Program's most recent annual reports entitled Voluntary Reporting of Greenhouse Gases 2003: Summary (<http://www.eia.doe.gov/oiaf/1605/vrrpt/summary/index.html>) and Voluntary Reporting of Greenhouse Gases 2003 (<http://www.eia.doe.gov/oiaf/1605/vrrpt/>). Additionally, EIA produces and makes publicly available, a "public-use" database containing all the non-confidential information reported to EIA's Voluntary Reporting of Greenhouse Gases Program (<http://www.eia.doe.gov/oiaf/1605/databases.html>).

II. Current Actions

EIA is soliciting public comments on the items below:

- A Revised Form EIA-1605, Voluntary Reporting of Greenhouse Gases' and instructions;
- A three year extension of Office of Management and Budget (OMB) approval in order for EIA to implement the revised Form EIA-1605, "Voluntary Reporting of Greenhouse Gases," and;
- The discontinuation of Form EIA-1605EZ, "Voluntary Reporting of Greenhouse Gases" (short form).

The request for comment is being made by the EIA in support of efforts to develop and implement a survey data collection instrument that is consistent with Interim Final General Guidelines and draft Technical Guidelines for the Voluntary Reporting of Greenhouse Gases Program that were proposed on March 24, 2005, by DOE's Office of Policy and International Affairs (70 FR 15169 and 70 FR 15164). It is important to note that the proposed revised EIA-1605 form represents EIA's interpretation of the Interim Final General Guidelines and draft Technical Guidelines and the final content of the revised EIA-1605 form will depend on the content of the final General and Technical Guidelines. For copies of the Interim Final General Guidelines, the draft Technical Guidelines and all public comments on these documents go to: <http://www.pi.energy.gov/enhancingGHGregistry/index.html>.

The Interim Final General Guidelines specify an effective date of September 20, 2005, but indicate that it is DOE's intent to finalize the guidelines prior to the effective date. As a consequence of a 30-day extension of the public comment period on the Interim Final General Guidelines and the draft Technical Guidelines, and the number and complexity of the public comments submitted, it is possible that DOE may extend the effective date beyond September 20, 2005.

EIA plans to complete its review of comments received under this notice, and revisions to the proposed revised EIA-1605 form, before the effective date of the revised General and Technical

Guidelines. Following OMB approval of the revised EIA-1605 form, EIA intends to develop an electronic data collection system. EIA now expects that this data collection system will be ready in time to permit reporting during 2006, although some delay in the normal reporting schedule is likely to be necessary. Any further delays in the effective date of the guidelines have the potential to cause corresponding delays in EIA's collection of data using the revised EIA-1605 form.

Summary background information on the development of the proposed revised General and Technical Guidelines to the Voluntary Reporting of Greenhouse Gases is provided below.

Proposed Revised Guidelines for the Voluntary Reporting of Greenhouse Gases Program

On February 14, 2002, President George W. Bush announced a series of programs and initiatives to address the issue of global climate change, including a greenhouse gas intensity reduction goal, energy technology research programs, targeted tax incentives to advance the development and adoption of new technologies, and voluntary programs to promote actions to reduce greenhouse gases. As a part of this effort, the President directed the Secretary of Energy, in consultation with the Secretary of Commerce, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency, to propose improvements to the current Voluntary Reporting of Greenhouse Gases Program required under section 1605(b) of the Energy Policy Act of 1992. These improvements are to enhance measurement accuracy, reliability, and verifiability, working with and taking into account emerging domestic and international approaches. The President also directed the Secretary of Energy to recommend reforms to ensure that businesses and individuals that register reductions are not penalized under a future climate policy and to give transferable credits to companies that can show real emissions reductions.

Finalization and Implementation of Revised Program Guidelines

DOE's Office of Policy and International Affairs published in the March 24, 2005 **Federal Register** Interim Final General Guidelines. On that date DOE also published a notice of availability inviting public comment on Draft Technical Guidelines that will, when combined with the revised General Guidelines, fully implement the revised Voluntary Reporting of Greenhouse Gases Program. In the March 25, 2005 **Federal Register**, DOE stated its intention that the Interim Final General Guidelines will be effective on September 20, 2005. As noted previously, it is possible that DOE could extend the effective date beyond September 20, 2005. The incorporation by reference of the Draft Technical Guidelines, in the **Federal Register**, affirms DOE's intention that they also will be effective on that date. The purposes of the proposed revised Guidelines are to: (1) Establish revised procedures and reporting requirements for filing voluntary reports, and (2) encourage corporations, government agencies, non-profit organizations, individuals and other private and public entities to submit annual reports of their total entity-wide greenhouse gas emissions, net emission reductions, and carbon sequestration activities that are complete, reliable and consistent.

In response to the finalization and issuance of the revised Guidelines, the EIA has developed and plans to issue revised reporting forms and instructions for reporting under the revised Program Guidelines. The first cycle of reporting to the Program under the revised Guidelines is expected to occur in 2006, for 2005 data.

Principal Conceptual Changes to the Current Survey Form EIA-1605, "Voluntary Reporting of Greenhouse Gases"

The principal conceptual changes to form EIA-1605 are illustrated below in Table 1 as a side-by-side comparison of the current and proposed revised form EIA-1605.

TABLE 1.—COMPARISON OF CURRENT VERSION OF FORM EIA-1605 WITH THE REVISED VERSION OF FORM EIA-1605

| Current version of form EIA-1605 | Revised version of form EIA-1605 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Schedule I, "Entity Identification and Certification." Collects information on the reporter, including contact information, organization type, geographic scope, Standard Industrial Classification (SIC) code, and confidentiality. Also includes report certification. | Replaced by Schedules I (Entity Statement) and II (Subentity Statement). Principal differences to Schedule I include collection of North American Industrial Classification System (NAICS) code (instead of SIC code), expanded list of entity type categories, changes in entity statement from previous years, and report characteristics (base period, voluntary program affiliation, entity organization). Schedule II collects similar data for reported subentities. Certification is addressed in Schedule VII (Verification and Certification) along with third party verification, which is not included on current form. |
| Schedule II, "Project-Level Emissions and Reductions." Collects information on projects that reduce emissions or sequester carbon in 10 sections, each devoted to a specific project category. | Project-level reductions can be "registered" only under limited circumstances in Schedule V (Emissions Reductions), Section 1, Part E, Action-specific Emission Reductions. |
| Schedule III, "Entity-Level Emissions and Reductions." Collects emissions, carbon sequestration, and emission reductions for the entire entity. | Focus on revised reporting form is reporting entity-level emissions and reductions. Schedule III (Entity and Subentity Emissions and Sequestration Inventories) collects data on entity-wide emissions. Schedule IV (Output and Emissions Intensity) collects information on output and emissions intensity. Schedule V (Emission Reductions) collects emission reductions calculated using approved methods and allows registration of reductions meeting certain criteria. |
| Schedule IV "Commitments to Reduce Greenhouse Gases." Collects information on commitments to reduce future emissions or sequester carbon. These commitments can be at the project or entity level, or can be financial commitments. | Not included |

Please refer to the proposed revised form and instructions for more information about the purpose, who may report, when to report, where to submit, the elements to be reported, instructions for reporting, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information (<http://www.eia.doe.gov/oiaf/1605/aboutcurrent.html>). For instructions on obtaining materials, see the "For Further Information Contact" section.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following issues are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the responsibilities of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency or other parties, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality,

objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. EIA will make the final EIA-1605 form and instructions publicly available after OMB approval is received. However, no request for information will be made until EIA has completed the automated EIA-1605 reporting system. For the first data collection in 2006 to collect calendar year 2005 data using the revised Form EIA-1605, EIA proposes the reporting due date will be three months after the automated reporting system is made publicly available, but no earlier than July 1, 2006. In subsequent years, the reporting due date will be July 1 for activities during the previous calendar year. Can the information be submitted by those due dates?

D. The public reporting burden for this collection is estimated to average 40 hours per response on Form EIA-1605, although it is expected that this burden will vary widely among reporters. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this

collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, June 24, 2005.

Jay H. Casselberry,
Agency Clearance Officer, Energy Information Administration.

[FR Doc. 05-12905 Filed 6-29-05; 8:45 am]

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Notice of Application For Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests**

June 21, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 349-098.

c. *Date Filed:* May 22, 2005.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Lake Martin Hydroelectric Project.

f. *Location:* Lake Martin is located in Tallapoosa County, Alabama. The project does not occupy any Tribal or federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r) and 799 and 801.

h. Applicant Contact: Mr. Keith Bryant, Alabama Power Company; 600 North 18th Street; Birmingham, Alabama 35291

FERC Contact: Any questions on this notice should be addressed to Brian Romanek at (202) 502-6175 or by e-mail: Brian.Romanek@ferc.gov.

j. *Deadline for filing comments and or motions:* July 22, 2005.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P-349-098) 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 e-filings*.

k. *Description of Request:* Alabama Power, licensee for the Lake Martin Hydroelectric Project, has requested Commission authorization to install seven boat dock structures that accommodate residents of the Glynmere Subdivision. The Subdivision is located in Tallapoosa County, Alabama (Section 19, Township 21 North, Range 21 East). Included in this proposal is a docking structure that will accommodate 40 boats and 42 personal water craft. The docking structures will be floated on encapsulated foam. No dredging is proposed.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

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 applications. A copy of the applications 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. E5-3418 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP05-383-000]

Algonquin Gas Transmission, LLC; Notice of Application

June 23, 2005.

Take notice that on June 13, 2005, Algonquin Gas Transmission, LLC (Algonquin), 5400 Westheimer Court, Houston, Texas 77056-5310, filed in Docket No. CP05-383-000, an application pursuant to section 7(c) of the Natural Gas Act (NGA), for authorization to: (i) Construct, install, own, operate and maintain certain pipeline facilities necessary to provide up to 800,000 Dth/d of firm transportation service for Excelerate Energy Limited Partnership, an affiliate of Northeast Gateway Energy Bridge, L.L.C. (Northeast Gateway); and (ii) implement initial rates for service on the new facilities. The project will consist of approximately 16.4 miles of new 24-inch diameter pipeline and related facilities (Pipeline Lateral) that will provide a direct connection between the offshore deepwater liquefied natural gas port (Northeast Port), which Northeast Gateway proposes to construct in federal waters in Massachusetts Bay, approximately 13 miles south of the city of Gloucester, Massachusetts, and Algonquin's existing HubLine offshore system in Massachusetts Bay, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502-8659 or TTY, (202) 208-3676.

Any questions regarding this application should be directed to Steven E. Tillman, General Manager, Regulatory Affairs, Algonquin Gas Transmission, LLC, P.O. Box 1642, Houston, Texas 77251-1642, at (713) 627-5113 or fax at (713) 627-5947.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and

Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 14, 2005.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3413 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES05-31-000]

Aquila, Inc.; Notice of Filing

June 22, 2005

Take notice that on June 14, 2005, Aquila, Inc. (Aquila) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue up to \$300 million of long-term, secured debt.

Aquila also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. eastern time on July 8, 2005.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3401 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05-784-000, ER05-785-000, and ER05-786-000]

California Independent System Operator Corp.; Notice of Designation of Certain Commission Personnel as Non-Decisional

June 22, 2005.

The following Commission staff members have been designated as non-decisional in the above-captioned proceedings.

Office of Market Oversight and Investigations

William Hederman
Stephen Harvey
Lee Ann Watson
Harry Singh
Steven Michals
Eric Hsieh
Bernardo Piereck
Mark Higgins
Martin Ramirez

Magalie R. Salas,
Secretary.

[FR Doc. E5-3400 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-380-000]

Cheyenne Plains Gas Company, L.L.C.; Notice of Proposed Changes in Ferc Gas Tariff

June 22, 2005.

Take notice that on June 17, 2005, Cheyenne Plains Gas Company, L.L.C. (Cheyenne Plains) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective July 18, 2005:

First Revised Sheet No. 104
First Revised Sheet No. 201
First Revised Sheet No. 270

Cheyenne Plains states that these tariff sheets remove the tariff provisions implementing the Commission's rebuttable presumption discount policy.

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. E5-3405 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-383-000]

Colorado Interstate Gas Company; Notice of Proposed Changes in Ferc Gas Tariff

June 22, 2005.

Take notice that on June 17, 2005, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC

Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective July 18, 2005:

Seventh Revised Sheet No. 22
Seventh Revised Sheet No. 88
Fourth Revised Sheet No. 132A.04
First Revised Sheet No. 132A.04a

CIG states that these tariff sheets remove the tariff provisions implementing the Commissions rebuttable presumption discount policy.

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. E5-3408 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-43-003]

Dominion Cove Point LNG, LP; Notice of Compliance Filing

June 22, 2005.

Take notice that on June 15, 2005, Dominion Cove Point LNG, LP (Cove Point) submitted a compliance filing pursuant to the Commission's "Order On Technical Conference And On Rehearing And Clarification" issued May 31, 2005 in Docket No. RP05-43-000 et al.

Cove Point 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. E5-3397 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP05-384-000]

1 Paso Natural Gas Company; Notice Of Proposed Changes in Ferc Gas Tariff

June 22, 2005.

Take notice that on June 17, 2005, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective July 18, 2005:

Fifth Revised Sheet No. 288
Second Revised Sheet No. 288A

EPNG states that these tariff sheets remove the tariff provisions implementing the Commission's rebuttable presumption discount policy.

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. E5-3409 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP02-361-051]

Gulfstream Natural Gas System, L.L.C.; Notice of Compliance Filing

June 21, 2005.

Take notice that, on June 16, 2005, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing a compliance filing pursuant to the Commission's June 1, 2005 Order in the above-captioned docket.

Gulfstream states that copies of the filing were served on parties on the official service list in the above-captioned proceeding, as well as all customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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. E5-3421 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP05-385-000]

Kern River Gas Transmission Company; Notice of Request Under Blanket Authorization

June 22, 2005.

Take notice that on June 13, 2005, Kern River Gas Transmission Company (Kern River) 2755 E. Cottonwood Parkway, Suite #300, Salt Lake City, Utah 84121, filed in Docket No. CP05-385-000, a prior notice request pursuant to sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate new delivery point facilities, the Redwood Meter Station, to serve the Chevron Texaco Products Company (Chevron Texaco) in Davis County, Utah, which is on file with the Commission and open to public inspection.

Any questions concerning this application may be directed to Billie L. Tolman, Manager, Tariffs and Certificates, Kern River Gas Transmission, PO Box 71400, Salt Lake City, Utah 84171-0400 at (801) 937-6176.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC OnlineSupport@ferc.gov or call toll-free at (866) 206-3676, or, for TTY, contact (202) 502-8659. 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 intervenors to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section

157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3398 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-378-000]

MIGC, Inc.; Notice of Tariff Filing

June 21, 2005.

Take notice that on June 16, 2005, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No.1, the following tariff sheet, to become effective August 1, 2005.

Sixth Revised Sheet No. 65.

MIGC asserts that the purpose of this filing is to update MIGC's tariff to combine revisions which were previously approved in separate proceedings. MIGC indicates that the instant application does not represent any new changes to MIGC's tariffs.

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. E5-3425 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-382-000]

Mojave Pipeline Company; Notice of Proposed Changes in Ferc Gas Tariff

June 22, 2005.

Take notice that on June 17, 2005, Mojave Pipeline Company (Mojave) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective July 18, 2005:

First Revised Sheet No. 240B
First Revised Sheet No. 240C

Mojave states that these tariff sheets remove the tariff provisions implementing the Commission's rebuttable presumption discount policy.

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. E5-3407 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-376-000]

Northern Natural Gas Company; Notice of Tariff Filing

June 21, 2005.

Take notice that on June 15, 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 proposed to be effective on July 16, 2005:

Seventh Revised Sheet No. 146
Eighth Revised Sheet No. 269

Northern states that the above tariff sheets are being filed to revise Northern's tariff to provide incentives for IDD shippers to comply with storage inventory allocations.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and

Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of 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. E5-3423 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-379-000]

Northwest Pipeline Corporation; Notice of Petition For Declaratory Order

June 22, 2005.

Take notice that on June 16, 2005, Northwest Pipeline Corporation (Northwest) submitted for filing a Petition for Declaratory Order requesting that the Commission terminate a controversy arising under Section 21.3 of its tariff concerning the

facilities reimbursement obligations of its shippers.

Northwest states that the subject controversy particularly involves a disagreement with shipper Duke Energy Trading and Marketing, LLC over the term "related income taxes" in determining facilities reimbursement under Northwest's tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 pm. eastern time on July 15, 2005.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3404 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-377-000]

Panhandle Eastern Pipe Line Company, LP; Notice of Tariff Filing

June 21, 2005.

Take notice that on June 14, 2005, Panhandle Eastern Pipe Line Company, LP (Panhandle) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the revised tariff sheets listed on Appendix A attached to the filing to become effective July 6, 1992, July 10, 1992, October 31, 1992, July 20, 1993, August 6, 1993, August 19, 1993, March 31, 1994, and April 1, 1995.

Panhandle states that the purpose of this filing is to comply with the Commission's orders approving abandonment and cancel Volume No. 2 rate schedules T-14, T-39, T-40, T-51, T-53, T-61, T-62, and T-63.

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. E5-3424 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-312-147]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate

June 21, 2005.

Take notice that on June 15, 2005, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a negotiated rate arrangement between Tennessee and El Paso Marketing, L.P. (EPM).

Tennessee requests that the negotiated rate arrangement between Tennessee and EPM become effective on July 15, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for

review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive 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. E5-3416 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-385-000]

Texas Gas Transmission, LLC; Notice of Proposed Changes in Ferc Gas Tariff

June 22, 2005.

Take notice that on June 20, 2005, Texas Gas Transmission, LLC (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet No. 56, to become effective June 17, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3410 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02-60-006]

Trunkline LNG Company, LLC; Notice of Tariff Filing

June 23, 2005.

Take notice that on June 16, 2005, Trunkline LNG Company, LLC (Trunkline LNG), PO Box 4967, Houston, Texas 77210-4967, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1-A, the original and revised tariff sheets listed in Appendix A hereto, to become effective July 20, 2005.

Trunkline LNG states that the purpose of this filing is to commence new services under Rate Schedules FTS-2 and ITS-2, on an interim basis, that will utilize certain vaporization facilities that are part of Trunkline LNG's Amended Expansion Project approved by the Commission on August 27, 2002, December 18, 2002, and October 27, 2003 in Docket Nos. CP02-60-000, CP02-60-001 and CP02-60-003, respectively.

Any person desiring to intervene or to protest this filing must file, on or before the below listed comment date, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR

154.210) on or before the below listed comment date. 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 strongly encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: July 1, 2005.

Magalie R. Salas,
Secretary.

Appendix A—Trunkline LNG Company, LLC; Tariff Sheets Filed June 16, 2005; Proposed To Be Effective July 20, 2005; All to FERC Gas Tariff

Second Revised Volume No. 1-A
First Revised Sheet No. 1
Third Revised Sheet No.2
Fifth Revised Sheet No. 5
Original Sheet No. 30
Original Sheet No. 31
Original Sheet No. 32
Original Sheet No. 33
Original Sheet No. 34
Original Sheet No. 35
Original Sheet No. 36
Sheet Nos. 37-49
First Revised Sheet No. 70
First Revised Sheet No. 71
First Revised Sheet No. 78
First Revised Sheet No. 89
First Revised Sheet No. 123
First Revised Sheet No. 125
First Revised Sheet No. 166
Original Sheet No. 182
Original Sheet No. 183
Original Sheet No. 184
Original Sheet No. 185
Original Sheet No. 186
Original Sheet No. 187
Original Sheet No. 188
Original Sheet No. 189
Original Sheet No. 190
Original Sheet No. 191
Original Sheet No. 192

Original Sheet No. 193
Original Sheet No. 194
Original Sheet No. 195
Original Sheet No. 196

[FR Doc. E5-3415 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01-229-002]

Trunkline LNG Company, LLC; Notice of Negotiated Rate

June 21, 2005.

Take notice that on June 16, 2005, Trunkline LNG Company, LLC (Trunkline LNG) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1-A, First Revised Sheet No. 6, to become effective July 20, 2005.

Trunkline LNG states that the purpose of this filing is to reflect the implementation of a new negotiated rate transaction.

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 email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3420 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02-60-005]

Trunkline LNG Company, LLC; Notice of Amendment

June 21, 2005

Take notice that on June 16, 2005, Trunkline LNG Company, LLC (Trunkline LNG), PO Box 4967, Houston, Texas 77210-4967, filed in Docket No. CP02-60-005 an abbreviated application pursuant to the Natural Gas Act (NGA) to establish an interim initial rate to provide interim vaporization capacity under Rate Schedule FTS-2 by July 20, 2005, all as more fully set forth in the application, which is open to the public for inspection. The filing is available for review 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 filed to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Any questions regarding this application may be directed to William W. Grygar, Vice President, Rates and Regulatory Affairs, at (713) 989-7000, Trunkline LNG Company, LLC, 5444 Westheimer Road, Houston, Texas 77056.

Trunkline LNG seeks Commission authorization to place certain LNG vaporization facilities into service as soon as their successful construction, completion and testing will allow. The additional interim vaporization capacity will permit BG LNG Services, LLC (BG LNG) to increase their sendout at Trunkline LNG's LNG terminal from 630,000 Mcf per day to 1,200,000 Mcf per day. This increased sendout will allow BG LNG additional flexibility to schedule its LNG cargoes for the remainder of 2005. The remainder of the

facilities approved by the Commission, the LNG storage tank and the layberth, continue to be scheduled for completion as originally contemplated. Trunkline LNG requests that the Commission approve the proposed interim Cost of Service and Derivation of Rates in order to provide the interim vaporization capacity to BG LNG.

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper, see, 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: July 1, 2005.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3427 Filed 6-29-05; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-199-001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing and Refund Report

June 21, 2005.

Take notice that on June 17, 2005, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the tariff sheets listed on Attachment A to the filing, in compliance with the Commission's Order issued March 30, 2005 in Docket No. RP05-199-000.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on June 28, 2005.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3422 Filed 6-29-05; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-199-001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing and Refund Report

June 21, 2005.

Take notice that on June 17, 2005, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the tariff sheets listed on Attachment A to the filing, in compliance with the Commission's Order issued March 30, 2005 in Docket No. RP05-199-000.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on June 28, 2005.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3426 Filed 6-29-05; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

June 21, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 1984-119.

c. *Date Filed:* June 6, 2005.

d. *Applicant:* Wisconsin River Power Company.

e. *Name of Project:* Petenwell and Castle Rock Hydroelectric Project.

f. *Location:* The proposed development is located on the Wisconsin River in Adams County,

Wisconsin. This project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Shawn Puzen, Wisconsin River Power Company, PO Box 19001, Green Bay, WI 54307–9001, (920) 433–1094.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502–8764, or e-mail address: shana.high@ferc.gov.

j. *Deadline for Filing Comments and or Motions:* July 12, 2005.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–1984–119) 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 e-filings.

k. *Description of Request:* Wisconsin River Power Company is seeking Commission authorization permit Northern Bay Development to install a commercial marina within the Petenwell-Castle Rock project boundary. The proposed marina will be a floating structure with only the anchors physically placed on the bottom of the reservoir. The proposed marina will have 269 boat slips located in two adjacent areas; 212 slips will be available to the general public. The proposal also includes a two-lane public boat landing which would replace the existing boat ramp.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

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 applications. A copy of the applications 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. E5–3417 Filed 6–29–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–381–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes In Ferc Gas Tariff

June 22, 2005.

Take notice that on June 17, 2005, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets, to become effective July 18, 2005:

Seventh Revised Sheet No. 8
Eighth Revised Sheet No. 9

WIC states that these tariff sheets remove the tariff provisions implementing the Commission's rebuttable presumption discount policy.

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. E5–3406 Filed 6–29–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7387–019]

Erie Boulevard Hydropower, L.P.; Notice of Availability of Environmental Assessment

June 23, 2005.

In accordance with the National Environmental Policy Act of 1969 and part 380 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, FERC

Order No. 486, and 52 FR. 47,897, the Office of Energy Projects has reviewed the application for a new license for the Piercefield Hydroelectric Project, located on the Raquette River, in St. Lawrence and Franklin Counties, New York, and has prepared a single environmental assessment (EA) for the project. The project does not use or occupy any federal facilities or lands. In the EA, Commission staff analyzes the potential environmental effects of the existing project and concludes that licensing the project, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Please file any comments (an original and 8 copies) within 30 days from the date of this letter. The comments should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix "Piercefield Hydroelectric Project No. 7387-019" to all comments. Comments may be filed electronically via the Internet in lieu of paper (see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-filing" link. The Commission strongly encourages electronic filings.

Please contact Janet Hutzel at (202) 502-8675, or by e-mail at janet.hutzel@ferc.gov if you have any questions.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3414 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05-364-000]

ANR Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Wisconsin 2006 Expansion Project and Request for Comments on Environmental Issues

June 22, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Wisconsin 2006 Expansion Project involving construction and operation of facilities by ANR Pipeline Company (ANR) in Rock, Outagamie, Marinette, Dane, Marathon, and Columbia Counties, Wisconsin.¹ ANR's project purpose is to create about 168,241 decatherms per day of incremental firm capacity on its pipeline system to accommodate growth in demand from all market segments in Wisconsin. In general these facilities would consist of about 6.86 miles of various diameter pipeline, addition of compression at 2 compressor stations, and minor upgrades at 5 existing meter stations. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice ANR provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's

¹ ANR's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

proceedings. It is available for viewing on the FERC Internet Web site (<http://www.ferc.gov>).

Summary of the Proposed Project

ANR proposes to install a total of 6.86 miles of looping² pipeline, add a compressor unit at an existing compressor station, construct a new compressor station, and perform minor upgrade work at 5 existing meter stations in Wisconsin. Specifically, the project includes:

- *Little Chute Loop (Outagamie County)*—About 3.08 miles of 16-inch outside diameter (OD) pipeline, looping the existing 6-inch OD pipeline;
- *Madison Lateral Loop (Rock County)*—About 3.78 miles of 30-inch OD pipeline, looping the existing 10-inch and 12-inch OD pipelines;
- *Janesville Compressor Station Upgrade (Rock County)*—A new 2,370 horsepower (hp) reciprocating compressor unit and associated equipment to be installed at an existing compressor station site;
- *Goodman Compressor Station (Marinette County)*—A new 20,620 hp compressor station comprised of two 10,310 hp units to be built at an existing meter station site; and
- *Meter Station Upgrades (Dane, Marathon, and Columbia Counties)*—Minor equipment modifications at 5 existing meter stations (McFarland, Sun Prairie, and Stoughton Meter Stations in Dane County; North Wausau Meter Station in Marathon County; and Randolph Meter Station in Columbia County).

The general locations of the project facilities are shown in Appendix 1.³

Land Requirements for Construction

Construction of the proposed facilities would require about 144.68 acres of land. Following construction, about 58.82 acres would be maintained as new aboveground facility sites. The remaining 85.86 acres of land would be restored and allowed to revert to its former use.

² A loop is a segment of pipeline installed adjacent to an existing pipeline and which connects to the existing pipeline at both ends of the loop. The loop allows more gas to be moved through the system.

³ The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's website at the "eLibrary" link or from the Commission's Public Reference Room, 888 First Street, NW., Washington, D.C. 20426, or call (202) 502-8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we⁴ will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use
- Water resources, fisheries, and wet lands
- Cultural resources
- Vegetation and wildlife
- Air quality and noise
- Endangered and threatened species
- Hazardous waste
- Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

⁴ "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by ANR. This preliminary list of issues may be changed based on your comments and our analysis.

- Project-related impact on:
- Visual aesthetics from the proposed Goodman Compressor Station;
 - Outagamie County Landfill's operations;
 - Karst geologic features;
 - School and recreation activities at Appleton Senior High School North; and
 - Air quality and noise.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and/or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP05-364-000.
- Mail your comments so that they will be received in Washington, DC on or before July 22, 2006.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenor play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission(s) Rules of Practice and Procedure (18 CFR 385.214) (see Appendix 2).⁵ Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site (<http://www.ferc.gov>) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, contact (202)502-8659. The eLibrary

⁵ Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to <http://www.ferc.gov/esubscribenow.htm>.

Finally, public meetings or site visits will be posted on the Commission's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx> along with other related information.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3411 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF05-11-000]

Florida Gas Transmission Company; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Phase VII Expansion Project and Request for Comments on Environmental Issues

June 22, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of Florida Gas Transmission Company's (FGT) proposed Phase VII Expansion Project, which would involve construction in portions of Florida as discussed below. This project is directly connected to Southern Natural Gas Company's proposed Cypress Pipeline Project. Therefore, the required National Environmental Policy Act (NEPA) review of the Phase VII Expansion Project will be part of the EIS we are currently preparing on the Cypress Pipeline Project under Docket No. PF05-7-000. The Cypress Pipeline Project involves the construction and operation of natural gas pipeline and compressor facilities in various counties in Georgia and Florida.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the Phase VII Expansion Project. Your input will help

determine which issues need to be evaluated in the EIS. Please note that the scoping period will close on July 25, 2005.

This notice is being sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents along this proposed project and encourage them to comment on their areas of concern.

Comments regarding this project may be submitted in written form or verbally. Further details on how to submit written or electronic comments are provided in the public participation section of this notice.

The FERC is the lead federal agency for the preparation of the EIS. The document will satisfy the requirements of NEPA. The U.S. Army Corps of Engineers (COE) (Savannah and Jacksonville Districts) has agreed to participate as a cooperating agency in the preparation of the EIS for the Cypress Pipeline Project to satisfy its NEPA responsibilities under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act. We anticipate the COE will also participate as a cooperating agency for the FGT Phase VII Expansion Project.

With this notice, we¹ are asking other federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated FGT's proposal relative to their responsibilities. Agencies that would like to request cooperating status should follow the instructions for filing comments described later in this notice.

If you are a landowner receiving this notice, you may be contacted by an FGT representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the FERC, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility on My Land? What Do I Need

¹ "We," "us," and "our" refer to the environmental staff of the Office of Energy Projects.

to Know?" is available for viewing on the FERC Internet Web site (<http://www.ferc.gov>). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the FERC's proceedings.

Summary of the Proposed Project

FGT proposes to expand its existing pipeline facilities between Jacksonville and Tampa, Florida (see map in Appendix A). The expansion would consist primarily of looping² FGT's existing pipeline system for approximately 32 miles and modifying compression at two existing compressor stations. In addition, miscellaneous piping, regulation, and metering facilities will be constructed along FGT's system. This work is being addressed as a "connected action" to the Cypress Pipeline Project because the FGT expansion is being constructed to transport the new volumes of natural gas that would be delivered into Florida by the Cypress project. The Phase VII Expansion Project would be constructed in two phases, with Phase 1 beginning in 2007 and Phase 2 in 2009, contingent on the project being certificated.

Specifically, FGT seeks authority to construct and operate the following facilities:

- Pipeline—2007
 - Loop J: about 5 miles of 36-inch mainline loop in Gilchrist County, Florida.
 - Loop K: about 6 miles of 36-inch mainline loop in Levy County, Florida.
 - Loop G: about 6 miles of 36-inch mainline loop in Hernando County, Florida.
- Pipeline—2009
 - Loop K: about 9 miles of 36-inch mainline loop in Levy County, Florida.
 - Loop G: about 6 miles of 36-inch mainline loop in Hernando County, Florida.
- Compression—2007
 - Increase the horsepower (HP) of existing gas turbine compressor at Compressor Station 24 (Trenton) by 2,000 HP in Gilchrist County, Florida.
 - Install a new 7,700 HP gas turbine compressor and increase by 400 HP an existing compressor at the existing Compressor Station 26 (Lecanto) in Citrus County, Florida.
- Compression—2009
 - Re-wheel existing gas turbine compressor at Compressor Station 27

² A loop is a segment of pipeline that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

(Thonotosassa) in Hillsborough County, Florida. This will not change the HP of the unit, only the performance curve of the compressor.

- Miscellaneous Facilities—2007
- Replace regulators and install new ultrasonic meters at the existing FPC-Hines meter and regulator station in Polk County, Florida.
- Modify existing Lawtey regulator facility on the Jacksonville Lateral in Clay County, Florida.
- Revise station piping at the existing Compressor Station 16 (Brooker) in Bradford County, Florida.
- Establish workspace area at existing Central Florida Gas (CFG) Suwannee tap in Suwannee County, Florida to set up tanker trucks to provide uninterrupted service to customer during mainline outage.
- Install new regulator facility on the Jacksonville Lateral adjacent to the Cypress/Company interconnect in Duval County, Florida.
- Install side valves and miscellaneous interconnecting piping for new Cypress/Company interconnect in Duval County, Florida.

Land Requirements for Construction

Construction of the proposed pipeline facilities would require about 300 acres of land which is primarily within existing maintained rights-of-way. The typical construction right-of-way for the pipeline facilities would be 75 feet wide and primarily within an existing powerline easement (Loop G), road and railroad rights-of-way (Loop K), and FGT's existing pipeline right-of-way (Loop J). Up to 25 feet of the temporary construction right-of-way would be required outside the existing FGT pipeline right-of-way on Loop J. Temporary extra workspace would also be required outside existing rights-of-way at certain feature crossings (e.g., roads, railroads, waterbodies) and in areas requiring topsoil segregation and special construction techniques.

The construction workspace at compressor stations would be within existing facility sites and the workspace for the miscellaneous facilities would be primarily within FGT's existing rights-of-way.

Following construction, no new permanent right-of-way would be required for the pipeline, compressor upgrades, or miscellaneous facilities. Temporary workspace that is used outside existing rights-of-way would be restored and allowed to revert to its current use.

The EIS Process

NEPA requires the Commission to take into account the environmental

impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues and reasonable alternatives.

Although no formal application has been filed, we have already initiated our NEPA review under the FERC's Pre-Filing Process. The purpose of the Pre-Filing Process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. We previously held interagency and public scoping meetings for the related Cypress Pipeline Project in March 2005.

As part of our Pre-Filing Process review for the Phase VII Expansion Project, representatives from the FERC participated in public open houses sponsored by FGT in the project area on June 13–14, 2005 to explain the environmental review process to interested stakeholders and take comments about the project. In addition, the FERC staff conducted an interagency scoping meeting in the project area on June 15, 2005 to solicit comments and concerns about the project from jurisdictional agencies. By this notice, we are formally announcing our preparation of the EIS and requesting additional agency and public comments to help us focus the analysis in the EIS on the potentially significant environmental issues related to the proposed action.

Our independent analysis of the issues will be included in a draft EIS. The draft EIS will be mailed to federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all timely comments on the draft EIS and revise the document, as necessary, before issuing a final EIS.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project under the general resource headings listed below. We have already identified several issues that we think deserve attention based on a preliminary review of the proposed

facilities, the environmental information provided by FGT, and the interagency scoping meeting. This preliminary list of issues may be changed based on your comments and our additional analysis.

- Geology and Soils
- Assessment of potential geologic hazards, including sinkholes.
- Potential impact on mineral resources and mining operations.
 - Water Resources and Wetlands
- Effect on groundwater resources.
- Potential effect on perennial streams, intermittent streams, and ponds crossed by or close to the route.
- Evaluation of temporary and permanent effects on wetlands.
 - Fisheries, Wildlife, and Vegetation
- Effect on fisheries, wildlife, and vegetation resources.
- Effect on vegetative nuisance species.
 - Endangered and Threatened Species
- Potential effect on federally and state-listed species, including the gopher tortoise, Florida scrub-jay, and southeastern kestrel.
 - Cultural Resources
- Effect on historic and prehistoric sites.
- Native American and tribal concerns.
 - Land Use
- Impact on residential areas.
- Effect on existing and future land use along the proposed right-of-way, including proposed developments and agricultural land.
- Effect on recreation and public interest areas.
- Visual effect of the aboveground facilities on surrounding areas.
 - Air Quality and Noise
- Effect on local air quality and noise environment from construction and operation of the proposed facilities.
 - Reliability and Safety
- Assessment of public safety factors associated with natural gas facilities.
 - Alternatives
- Assessment of alternative routes, facility sites, systems, and energy sources to reduce or avoid environmental impacts.
 - Cumulative Impacts
- Assessment of the effect of the proposed project when combined with other projects that have been or may be proposed in the same region and similar time frame.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the proposal. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to

avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please mail your comments so that they will be received in Washington, DC on or before July 25, 2005 and carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Branch 1, DG2E; and
- Reference Docket No. PF05-11-000 on the original and both copies.

We will include all comments that we receive within a reasonable time frame in our environmental analysis of the project. To expedite our receipt and consideration of your comments, the Commission strongly encourages electronic submission of any comments on this project. See Title 18 Code of Federal Regulations 385.2001(a)(1)(iii) and the instructions on the Commission's website at <http://www.ferc.gov> under the "e-Filing" link and the link to the User's Guide. Before you can submit comments, you will need to create a free account which can be created online.

Once FGT formally files its application with the Commission, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "eFiling" link on the Commission's website. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding that would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

If you wish to remain on our environmental mailing list, please return the Information Request Form included in Appendix 2. If you do not

return this form, you will be removed from our mailing list.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs at 1-866-208 FERC or on the FERC Internet website (<http://www.ferc.gov>) using the "eLibrary" link. Click on the eLibrary link, click on "General Search," and enter the docket number excluding the last three digits in the Docket Number field (i.e., PF05-11). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, contact (202) 502-8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to <http://www.ferc.gov/esubscribenow.htm>.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3403 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12588-000]

Hydraco Power, Inc; Notice of Application Tendered for Filing With the Commission, and Soliciting Additional Study Requests

June 22, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

- a. *Type of Application:* Exemption from License, 5 MW or Less.
- b. *Project No.:* 12588-000.
- c. *Date Filed:* May 3, 2005.
- d. *Applicant:* Hydraco Power, Inc.
- e. *Name of Project:* A. H. Smith Dam Project.
- f. *Location:* On the San Marcos River near the town of Martindale, Caldwell County, Texas.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Linda A. Parker, Small Hydro of Texas, Inc., 1298 FM 766, Cuero, Texas 77954. (361) 275-9395.

i. *FERC Contact:* Monte TerHaar (202) 502-6035 or monte.terhaar@ferc.gov.

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* 30 days from date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

m. This application is not ready for environmental analysis at this time.

n. The proposed project consists of: (1) An existing 10.5-foot-high by 86.5-foot-long concrete dam with a 20-foot-wide concrete apron; (2) an existing 3-foot-wide by 4-foot-high wooden

stopgate positioned in the east bank of the dam; (3) a 10.62-acre impoundment; (4) an existing 20-foot-wide by 30-foot-long powerhouse; (5) an existing generator with installed capacity of 150 kilowatts (kW); (6) an existing 150 kW turbine; and (7) an existing trashrack of unknown dimensions.

The proposed project consists of an existing dam, generating equipment, and powerhouse which ceased hydropower generation in early 1990. Hydraco proposes to restore these facilities.

o. A copy of the application is on file with the Commission and is available for public inspection. 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 toll-free at 1-866-208-3676, or for Text Telephone (TTY) call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the *Texas State Historic Preservation Officer (SHPO)*, as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments*: A separate notice will be posted with the Commission's proposed Hydro Licensing Schedule and a schedule for filing final amendments to the application.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3402 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9184-013]

Flambeau Hydro, LLC; Notice of Application Tendered for Filing with the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

June 21, 2005.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection.

a. *Type of Application*: Subsequent License.

b. *Project No.*: 9184-013.

c. *Date Filed*: June 10, 2005.

d. *Applicant*: Flambeau Hydro, LLC.

e. *Name of Project*: Danbury Hydroelectric Project.

f. *Location*: On the Yellow River in Burnett County, near Danbury, Wisconsin. The project does not occupy federal lands.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact*: Scott Klabunde, North American Hydro, Inc., PO Box 167, Neshkoro, WI 54960; 920-293-4628 ext. 14.

i. *FERC Contact*: Timothy Konnert, (202) 502-6359 or timothy.konnert@ferc.gov.

j. *Cooperating agencies*: We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status*: August 8, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The

Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "eFiling" link.

m. This application is not ready for environmental analysis at this time.

n. The existing Clam River Project consists of: (1) A 30-foot-high dam with a 48-foot-long, three-bay concrete spillway section equipped with six steel slide gates; (2) a 300-foot-long earthen dike that connects to the north side of the spillway; (3) a 255-acre reservoir with a normal water surface elevation of 929.0 feet msl; (4) a forebay structure with two steel slide gates leading to; (5) two 26-foot-long, 5.75-foot-diameter penstocks to convey flow to; (6) powerhouse 1 integral with the dam containing two generating units with a combined capacity of 476 kW; (7) a power canal headworks structure with stoplogs; (8) a 53-foot-wide, 2,500-foot-long power canal; (9) a 95-foot-long, 1.67-foot-diameter penstock to convey flow from the power canal to; (10) powerhouse 2 containing a generating unit with a capacity of 600 kW; and (11) appurtenant facilities. The applicant estimates that the average annual generation would be 3,844 megawatt hours using the three generating units with a combined capacity of 1,076 kW.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Wisconsin State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments*: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff

proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA. Staff intends to give at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application.

Issue Acceptance or Deficiency Letter: July 2005.

Issue Scoping Document: August 2005.

Notice of application is ready for environmental analysis: October 2005.

Notice of the availability of the EA: April 2006.

Ready for Commission's decision on the application: June 2006.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E5-3419 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice on Post-Technical Conference Procedures

June 23, 2005.

Capacity Markets in the PJM Region (Docket No. PL05-7-000); PJM Interconnection, LLC (Docket No. EL03-236-000); PJM Interconnection, LLC (Docket No. ER04-539-000); Promoting Regional Transmission Planning and Expansion to Facilitate Fuel Diversity Including Expanded Uses of Coal-Fired Resources (Docket No. AD05-3-000); PSEG Energy Resources and Trade, LLC (Docket No. ER05-644-000); PJM Interconnection, LLC (Docket No. RT01-2-000); New York Independent System Operator, Inc. (Docket No. ER04-1144-000)

On June 16, 2006, the Commission convened a technical conference in these proceedings to discuss the capacity markets in the PJM Interconnection, LLC region. The following procedures regarding the filing of comments were announced at the conclusion of the conference.

1. Comments are due on or before July 7, 2005, and reply comments are due on or before July 14, 2005.

2. Given the general level of understanding among participants regarding the proposed Reliability Pricing Model (RPM) and proposed alternatives, commenters are requested to refrain from discussing the proposals generally, but rather to respond to the following:

- Conditions under which a consensus could be reached on issues as to which the commenter does not currently support the resolution within the current RPM and alternative proposals, and as to which the commenter would be able to compromise; and if so, what would be required for that compromise;
- Position on issues raised at the technical conference;
- Elements of the RPM and alternative proposals that the commenter supports;
- Elements of- or changes to the current market proposals that could be phased in while further development and consensus are explored on remaining issues; and
- Identification of specific impediments to the completion of identified and proposed transmission projects; as well as, proposed fixes to the transmission planning process that will eliminate these impediments and facilitate the completion of identified projects.

The Commission encourages electronic submission of comments 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 comment to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All filings in this docket are accessible online at <http://www.ferc.gov>, using the "eLibrary" link and will be 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. E5-3412 Filed 6-29-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05-1065-000]

Entergy Services, Inc.; Supplemental Notice of Technical Conference

June 22, 2005.

As announced in the Notice of Technical Conference issued on June 17, 2005, a technical conference will be held on June 30 and July 1, 2005, in New Orleans, Louisiana, to discuss Entergy Services, Inc.'s (Entergy) proposal to establish an Independent Coordinator of Transmission (ICT). The conference will be held from 9 a.m. to 4:30 p.m. (c.s.t.) on June 30, and 9 a.m. to 12 p.m. on July 1. The conference will be held in the Egyptian Ballroom of the Hotel Monaco, 333 St. Charles Avenue, New Orleans, Louisiana, 70130. Conference Attendees should call 1-866-561-0010 for room reservations. A negotiated rate is available by mentioning ICT Technical Conference.

Entergy has also made a Dial-In Facility available for those who cannot attend in person. The Dial-In number is 1-888-685-8359 and the Participant Code is 706244.

To ensure adequate space both at the hotel and for the Dial-In Facility, please contact Geri Jackson at gjackson@entergy.com to confirm your in-person or call-in attendance.

A Draft Agenda prepared by Entergy is attached.

For more information about the conference, please contact Sanjeev Jagtiani at (202) 502-8886; sanjeev.jagtiani@ferc.gov or Christy Walsh at (202) 502-6523; christy.walsh@ferc.gov.

Magalie R. Salas,

Secretary.

Attachment

Agenda for Technical Conference

June 30

Docket No. ER04-699-000, et al.

9-9:15 Introduction
 9:15-10 ICT Agreement and Attachment S
 10-10:45 Planning Protocol
 10:45-11 Break
 11-12 Transmission Service Protocol
 12-12:45 Lunch (on your own)
 12:45-1:45 Attachment V
 1:45-2:45 Attachment T
 2:45-3 Break
 3-3:45 Attachment T, cont.
 3:45-4:30 Attachment T—Analysis of previously incurred costs

July 1

9–10: Interconnection Protocol,
Attachment U
10–10:15 Break
10:15–12 Follow-up questions and other
issues

[FR Doc. E5–3399 Filed 6–29–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2005–0010, FRL–7930–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements Under EPA's WasteWise program; EPA ICR Number 1698.06, OMB Control Number 2050–0139

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 30, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 29, 2005.

ADDRESSES: Submit your comments, referencing Docket ID No. RCRA–2005–0010, to EPA online using EDOCKET (our preferred method), by email to rcra-docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Charles Heizenroth, Office of Solid Waste, 5306W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–0154; fax number: (703) 308–8686; e-mail address: heizenroth.charles@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID No. RCRA–2005–0010, which is available for public viewing at the OSWER 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 OSWER Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at <http://www.epa.gov/edocket>. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select “search,” then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to <http://www.epa.gov/edocket>.

Affected entities: Entities potentially affected by this action are those business, institutions, and government agencies that voluntarily sign up to participate in EPA's WasteWise program.

Title: Reporting and Recordkeeping Requirements Under EPA's WasteWise program.

Abstract: EPA's voluntary WasteWise program encourages businesses and other organizations to reduce solid waste through waste prevention, recycling, and the purchase or manufacture of recycled-content products. WasteWise participants include partners, which commit to implementing waste reduction activities of their choice, and endorsers which

promote the WasteWise program and waste reduction to their members.

The Partner Registration Form identifies an organization and its facilities registering to participate in WasteWise, and requires the signature of a senior official that can commit the organization to the program. (This form can be submitted either electronically or in hard copy.) Within six months of registering, each partner is asked to conduct a waste assessment and submit baseline data and waste reduction goals to EPA via the Annual Assessment Form. (This form can also be submitted either electronically or in hard copy.) On an annual basis partners are asked to report, via the Annual Assessment Form, on their progress toward achieving their waste reduction goals by estimating amounts of waste prevented and recyclables collected, and describing buying or manufacturing recycled-content products. They can also provide WasteWise with information on total waste prevention revenue, total recycling revenue, total avoided purchasing costs due to waste prevention, and total avoided disposal costs due to recycling and waste prevention. Additionally, they are asked to submit new waste reduction goals.

Endorsers, which are typically trade associations or state/local governments, submit the Endorser Registration Form once during their endorser relationship with WasteWise. (This form can be submitted either electronically or in hard copy.) The Endorser Registration Form identifies the organization, the principal contact, and the activities to which the Endorser commits.

EPA's WasteWise program uses the submitted information to (1) identify and recognize outstanding waste reduction achievements by individual organizations, (2) compile aggregate results that indicate overall accomplishments of WasteWise partners, (3) identify cost-effective waste reduction strategies to share with other organizations, and (4) identify topics on which to develop assistance and information efforts.

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 are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

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

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The respondent burden for this collection is estimated to average 1 hour per response for the Partner Registration Form, 40 hours per response for the Annual Assessment Form, and 16 hours per response for the Endorser Registration Form. This results in an estimated annual partner respondent burden of 41 hours for new partners, 40 hours for established partners, and a one-time respondent burden of 10 hours for endorsers.

The estimated number of respondents is 1,325 in Year 1; 1,425 in Year 2; and 1,525 in Year 3. Estimated total annual burden on all respondents is 52,350 hours in Year 1; 56,350 hours in Year 2; and 60,350 hours in Year 3.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 12, 2005.

Matt Hale,

Director, Office of Solid Waste.

[FR Doc. 05-12945 Filed 6-29-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OAR-2002-0081; FRL-7930-5]

RIN 2060-AJ92

National Emission Standards for Hazardous Air Pollutants: Revision of Source Category List Under Section 112 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revisions to the list of major source categories.

SUMMARY: This action updates the list of major sources of hazardous air pollutants (HAP) emissions for which regulatory actions have been developed. The source category list is required under section 112(c) of the Clean Air Act (CAA) and was last published in the **Federal Register** on February 12, 2002.

This action meets the requirement in section 112(c)(1) to publish from time to time, but no less often than every 8 years, a list of all major categories and subcategories of sources reflecting revisions since the list was last published. The revisions reflected in this notice have previously been published in actions associated with proposing and promulgating emission standards for individual source categories, and public comments have been requested in the context of those actions. This action does not include any revisions to the schedule for standards provided for by CAA section 112(e).

EFFECTIVE DATE: June 30, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR-2002-0081. All documents in the docket are listed in the index. Publicly available docket materials are available for public inspection and copying between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. The docket is located at: U.S. EPA, Air and Radiation Docket and Information Center (6102T), 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460, or by calling (202) 566-1744 or 1742. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Ms. Maria Noell, U.S. EPA, Office of Air Quality Planning and Standards (OAQPS), Organic Chemicals Group (C504-4), Research Triangle Park, North Carolina 27711, telephone number (919) 541-5607, facsimile number (919) 541-3470, electronic mail address noell.maria@epa.gov.

SUPPLEMENTARY INFORMATION: *Docket.* EPA has established an official public

docket for this action under Docket ID No. OAR-2002-0081. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, 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 Air Docket is (202) 566-1742.

Electronic Docket Access. You may access this notice electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public documents, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility in the above paragraph entitled "Docket." Once in the system, select "search," then key in the appropriate docket identification number.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's notice will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules <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.

I. What Is the History of the Source Category List?

The CAA requires, under section 112, that EPA list all categories of major sources emitting HAP and such

categories of area sources warranting regulation and promulgate national emission standards for hazardous air pollutants (NESHAP) to control, reduce, or otherwise limit the emissions of HAP from such categories of major and area sources. Pursuant to the various specific listing requirements in section 112(c), on July 16, 1992 (57 FR 31576), we published a list of 174 categories of major and area sources—referred to as the initial list—for which we would develop emission standards. On December 3, 1993 (58 FR 63941), pursuant to requirements in section 112(e), we published a schedule for the promulgation of emission standards for each of the 174 initially listed source categories.

When we publish notices that affect actions relating to individual source categories, it is important to reflect the resultant changes on the list. We published five separate notices where we listed or removed sources for specific pollutants under section 112(c)(6) on April 10, 1998 (63 FR 17838); and added area sources under section 112(k) on July 19, 1999 (64 FR 38706); June 26, 2002 (67 FR 43112); November 8, 2002 (67 FR 68124); and November 22, 2002 (67 FR 70427). On June 4, 1996 (61 FR 28197), we published a notice that referenced all previous list and schedule changes and consolidated those actions, along with several new actions, into a revised source category list and schedule. Subsequently, we published five additional notices which updated the list and schedule: February 12, 1998 (63 FR 7155); May 17, 1999 (64 FR 26743); November 18, 1999 (64 FR 63025); January 30, 2001 (66 FR 8220); and February 12, 2002 (67 FR 6521). You should read the previous notices for information relating to the development of the initial list and schedule and subsequent changes.

II. Why Is EPA Issuing This Notice?

This notice announces the changes to the source category list that have occurred since we last updated the list on February 12, 2002 (67 FR 6521).

For general descriptions of source categories listed in Table 1, please refer to “Documentation for Developing the Initial Source Category List” (EPA-450/3-91-030) and the **Federal Register** notice for the first revision of the source category list and schedule (61 FR 28197, June 4, 1996). For subsequent changes and/or amendments to the major source categories listed, please refer to: <http://www.epa.gov/ttn/atw/mactfnlaph.html>.

III. What Are the Revisions EPA Is Making to the Source Category List?

A. Changes to Source Category Names

The following source categories were renamed to better describe the source category:

1. Amino Resins Production and Phenolic Resins Production are subsumed and renamed Amino/Phenolic Resins Production.
2. Engine Test Facilities is renamed Engine Test Cells/Standards.
3. Industrial Boilers is renamed Industrial/Commercial/Institutional Boilers and Process Heaters.
4. Printing, Coating, and Dyeing of Fabrics is renamed Printing, Coating, and Dyeing of Fabrics and Other Textiles.
5. Refractories Manufacturing is renamed Refractory Products Manufacturing.

B. Division of a Source Category To Create Two New Source Categories

The Brick and Structural Clay Products Manufacturing source category and the Clay Ceramics Manufacturing source category were separated and added to the list of categories of major sources. These newly created source categories are replacing the Clay Products Manufacturing source category, which was on the initial list of source categories to be regulated. For further information, you should refer to the proposed preamble to the NESHAP for Brick and Structural Clay Products Manufacturing and the NESHAP for Clay Ceramics Manufacturing (67 FR 47894, July 22, 2002), which serve as the official actions to add the source categories. These NESHAP were promulgated on May 16, 2003 at 68 FR 26690.

C. Subsumptions of Source Categories

Today's notice updates the source category list to reflect the following subsumptions:

1. Amino/Phenolic Resins Production

Amino Resins and Phenolic Resins source categories were subsumed and renamed Amino/Phenolic Resins Production. The information obtained during the information gathering phase of the project demonstrated that the manufacturing processes, emission characteristics, and applicable control technologies for facilities in these two source categories are similar. Based on these factors, the EPA concluded that these two source categories are to be treated as a single source category. For further information, you should refer to the preamble to the proposed NESHAP for Manufacture of Amino/Phenolic

Resins at 63 FR 68832 (December 14, 1998), and the final NESHAP for Amino/Phenolic Resins Production at 65 FR 3275 (January 20, 2000) which serve as the official actions to rename and combine the source categories.

2. Engine Test Cells/Standards

The Engine Test Facilities and Rocket Engine Test Firing source categories were subsumed and renamed the Engine Test Cells/Standards source category. After gathering information about the source categories, we concluded that rocket testing facilities are similar in many respects to engine test cells/stands; therefore, we decided to regulate rocket engine test firing facilities as a subcategory of the Engine Test Cells/Standards source category. For further information, you should refer to the proposed preamble for the NESHAP for Engine Test Cells/Standards at 67 FR 34548 (May 14, 2002), and the final NESHAP for Engine Test Cells/Standards at 68 FR 28774 (May 27, 2003) which serve as the official actions to rename and combine the source categories.

3. Hydrochloric Acid Production

The Fume Silica Production source category was subsumed into the Hydrochloric Acid Production source category. Originally, both hydrochloric acid production and fume silica production were listed separately as major sources under the production of inorganic chemicals group. In developing the respective NESHAP, it was learned that the primary source of HAP emissions in the two source categories was the same process. For further information, you should refer to the proposed preamble for the NESHAP for Hydrochloric Acid Production at 66 FR 48175 (September 8, 2001), and the final NESHAP for Hydrochloric Acid Production at 68 FR 19076 (April 17, 2003) which serve as the official actions to combine the source categories.

4. Industrial/Commercial/Institutional Boilers and Process Heaters

The Institutional/Commercial Boilers, the Process Heaters, and the Industrial Boiler source categories have been combined into the Industrial/Commercial/Institutional Boilers and Process Heaters source category. For further information, you should refer to the proposed preamble for the Industrial/Commercial/Institutional Boilers and Process Heaters NESHAP at 68 FR 1660 (January 13, 2003), and the final NESHAP for Industrial/Commercial/Institutional Boilers and Process Heaters at 69 FR 55218 (September 13, 2004) which serve as the

official actions to combine the source categories.

5. Iron and Steel Foundries

The Iron Foundries and the Steel Foundries source categories have been combined into a new major source category called Iron and Steel Foundries. Since some facilities produce both iron castings and steel castings in the same foundry (*i.e.*, using the same equipment), it is more sensible to have facilities subject to only one rule rather than two separate rules. For further information, you should refer to the proposed preamble for the NESHAP for Iron and Steel Foundries at 67 FR 78274 (December 23, 2002), and the final NESHAP for Iron and Steel Foundries at 69 FR 21906 (April 22, 2004) which serve as the official actions to combine the source categories.

6. Surface Coating of Miscellaneous Metal Parts and Products

The Asphalt/Coal Tar Application-Metal Pipes source category has been subsumed into the Surface Coating of Miscellaneous Metal Parts and Products source category. For further information, you should refer to the proposed preamble for the NESHAP for Surface Coating of Miscellaneous Metal Parts and Products at 67 FR 52780 (August 31, 2002), and the final NESHAP for Surface Coating of Miscellaneous Metal Parts and Products at 69 FR 130 (January 2, 2004) which serve as the official actions to combine the source categories.

7. Miscellaneous Organic Chemical Manufacturing and Miscellaneous Coating Manufacturing

The following source categories have been subsumed into the Miscellaneous Organic Chemical Manufacturing source category: benzyltrimethylammonium chloride production, carbonyl sulfide production, chelating agents production, chlorinated paraffins production, ethylidene norbornene production, explosives production, hydrazine production, photographic chemicals production, phthalate plasticizers production, rubber chemicals production, symmetrical tetrachloropyridine production, OBPA/1,3-diisocyanate production, alkyd resins production, polyester resins production, polyvinyl alcohol production, polyvinyl acetate emulsions production, polyvinylbutyral production, polymerized vinylidene chloride production, polymethylmethacrylate production, maleic anhydride copolymers production, ammonium sulfate production—caprolactam by-product

plants, and quaternary ammonium compounds production. Along with these 22 source categories, the Miscellaneous Organic Chemical Manufacturing source category was also defined to include other organic chemical manufacturing processes which are not being covered by any other maximum achievable control technology standards.

The Manufacture of Paints, Coatings, and Adhesives source category has been subsumed into the Miscellaneous Coating Manufacturing source category. For further information, you should refer to the proposed preamble for the NESHAP for Miscellaneous Organic Chemical Manufacturing and Miscellaneous Coating Manufacturing at 67 FR 16154 (April 4, 2002). The final NESHAP for Miscellaneous Organic Chemical Manufacturing was promulgated at 68 FR 63852 (November 10, 2003), and the final NESHAP for Miscellaneous Coating Manufacturing was promulgated at 68 FR 69164 (December 11, 2003). These final NESHAP serve as the official actions to combine and rename the source categories.

D. Changes to Source Category Designation

In a final rule issued on March 29, 2005, at 70 FR 15994, EPA revised the regulatory finding that it issued in December 2000 pursuant to section 112(n)(1)(A) of the CAA and removed coal- and oil-fired electric utility steam generating units from the CAA section 112(c) source category list. EPA promulgated the Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units on March 15, 2005, under the authority of CAA section 111. Today's notice updates the source category list to reflect the March 29 final action.

Today's notice also serves as the official notice of our determination that currently there are no major sources with paint stripping operations whose operations are not already subject to other NESHAP. As a result, we are subsuming paint stripping operations into those other NESHAP. Paint stripping is a process that is invariably part of a larger process whose purpose is to prepare a surface for a new coating. The process of removing the old coat, preparing the surface, and applying a new one is, as we found, regulated by other NESHAP, and these NESHAP have already helped us significantly reduce emissions of HAP from major sources and satisfy our obligation under CAA section 112(d) to set standards for major

sources in the paint stripping source category.

The Paint Stripping Operations source category was listed for regulation under section 112(c) of the CAA. Paint stripping is defined, for purposes of rulemaking, as the removal of paint, or any other type of coating, using HAP-containing chemicals. Methylene chloride is the HAP that predominates in paint stripping operations. Major sources of paint stripping include facilities that use methylene chloride or other HAP to remove coatings from furniture, aircraft, metal parts, or any other type of component for purposes of preparing the surface for a new coating.

To identify major sources of paint stripping operations, we engaged in a number of activities that helped us obtain information about the nature of the paint removal processes at a given facility and the associated HAP emissions. This process included searching emissions databases, such as the Atmospheric Information Retrieval System (AIRS), to find facilities with methylene chloride and any other types of facilities that perform paint removal. Even though we were able to identify many facilities with methylene chloride emissions, we found no unregulated major sources through this search that would be affected by paint stripping NESHAP. Our search included both free standing major sources and collocated sources. We identified several major sources that perform paint removal operations; however, these operations are already regulated under other surface coating NESHAP such as aerospace and wood furniture.

We also reviewed the air permits and related information of potential paint stripping facilities with HAP emissions in several States. We requested the States of North Carolina, California, New York, Illinois, Texas, and Florida to provide us with lists of facilities that emit methylene chloride or any other HAP associated with paint removal processes. These States were a representative subset with relatively large numbers of facilities with reported methylene chloride emissions. Our information gathering and permit review effort with these States identified no major sources that would be potentially affected by a paint stripping NESHAP. Even though we identified several sources with paint stripping operations, either the operations were already covered by other NESHAP as listed below, or the sources were not major sources. Supporting documentation for these activities can be found in the "Paint Stripping Operations" docket (number A-99-42). The **ADDRESSES** section of this preamble

provides information on how to obtain copies of documents contained in the docket.

| Source category | Status | Subpart | FR publication date and citation or contact information |
|--------------------------------------------------------|--------------|---------|---------------------------------------------------------|
| Aerospace Industry | Final | GG | 09/01/95, 60FR45948 |
| Large Appliance (Surface Coating) | Final | NNNN | 7/23/02, 67FR48253 |
| Metal Furniture (Surface Coating) | Proposed ... | RRRR | 04/24/02, 67FR20205 |
| Misc. Metal Parts and Products (Surface Coating) | Proposed ... | MMMM | 08/13/02, 67FR52799 |
| Wood Furniture | Final | JJ | 12/07/95, 60FR62930 |

There are, however, thousands of small paint stripping facilities that are not major sources and that release HAP emissions. These small facilities will be studied and potentially subject to rulemaking in the future as area sources.

IV. Is This Action Subject to Judicial Review?

Section 112(e)(4) of the CAA states that, notwithstanding section 307 of the CAA, no action of the Administrator listing a source category or subcategory under section 112(c) shall be a final Agency action subject to judicial review, except that any such action may be reviewed under section 307 when the Administrator issues emission standards for such pollutant or category. Section 112(e)(3) states that the determination of priorities for promulgation of standards for the listed source categories is not a rulemaking and is not subject to judicial review, except that failure to promulgate any standard pursuant to the schedule established under section 112(e) shall be subject to review under section 304 of the CAA. Therefore, today's notice is not subject to judicial review.

V. Is EPA Asking for Public Comment?

Prior to issuance of the initial source category list, we published a draft initial list for public comment (56 FR 28548, June 21, 1991). Although we were not required to take public comment on the initial source category list, we believed

it was useful to solicit input on a number of issues related to the list. Indeed, in most instances, even where there is no statutory requirement to take comment, we solicit public comments on actions we are contemplating. We have decided, however, that it is unnecessary to solicit additional public comment on the revisions reflected in today's action. Most of the changes discussed in this notice have been subject to comment in the MACT standard setting process.

VI. Statutory and Executive Order Reviews

Today's action is not a rule; it is essentially an information sharing activity which does not impose regulatory requirements or costs. Therefore, the requirements of Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks), Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments), Executive Order 13132 (Federalism), Executive Order 13211 (Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use), the Regulatory Flexibility Act, the National Technology Transfer and Advancement Act, and the Unfunded Mandates Reform Act do not apply to today's notice. Also, this notice does not contain any information collection requirements and, therefore,

is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), a regulatory action determined to be "significant" is subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant" regulatory action as one that is likely to lead to a rule that may either (1) Have an annual effect on the economy of \$100 million or more, or adversely affect 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 entitlements, 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.

The OMB has determined that this action is not significant under the terms of Executive Order 12866.

Dated: June 23, 2005.

Jeffrey R. Holmstead,
Assistant Administrator for Air and Radiation.

TABLE 1.—CATEGORIES OF MAJOR SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROPOSAL AND PROMULGATION DATES

[Revision Date: June 30, 2005.] Refer to <http://www.epa.gov/ttn/atw/mactfnlalph.html> for the listing of all regulatory actions for each individual rule and <http://www.epa.gov/ttn/atw/socatlst/socatpg.html> for previous notices on the source category list and revisions.]

| Source category | Statutory promulgation date court-ordered date | FEDERAL REGISTER proposal and final citations and dates |
|------------------------------------------------------------|------------------------------------------------|---------------------------------------------------------|
| Aerospace Industries | 11/15/1994 N/A | 59FR29216(P), 6/6/1994 60FR45956(F), 9/1/1995 |
| Asphalt Processing and Asphalt Roofing Manufacturing | 11/15/2000 2/28/2003 | 66FR58610(P), 11/21/2001 68FR24562(F), 5/7/2003 |
| Auto and Light Duty Truck (Surface Coating) | 11/15/2000 2/28/2004 | 67FR78612(P), 12/24/2002 69FR22601(F), 4/26/2004 |
| Boat Manufacturing | 11/15/2000 NA | 65FR43842(P), 7/14/2000 66FR44218(F), 8/22/2001 |

TABLE 1.—CATEGORIES OF MAJOR SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROPOSAL AND PROMULGATION DATES—Continued

[Revision Date: June 30, 2005.] Refer to <http://www.epa.gov/ttn/atw/mactfnlalph.html> for the listing of all regulatory actions for each individual rule and <http://www.epa.gov/ttn/atw/socatlst/socatpg.html> for previous notices on the source category list and revisions.]

| Source category | Statutory promulgation date court-ordered date | FEDERAL REGISTER proposal and final citations and dates |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|------------------------------------------------------------------------------|
| Brick and Structural Clay Products Manufacturing | 11/15/2000 2/28/2003 | 67FR47894(P), 7/22/2002 68FR26690(F), 5/16/2003 |
| Cellulose Products Manufacturing | 11/15/2000 NA | 65FR52166(P), 8/28/2000 67FR40044(F), 6/11/2002 |
| Cellulose Ethers Production: <ul style="list-style-type: none"> • Methyl Cellulose • Carboxymethylcellulose • Cellulose Ethers Miscellaneous Viscose Processes: <ul style="list-style-type: none"> • Cellulose Food Casing • Rayon • Cellulosic Sponge • Cellophane | | |
| Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semi-Chemical Pulp Mills—MACT II. | 11/15/1997 12/15/2000 | 63FR18754(P), 4/15/1998 66FR3180(F), 1/12/2001 |
| Chromium Electroplating | 11/15/1994 NA | 58FR65768(P), 12/16/1993 60FR4948(F), 1/25/1995 |
| <ul style="list-style-type: none"> • Chromic Acid Anodizing • Decorative Acid • Hard Chromium Electroplating | | |
| Clay Ceramics Ceramics Manufacturing | 11/15/2000 2/28/2003 | 67FR47894(P), 7/22/2002 68FR26690(F), 5/16/2003 |
| Coke Ovens: Charging, Top Side and Door Leaks | 12/31/1992 NA | 57FR57534(P), 12/4/1992 58FR57898(F), 10/27/1993 |
| Coke Ovens: Pushing, Quenching and Battery Stacks | 11/15/2000 2/28/2003 | 66FR35326(P), 7/3/2001 68FR18008(F), 4/14/2003 |
| Combustion Turbines | 11/15/2000 8/29/2003 | 68FR1888(P), 1/13/2003 69FR10512(F), 3/5/2004 |
| Commercial Sterilizers | 11/15/1994 NA | 59FR10591(P), 3/7/1994 59FR62585(F), 12/6/1994 |
| Dry Cleaning | 11/15/1992 NA | 56FR64382(P), 12/9/1991 58FR49354(F), 9/22/1993 |
| <ul style="list-style-type: none"> • Commercial Dry Cleaning Dry-to-Dry • Commercial Dry Cleaning Transfer Machines • Industrial Dry Cleaning Dry-to-Dry • Industrial Dry Cleaning Transfer Machines | | |
| Engine Test Cells/Standards | 11/15/2000 2/28/2003 | 67FR34548(P), 5/14/2002 68FR28774(F), 5/27/2003 |
| Fabric Printing, Coating, and Dyeing | 11/15/2000 2/28/2003 | 67FR46028(P), 7/11/2002 68FR32172(F), 5/29/2003 |
| Ferroalloys Production: Silicomanganese and Ferromanganese | 11/15/1997 5/15/1999 | 63FR41509(P), 8/4/1998 64FR7149(SP), 2/12/1999 64FR27450(F), 5/20/1999 |
| Flexible Polyurethane Foam Fabrication Operations | 11/15/2000 2/28/2003 | 66FR41718(P), 8/8/2001 68FR18062(F), 4/14/2003 |
| Flexible Polyurethane Foam Production | 11/15/1997 NA | 61FR68406(P), 12/27/1996 63FR53980(F), 10/7/1998 |
| Friction Materials Manufacturing | 11/15/2000 NA | 66FR50768(P), 10/4/2001 67FR64498(F), 10/18/2002 |
| Gasoline Distribution (Stage 1) | 11/15/1994 NA | 59FR5868(P), 2/8/1994 59FR64303(F), 12/14/1994 |
| Generic MACT I | 11/15/1997 5/15/1999 | 63FR55178(P), 10/14/1998 64FR34854(F), 6/29/1999 |

TABLE 1.—CATEGORIES OF MAJOR SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROPOSAL AND PROMULGATION DATES—Continued

[Revision Date: June 30, 2005.] Refer to <http://www.epa.gov/ttn/atw/mactfnlalph.html> for the listing of all regulatory actions for each individual rule and <http://www.epa.gov/ttn/atw/socatlst/socatpg.html> for previous notices on the source category list and revisions.]

| Source category | Statutory promulgation date court-ordered date | FEDERAL REGISTER proposal and final citations and dates |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|---------------------------------------------------------|
| <ul style="list-style-type: none"> • Acetal Resins Production • Acrylic Fibers/Modacrylic Fibers Production • Hydrogen Fluoride Production • Polycarbonates Production | | |
| Generic MACT II | 11/15/2000 NA | 65FR76408(P), 12/67/2000 67FR46258(F), 7/12/2002 |
| <ul style="list-style-type: none"> • Carbon Black Production • Spandex Production • Cyanide Chemicals Manufacturing • Ethylene Processes | | |
| Hazardous Waste Combustors Phase I | 11/15/2000 | 61FR17358(P), 4/19/1996 64FR52828(F), 9/30/1999 |
| Phase II | NA | 69FR21198(P), 4/20/2004 |
| Hydrochloric Acid Production | 11/15/2000 | 66FR48174(P), 9/18/2001 |
| | 2/28/2003 | 68FR19076(F), 4/17/2003 |
| Industrial/Commercial/Institutional Boilers and Process Heaters | 11/15/2000 | 68FR1660(P), 2/26/2004 |
| | 2/27/2004 | 69FR55218(F), 9/13/2004 |
| Industrial Process Cooling Towers | 11/15/1994 | 58FR43028(P), 8/12/1993 |
| | NA | 59FR46339(F), 9/8/1994 |
| Integrated Iron and Steel Manufacturing | 11/15/2000 | 66FR36836(P), 7/13/2001 |
| | 2/28/2003 | 68FR27645(F), 5/20/2003 |
| Iron and Steel Foundries | 11/15/2000 | 67FR78274(P), 12/23/2002 |
| | 8/29/2003 | 69FR21905(F), 4/22/2004 |
| Large Appliance (Surface Coating) | 11/15/2000 | 65FR81134(P), 12/22/2000 |
| | NA | 67FR48254(F), 7/23/2002 |
| Leather Finishing Operations | 11/15/2000 | 65FR58702(P), 10/2/2000 |
| | NA | 67FR9156(F), 2/27/2002 |
| Lime Manufacturing | 11/15/2000 | 67FR78046(P), 12/20/2002 |
| | 8/29/2003 | 69FR394(F), 1/5/2004 |
| Magnetic Tapes (Surface Coating) | 11/15/1994 | 59FR11662(P), 3/11/1994 |
| | NA | 59FR64580(F), 12/15/1994 |
| Manufacturing of Nutritional Yeast | 11/15/2000 | 63FR55812(P), 10/19/1998 |
| | NA | 64FR27876(F), 5/21/2001 |
| Marine Vessel Loading Operations | 11/15/1997 | 59FR25004(P), 5/13/1994 |
| | NA | 60FR48388(F), 9/19/1995 |
| Metal Can (Surface Coating) | 11/15/2000 | 68FR2110(P), 1/15/2003 |
| | 8/29/2003 | 68FR64432(F), 11/13/2003 |
| Metal Coil (Surface Coating) | 11/15/2000 | 65FR44616(P), 7/18/2000 |
| | NA | 67FR39794(F), 6/10/2002 |
| Metal Furniture (Surface Coating) | 11/15/2000 | 67FR20206(P), 4/24/2002 |
| | 2/28/2003 | 68FR28606(F), 5/23/2003 |
| Mineral Wool Production | 11/15/1997 | 62FR25370(P), 5/8/1997 |
| | 5/15/1999 | 64FR7149(SP), 2/12/1999 |
| | | 64FR29490(F), 6/1/1999 |
| Miscellaneous Coatings Manufacturing | 11/15/2000 | 67FR16154(P), 4/4/2002 |
| | 8/29/2003 | 68FR69164(F), 12/11/2003 |
| Miscellaneous Metal Parts and Products (Surface Coating) | 11/15/2000 | 67FR52780(P), 8/13/2002 |
| | 8/29/2003 | 69FR130(F), 1/2/2004 |
| Miscellaneous Organic Chemical Manufacturing | 11/15/2000 | 67FR16154(P), 4/4/2002 |
| | 8/29/2003 | 68FR63852(F), 11/10/2003 |

TABLE 1.—CATEGORIES OF MAJOR SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROPOSAL AND PROMULGATION DATES—Continued

[Revision Date: June 30, 2005.] Refer to <http://www.epa.gov/ttn/atw/mactfnlalph.html> for the listing of all regulatory actions for each individual rule and <http://www.epa.gov/ttn/atw/socatlst/socatpg.html> for previous notices on the source category list and revisions.]

| Source category | Statutory promulgation date court-ordered date | FEDERAL REGISTER proposal and final citations and dates |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|-------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> • Alkyd Resins • Ammonium Sulfate Production-Caprolactum By-Products • Benzyltrimethylammonium Chloride • Carbonyl Sulfide • Chelating Agents • Chlorinated Paraffins • Ethylidene Norbornene • Explosives • Hydrazine • Maleic Anhydride Copolymers • OBPA/1, 3-Diisocyanate • Photographic Chemicals • Phthalate Plasticizers • Polyester Resins • Polymerized Vinylidene Chloride • Polymethyl Methacrylate Resins • Polyvinyl Acetate Emulsions • Polyvinyl Alcohol • Polyvinyl Butyral • Quaternary Ammonium Compounds • Rubber Chemicals • Symmetrical Tetrachloropyridine | | |
| Municipal Solid Waste Landfills | 11/15/2000 NA | 65FR66672(P), 11/7/2000 67FR36459(SP), 5/23/2002 68FR2227(F), 1/16/2003 |
| Off-Site Waste and Recovery Operations | 11/15/1994 NA | 59FR51913(P), 10/13/1994 61FR34140(F), 7/1/1996 |
| Oil and Natural Gas Production | 11/14/1997 5/15/1999 | 63FR6288(P), 2/6/1998 64FR32610(F), 6/17/1999 |
| Organic Liquids Distribution (Non-Gasoline) | 11/15/2000 8/29/2003 | 67FR15674(P), 4/2/2002 69FR5038(F), 2/3/2004 |
| Paper and Other Web (Surface Coating) | 11/15/2000 NA | 65FR55332(P), 9/13/2000 67FR72330(F), 12/4/2002 |
| Pesticide Active Ingredient Production | 11/15/1997 5/15/1999 | 62FR60566(P), 10/10/1997 64FR33549(F), 6/23/1999 |
| Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units. | 11/15/1997 5/15/1999 | 63FR48890(P), 9/11/1998 67FR17762(F), 4/11/2002 |
| Petroleum Refineries—Other Sources Not Distinctly Listed | 11/15/1994 NA | 59FR36130(P), 7/15/1994 60FR43244(F), 8/18/1995 |
| Pharmaceuticals Productions | 11/15/1997 NA | 62FR15753(P), 4/2/1997 63FR50280(F), 9/21/1998 |
| Phosphate Fertilizers Production and Phosphoric Acid Manufacturing | 11/15/1997 5/15/1999 | 61FR68430(P), 12/27/1996 64FR31358(F), 6/10/1999 |
| Plastic Parts and Products (Surface Coating) | 11/15/2000 8/29/2003 | 67FR72276(P), 12/4/2002 69FR20967(F), 4/19/2004 |
| Plywood and Composite Wood Products | 11/15/2000 2/28/2004 | 68FR1276(P), 1/9/2003 69FR45944(F), 7/30/2004 |
| Polyether Polyols Production | 11/15/1997 5/15/1999 | 62FR46804(P), 9/4/1997 64FR19420(F), 6/1/1999 |
| Polymers and Resins | 11/15/1994 NA | 60FR30801(P), 6/12/1995 61FR46906(F), 9/5/1996 |
| <ul style="list-style-type: none"> • Butyl Rubber • Epichlorohydrin Elastomers • Ethylene-Propylene Rubber • Hypalon (tm) • Neoprene • Nitrile Butadiene Rubber • Polybutadiene Rubber • Polysulfide Rubber • Styrene-Butadiene Rubber and Latex | | |
| Polymers and Resins II | 11/15/1994 NA | 59FR25387(P), 5/16/1994 60FR12670(F), 3/8/1995 |

TABLE 1.—CATEGORIES OF MAJOR SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROPOSAL AND PROMULGATION DATES—Continued

[Revision Date: June 30, 2005.] Refer to <http://www.epa.gov/ttn/atw/mactfnlalph.html> for the listing of all regulatory actions for each individual rule and <http://www.epa.gov/ttn/atw/socatlst/socatpg.html> for previous notices on the source category list and revisions.]

| Source category | Statutory promulgation date court-ordered date | FEDERAL REGISTER proposal and final citations and dates |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|------------------------------------------------------------|
| <ul style="list-style-type: none"> • Epoxy Resins • Non-Nylon Polyamides | | |
| Polymers and Resins III—Amino/Phenolic Resins | 11/15/1997 | 63FR68832(P), 12/14/1998 |
| | 12/15/1999 | 65FR3276(F), 1/20/2000 |
| Polymers and Resins IV | 11/15/1994 | 60FR16090(P), 3/29/1995 |
| | NA | 61FR48208(F), 9/12/1996 |
| <ul style="list-style-type: none"> • Acrylonitrile-Butadiene-Styrene • Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene • Methyl Methacrylate-Butadiene-Styrene Terpolymers • Nitrile Resins • Polyethylene Terephthalate • Polystyrene • Styrene-Acrylonitrile | | |
| Polyvinyl Chloride and Copolymers Production | 11/15/2000 | 65FR76958(P), 12/6/2000 |
| | NA | 67FR45886(F), 7/10/2002 |
| Portland Cement Manufacturing | 11/15/1997 | 63FR14182(P), 3/24/1998 |
| | 5/15/1999 | 64FR31897(F), 6/14/1999 |
| Primary Aluminum Production | 11/15/1997 | 61FR188(P), 9/26/1996 |
| | NA | 62FR52383(F), 10/07/1997 |
| Primary Copper Smelting | 11/15/1997 | 63FR19582(P), 4/20/1998 |
| | 5/15/1999 | 65FR39326(SP), 6/26/2000 |
| | | 67FR40477(F), 6/12/2002 |
| Primary Lead Smelting | 11/15/1997 | 63FR19200(P), 4/17/1998 |
| | 5/15/1999 | 64FR30194(F), 6/4/1999 |
| Primary Magnesium Refining | 11/15/2000 | 68FR2970(P), 1/22/2003 |
| | 8/29/2003 | 68FR58615(F), 10/10/2003 |
| Printing and Publishing (Surface Coating) | 11/15/1994 | 60FR13664(P), 3/14/1995 |
| | NA | 61FR27132(F), 5/30/1996 |
| Publicly Owned Treatment Works | 11/15/1995 | 63FR66084(P), 12/1/1998 |
| | 10/15/1999 | 64FR57572(F), 10/26/1999 |
| Pulp and Paper Production (MACT I and III) | 11/15/1994 | 58FR66078(P), 12/17/1993 |
| | NA | 63FR18504(F), 4/15/1998 |
| Reciprocating Internal Combustion Engines | 11/15/2000 | 67FR77830(P), 12/19/2002 |
| | 2/28/2003 | 69FR33474(F), 6/15/2004 |
| Refractory Products Manufacturing | 11/15/2000 | 68FR42108(P), 6/20/2002 |
| | 2/28/2003 | 68FR18730(F), 4/16/2003 |
| Reinforced Plastic Composites Production | 11/15/2000 | 66FR40324(P), 8/2/2001 |
| | 2/28/2003 | 68FR19375(F), 4/21/2003 |
| Rubber Tire Manufacturing | 11/15/2000 | 65FR62414(P), 10/18/2000 |
| | NA | 67FR45588(F), 7/9/2002 |
| Secondary Aluminum Production | 11/15/1997 | 63FR6946(P), 2/11/1999 |
| | 12/15/1999 | 65FR15689(F), 3/23/2000 |
| Secondary Lead Smelting | 11/15/1994 | 59FR63941(P), 6/9/1994 |
| | NA | 60FR32587(F), 6/23/1995 |
| Semiconductor Manufacturing | 11/15/2000 | 67FR30848(P), 5/8/2002 |
| | 2/28/2003 | 68FR27913(F), 5/22/2003 |
| Shipbuilding and Ship Repair (Surface Coating) | 11/15/1994 | 59FR62681(P), 12/6/1994 |
| | NA | 60FR64330(F), 12/15/1995 |
| Site Remediation | 11/15/2000 | 67FR49398(P), 7/30/2002 |
| | 8/29/2003 | 68FR58172(F), 10/8/2003 |
| Solvent Extraction for Vegetable Oil Production | 11/15/2000 | 65FR34251(P), 5/26/2000 |
| | NA | 66FR19006(F), 4/12/2001 |
| Steel Pickling— HCL Process Facilities and Hydrochloric Acid Regeneration Plants | 11/15/1997 | 62FR49051(P), 9/18/1997 |
| | 05/15/1999 | 64FR33202(F), 6/22/1999 |
| Synthetic Organic Chemical Manufacturing— Hazardous Organic NESHAP—Tetrahydrobenzaldehyde Manufacture. | 11/15/1992 | 57FR62608(P), 12/31/1992 |
| | | 59FR19402(F), 4/22/1994 |
| | NA | 62FR44614(P), 8/22/1999 |
| | | 63FR26078(F), 5/12/1998 |
| Taconite Iron Ore Processing | 11/15/2000 | 67FR77562(P), 12/18/2002 |
| | 8/29/2003 | 68FR61868(F), 10/30/2003 |
| Wet-Formed Fiberglass Mat Production | 11/15/2000 | 65FR34278(P), 5/26/2000 |
| | NA | 67FR17824(F), 4/11/2002 |

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| Source category | Statutory promulgation date court-ordered date | FEDERAL REGISTER proposal and final citations and dates |
|------------------------------------------------|------------------------------------------------|-------------------------------------------------------------------------------|
| Wood Building Products (Surface Coating) | 11/15/2000 2/28/2003 | 67FR42400(P), 6/21/2002 68FR31746(F), 5/28/2003 |
| Wood Furniture (Surface Coating) | 11/15/1994 NA | 58FR62652(P), 12/6/1994 60FR62930(F), 12/7/1995 |
| Wool Fiberglass Manufacturing | 11/15/1997 5/15/1999 | 62FR15228(P), 3/31/1997 64FR7149(SP), 2/12/1999 64FR31695(F), 6/14/1999 |

Legend: (P)—Proposal; (SP)—Supplementary Proposal; (F)—Final.

[FR Doc. 05–12942 Filed 6–29–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0137; FRL–7715–3]

Pesticide Environmental Stewardship Program (PESP) Regional Grants; Notice of Funds Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA’s Office of Pesticide Programs (OPP), in coordination with the EPA Regional Offices, is soliciting applications for projects that further the goals of the Pesticide Environmental Stewardship Program (PESP). Eligible applicants include the 50 States, District of Columbia, U.S. Virgin Islands, Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State including State universities, and all federally recognized Tribes. Under this program, assistance agreements will provide financial support to eligible applicants to carry out projects that reduce the risks associated with pesticide use in agricultural and non-agricultural settings. The total amount of funding available for award in FY 2005 is expected to be approximately \$470,000, with a maximum funding level of \$47,000 per project.

DATES: Submit your proposals in accordance with the detailed instructions in Unit IV.3. no later than August 15, 2005.

ADDRESSES: Applications must be submitted to your EPA Regional PESP Coordinator listed in Unit VII.

FOR FURTHER INFORMATION CONTACT: Your EPA Regional PESP Coordinator listed in Unit VII.

SUPPLEMENTARY INFORMATION:

Overview

The following listing provides certain key information concerning the proposal opportunity.

- *Federal agency name:* Environmental Protection Agency.
- *Funding opportunity title:* Pesticide Environmental Stewardship Program (PESP) Regional Grants; Notice of Funds Availability.
- *Funding opportunity number:* OPP–006.
- *Announcement type:* The initial announcement of a funding opportunity.
- *Catalog of Federal Domestic Assistance (CFDA) number:* This program is included in the Catalog of Federal Domestic Assistance under number 66.714 at <http://www.cfda.gov>.
- *Dates:* Applications must be postmarked by the U.S. Postal Service, hand delivered, or include official delivery service documentation indicating EPA Regional Office acceptance from a delivery service no later than August 15, 2005.

I. Funding Opportunity Description

A. Authority

EPA expects to enter into assistance agreements under the authority of section 20 of the Federal Insecticide, Fungicide, and Rodenticide Act(FIFRA), 7 U.S.C. 136r, which authorizes the Agency to issue grants or cooperative agreements for research, public education, training, monitoring, demonstrations, and studies. Regulations governing these assistance agreements are found at 40 CFR part 30 for institutions of higher education, colleges and universities, and nonprofit organizations, and 40 CFR part 31 for States and local governments. In addition, the provisions in 40 CFR part 32, governing government wide debarment and suspension; and the

provisions in 40 CFR part 34, regarding restrictions on lobbying apply. All costs incurred under this program must be allowable under the applicable OMB Cost Circulars: A–87 (States and local governments), A–122 (nonprofit organizations), or A–21 (universities). Copies of these circulars can be found at <http://www.whitehouse.gov/omb/circulars/>. In accordance with EPA policy and the OMB circulars, as appropriate, any recipient of funding must agree not to use assistance funds for lobbying, fund-raising, or political activities (e.g., lobbying members of Congress or lobbying for other Federal grants, cooperative agreements, or contracts). See 40 CFR part 34.

B. Program Description

1. *Purpose and scope.* Assistance agreements awarded under this program are intended to provide financial assistance to eligible States and Tribal governments for projects that address pesticide risk reduction, integrated pest management (IPM), IPM in schools, children’s health issues related to pesticides, and those research methods for documenting IPM adoption or the reduction of risks associated with changes in pesticide use. Other projects will be considered as they complement these goals through public education, training, monitoring, demonstrations, and other activities. Emphasis will be placed on those projects with defined outcomes that can quantitatively document project impacts. Although the proposal may request funding for activities that will further long-term objectives, this program provides onetime funding, and the maximum period of performance for funded activities is expected to be not more than 24 months.

2. *Activities to be funded.* EPA specifically seeks to build IPM capacities or to evaluate the feasibility of new IPM approaches at the local level

(i.e., innovative approaches and methodologies that use application or other strategies to reduce the risks associated with pesticide use). Projects might focus on, for example:

i. Developing and utilizing measures to determine and document progress in pesticide risk reduction.

ii. Investigating methods for establishing IPM as an environmental management priority, establishing prevention goals, developing strategies to meet those goals, and integrating the ethic within both governmental and non-governmental institutions of the State or region.

iii. Initiating projects that test and support: Innovative techniques for reducing pesticide risk or using pesticides in a way to reduce risk, and innovative application techniques to reduce worker and environmental exposure.

iv. Conducting projects focusing on IPM for specific pests.

3. *Goals and objectives.* Through the assistance agreements awarded under this program, EPA intends that recipients address specific pesticide risk reduction concerns.

4. *EPA strategic plan linkage and anticipated outcomes/outputs.*

i. *Linkage to EPA Strategic Plan/GPRA Architecture.* These assistance agreements will support progress towards EPA Strategic Plan Goal 4, Healthy Communities and Ecosystems, Objective 4.1: Chemical, Organism, and Pesticide Risks: Prevent and Reduce Pesticide, Chemical, and Genetically Engineered Biological Organism Risks to Humans, Communities, and Ecosystems. These projects will support EPA's efforts in pesticide risk reduction by fostering IPM adoption, developing IPM program components, testing and supporting innovative techniques for reducing pesticide risk, and disseminating information on proven reduced risk pest management approaches.

ii. *Outcomes.* Through these agreements EPA hopes to work with States and Tribes so they can reduce risks from exposure to pesticides through implementation of proven reduced risk approaches to pest management.

iii. *Outputs.* The anticipated output of these PESP projects may include educational and outreach materials, increased IPM adoption, conferences, training, and other programs, policies, and activities that will result in the reduction of pesticide risks.

5. *History.* The goal of the PESP is to reduce the risks associated with pesticide use in agricultural and non-agricultural settings in the United

States. Each year since 1996, EPA's Office of Pesticide Programs, in coordination with the EPA Regions, has published similar solicitations, awarding approximately \$470,000 annually to eligible State and Tribal entities for projects supporting pesticide risk reduction. This **Federal Register** notice provides qualification and application requirements to parties who may be interested in submitting proposals for fiscal year 2005 monies. A list of projects funded since fiscal year 1998 and their proposals may be obtained at http://www.epa.gov/oppbpd1/PESP/regional_grants.htm or from your Regional PESP Coordinator.

II. Award Information

The funding for each selected award project will be in the form of an assistance agreement awarded under FIFRA section 20. The total funding available for award in FY 2005 is expected to be approximately \$470,000, with a maximum funding level of \$47,000 per project. Indirect cost rates will not increase the \$47,000 maximum funding amount.

Should additional funding become available for award, the Agency may award additional grants based on this solicitation and in accordance with the final selection process, without further notice of competition during the first 4 months following the competition award. The Agency also reserves the right to decrease available funding for this program, or to make no awards based on this solicitation.

III. Eligibility Information

1. *Threshold eligibility factors.* To be eligible for consideration, applicants must meet all of the following criteria. Proposals that do not meet these threshold criteria will be rejected without further evaluation.

i. Eligible applicants include the 50 States, District of Columbia, U.S. Virgin Islands, Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State including State universities, and all federally recognized Tribes.

ii. All proposed project activities must be eligible under the authorizing statute, FIFRA section 20 (7 U.S.C. 136r).

iii. The proposal must meet all format and content requirements contained in Unit IV.

iv. The proposal must comply with the directions for submittal contained in Unit IV.

2. *Cost sharing or matching.* There are no cost share requirements for this project.

IV. Application and Submission Information

1. *Address to request a proposal package.* Contact your EPA Regional PESP Coordinator listed in Unit VII. A generic proposal format is also available from EPA at http://www.epa.gov/oppbpd1/PESP/regional_grants.htm.

2. *Content and form of proposal submission.* Proposals must be typewritten, double-spaced, using 8.5 x 11 inch paper with minimum 1 inch horizontal and vertical margins. Pages must be numbered in order starting with the cover page and continuing through the appendices. One original and one electronic copy (disk or CD ROM) are required. Applications must contain a narrative proposal, and one completed and signed Federal grant application package. The narrative proposal must explicitly describe the applicant's proposed project and specifically address each of the evaluation criteria disclosed in Unit V.1. of this notice.

A complete application must contain the following, in the sequential order shown:

- Completed Standard Form SF-424, Application for Federal Assistance with organization fax number and e-mail address. The application forms are available on line at http://www.epa.gov/ogd/grants/how_to_apply.htm.

- Proposal narrative. The narrative must conform to the following format and contain the following information:

Proposal narrative. Includes Parts I-IV as identified below. The narrative must conform to the following format:

Part I—Summary Information (page 1).

i. EPA docket ID number OPP 2005-0137.

ii. Applicant information. Include applicant (organization) name, address, contact person, phone number, fax and e-mail address.

iii. Title of project.

iv. Purpose statement. One sentence description of what will be accomplished as a result of the project.

v. Project duration.

vi. Funding requested. A budget table that lists first year funding, second year funding, and total funding being requested and any matching funds that will be provided.

Part II—Executive Summary (page 2). Summary of key objectives and final products (expected outputs and outcomes) including the measurable environmental results you expect including potential human health and ecological benefits.

Part III—Narrative (page 3 up to page 11). Includes sections i-viii as identified below and may not exceed eight pages.

i. *Objectives.* Identify the key factors or achievements necessary to the success of the project.

ii. *Rationale.* For each objective listed above, discuss the potential outcome in terms of environmental, human health, pesticide risk and/or use reduction or pollution prevention.

iii. *Approach and methods.* Describe in detail how the project will be carried out. Describe how the system or approach will support the project goals.

iv. *Background information.* This should contain information on current state of knowledge of the proposed project. This may be in the form of a literature review or a summary of collective activities. If your organization has received previous funding on this effort, please provide the agency/organization name and project number.

v. *Resources.* What human resources, funding, potential collaborators and/or existing networks do you offer to increase possibility of project success? Please state the role these people and/or organizations will play in the project.

vi. *Measures and outcomes.* What will be different as a result of this project? How will you evaluate the success of the project in terms of measurable environmental results? Quantifiable risk reduction measures should be described.

vii. *Outreach.* Describe how you will promote the project so that information is clearly presented and useful to the intended audience. A strong proposal will use a variety of methods for education and information dissemination.

viii. *Sustainability.* Describe how the efforts may continue after the EPA funding ends and how information learned in the project may be useful to other locales, commodities, or a broader audience.

Part IV—Appendices. The following appendices must be included in the proposal. Additional appendices are not permitted.

i. *Appendix A—Literature Cited.* List cited key literature references alphabetically by author.

ii. *Appendix B—Timetable.* A timetable that includes what will be accomplished under each of the objectives during the project and when completion of each objective is anticipated.

iii. *Appendix C—Major Participants.* List all affiliates or other organizations, educators, trainers, and others having a major role in the proposal. Provide name, organizational affiliation, or occupation and a description of the role each will play in the project. A brief resume (not to exceed two pages) should be submitted for each major project

manager, educator, support staff, or other major participant.

iv. *Appendix D—Project Budget.* Use Form 424A and provide narrative on how resources will be spent. The budget should outline costs for personnel, fringe benefits, travel, equipment, supplies, contractual, indirect cost rate, and any other costs associated with the proposed project.

3. *Application submission.* Applications must be submitted by mail or courier.

i. *Submission method.* Submit one complete copy of your proposal along with an electronic version on disk or CD ROM to your EPA Regional PESP Coordinator listed in Unit VII. Your name, e-mail address, and telephone number must appear on the outside of any disk or CD ROM you submit. The electronic submission must be consolidated into a single file and in Microsoft Word for Windows, WordPerfect for Windows, or Adobe PDF format.

ii. *Submission dates and times.* EPA will consider all proposals that are postmarked by the U.S. Postal Service or include official delivery service documentation indicating EPA Regional Office acceptance from a delivery service no later than August 15, 2005. If proposals are not submitted or postmarked by August 15, 2005, they will be rejected and will not be considered for funding.

4. *Intergovernmental Review.* All applicants should be aware that formal requests for assistance (i.e., SF 424 and associated documentation) may be subject to intergovernmental review under Executive Order 12372 “Intergovernmental Review of Federal Programs.” Applicants should contact their states’ single point of contact (SOC) for further information. There is a list of these contacts at the following web site: <http://whitehouse.gov/omb/grants/spoc.html>.

5. *Funding restrictions.* EPA grant funds may only be used for the purposes set forth in the assistance agreement, and must be consistent with the statutory authority for the award. Assistance agreement funds may not be used for matching funds for other Federal grants, lobbying, or intervention in Federal regulatory or adjudicatory proceedings. In addition, Federal funds may not be used to sue the Federal government or any other governmental entity. All costs identified in the budget must conform to applicable Federal Cost Principles contained in OMB Circular A-87; A-122; and A-21, as appropriate. Indirect cost rates will not increase the maximum funding amount.

6. *Other submission requirements.* Awards involving the collection of environmental data will be subject to the requirements of a Quality Assurance Project Plan (QAPP) and will require coordination with the EPA Regional PESP Coordinator listed in Unit VII. A QAPP is not required at the time of submittal but will be required if selected for funding.

7. *Confidential business information.* In accordance with 40 CFR 2.203, applicants may claim all or a portion of their application/proposal as confidential business information. EPA will evaluate confidential claims in accordance with 40 CFR part 2. Applicants must clearly mark applications/proposals or portions of applications/proposals they claim as confidential. If no claim of confidentiality is made, EPA is not required to make the inquiry to the applicant otherwise required by 40 CFR 2.204(2) prior to disclosure.

V. Application Review Information

1. *Criteria.* Applicants will be screened to ensure that they meet all eligibility criteria and will be disqualified if they do not meet all eligibility criteria. EPA Regional PESP Coordinators are responsible for the receipt and will coordinate the screening and selection of proposals. The corresponding points next to each criterion are the weights that will be used to evaluate the applications. Please note that certain sections are given greater weight than others. Each application will be ranked based on the following evaluation criteria (Total: 100 points):

i. *Clearly stated objectives.* Are the project objectives clearly stated and consistent with the pesticide risk reduction goals of PESP? Do the objectives implement reduced risk pest control techniques, develop strategies that will lead to implementation of such projects, or document the trends toward the adoption of IPM or the reduction of risk associated with pesticide use? (Weight: 10 points)

ii. *Critical pesticide risk reduction need.* Does the project identify a regionally/nationally critical pesticide risk reduction issue? Does the project clearly explain the importance of the project and define the environmental problem? (Weight: 15 points)

iii. *Project design/past performance.* Does the project specify realistic goals and objectives that deal with the identified problem? Does the project demonstrate potential for long-term benefits? Can the project be accomplished within the designated 24-month time frame? Does the project

apply holistic problem-solving, particularly biological systems, and address multiple components of the system? Does the project build upon or consider lessons learned from existing efforts, or leverage other significant activities? Does the workplan commit to providing regular project reports including progress on measurement? (Weight: 20 points)

iv. *Qualifications.* Does the applicant demonstrate sufficient experience in the field of the proposed activity? Does the applicant have the properly trained staff, facilities, or infrastructure in place to conduct the project? (Weight: 5 points)

v. *Performance measures.* Is the project designed in such a way that it is maximized to measure and document the results quantitatively and qualitatively? Does the applicant identify the method that will be used to measure and document the project's results quantitatively and qualitatively? Will the project assess or suggest a new means of measuring progress in reducing pesticide risks and result in information that will be valuable to other efforts? Is the project likely to achieve predicted environmental results, expected outcomes, project goals, and produce quantifiable environmental change identified in Unit I of the announcement. Is a description of expected outcomes included? (Weight: 25 points)

vi. *Outreach and transferability.* Does the project include participation of partner organizations? Does the project include the involvement of local stakeholders, grower-to-grower education, or grower-to-scientist interaction to achieve technology transfer? Is the project likely to be replicated in other areas by other organizations or is the product likely to have broad utility to a widespread audience? (Weight: 25 points)

2. *Review and selection process.* Applications will be reviewed and evaluated for validity and completeness by the EPA Regional PESP Coordinators. If the Region determines that an application is incomplete, the proposal will not be considered further. Each Regional PESP Coordinator will convene a panel consisting of Regional staff to evaluate all complete proposal packages. The highest rated/ranked proposal in each Region will be funded.

3. *Anticipated announcement and award dates.* Final selections will be made approximately 28 days after the closing date for receipt of proposals. The Agency reserves the right to reject all proposals and make no awards.

VI. Award Administration Information

1. *Award notices.* The EPA Regional PESP Coordinator will e-mail an acknowledgment to applicants upon receipt of the application. Once all of the applications have been reviewed, evaluated, and ranked, applicants will be notified of the outcome of the competition. A listing of the successful proposals will be posted on the PESP website (http://www.epa.gov/oppbppd1/PESP/regional_grants.htm) at the conclusion of the competition.

2. *Administrative and national policy requirements.* An applicant whose proposal is selected for Federal funding must complete additional forms prior to award (see 40 CFR 30.12 and 31.10), and will be required to certify that they have not been debarred or suspended from participation in Federal assistance awards in accordance with 40 CFR part 32.

Selected applicants must formally apply for funds through the appropriate EPA Regional Office. In addition, selected applicants must negotiate a final work plan, including reporting requirements, with the designated EPA Regional project officer. For more general information on post award requirements and the evaluation of grantee performance, see 40 CFR part 31.

3. *Reporting.* The successful recipient will be required to submit quarterly and/or annual reports (as determined by the EPA Regional PESP Coordinator), and to submit annual financial reports. The specific information contained within the report will include at a minimum, a comparison of actual accomplishments to the objectives established for the period. The EPA Regional PESP Coordinator may request additional information relative to the scope of work in the assistance agreement and which may be useful for Agency reporting under the Government Performance and Results Act.

4. *Disputes.* Assistance agreement competition-related disputes will be resolved in accordance with the dispute resolution procedures published in the **Federal Register** of January 26, 2005 (70 FR 3629) (FRL-7863-3), which can be found at <http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/05-1371.htm>. Copies of these procedures may also be requested by contacting the appropriate EPA Regional PESP Coordinator listed under Unit VII.

VII. Agency Contact

The applicant may contact the appropriate EPA Regional PESP Coordinator to obtain clarification and

guidance. EPA Regional PESP Coordinators are:

Region I (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont), Andrea Szylyvian, 1 Congress St., Suite 1100, (CPT), Boston, MA 02114-2023; telephone: (617) 918-1198; e-mail: szylyvian.andrea@epa.gov.

Region II (New York, New Jersey, Puerto Rico, Virgin Islands), Tara Masters, Raritan Depot, 2890 Woodbridge Ave., (MS-500), Edison, NJ 08837-3679; telephone: (732) 906-6183; e-mail: masters.tara@epa.gov.

Region III (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia), Fatima El-Abdaoui, 1650 Arch St., (3WC32), Philadelphia, PA 19103-2029; telephone: (215) 814-2129; e-mail: el-abdaoui.fatima@epa.gov.

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Amber Davis, 61 Forsyth St., SW., Atlanta, GA 30303-8960; telephone: (404) 562-9014; e-mail: davis.amber@epa.gov.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), Heather Anhalt, 77 W Jackson Blvd., (DT-8J), Chicago, IL 60604-3507; telephone: (312) 886-3572; e-mail: anhalt.heather@epa.gov.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), Jerry Collins, 1445 Ross Ave., Suite 1200, (6PD-P), Dallas, TX 75202-2733; telephone: (214) 665-7562; e-mail: collins.jerry@epa.gov.

Region VII (Iowa, Kansas, Missouri, Nebraska), Brad Horchem, 901 N 5th St., (WWPDPEST), Kansas City, KS 66101; telephone: (913) 551-7137; e-mail: horchem.brad@epa.gov.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), Peg Perreault, 999 18th St., Suite 300, (8P-P3T), Denver, CO 80202-2466; telephone: (303) 312-6286; e-mail: perreault.peg@epa.gov.

Region IX (Arizona, California, Hawaii, Nevada, American Samoa, Guam), Karen Heisler, 75 Hawthorne St., (CMD-1), San Francisco, CA 94105; telephone: (415) 947-4240; e-mail: heisler.karen@epa.gov.

Region X (Alaska, Idaho, Oregon, Washington), Sandra Halstead, (WSU-IAREC), 24106 N. Bunn Road, Prosser, WA 99350; telephone: (509) 786-9225; e-mail: halstead.sandra@epa.gov.

VIII. Other Information

A. Does this Action Apply to Me?

This action is directed to the public in general but will be of particular interest to eligible applicants who include the 50 States, District of

Columbia, U.S. Virgin Islands, Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State including State universities, and all federally recognized Tribes.

If you have any questions regarding the applicability of this action to a particular entity, consult your EPA Regional PESP Coordinator listed under Unit VII.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2005-0137. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Room 119, Crystal Mall #2, 1800 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may obtain electronic copies of this document through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgstr/>. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1., above. Once in the system, select "search," then key in the appropriate docket ID number.

IX. Submission to Congress and the Comptroller General

Grant solicitations containing binding legal requirements are considered rules for the purpose of the Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*). The CRA 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 grant solicitation 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 in the **Federal Register**. This grant solicitation does not qualify as a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Pesticides, Risk reduction, PESP.

Dated: June 24, 2005.

Margaret Schneider,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 05-12923 Filed 6-29-05; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT-2005-0011; FRL-7706-6]

Tribal Educational Outreach on Lead Poisoning and Baseline Assessment of Tribal Children's Existing and Potential Exposure and Risks Associated With Lead; Notice of Funds Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting grant proposals from Indian tribes to support Tribal educational outreach and to conduct a baseline assessment of Tribal children's existing and potential exposure to lead. EPA is awarding grants which will provide approximately \$1.2 million to Indian tribes to perform those activities and to encourage Indian tribes to consider continuing such activities in the future. This notice describes eligibility, activities, application procedures and requirements, and evaluation criteria.

DATES: All grant proposals must be received on or before August 15, 2005.

ADDRESSES: Grant proposals must be submitted by mail. Please follow the detailed instructions as provided in Unit IV.F. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Darlene Watford, Program Assessment and Outreach Branch, National Program Chemicals Division (7404T), Office of

Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-0516; e-mail address: watford.darlene@epa.gov.

SUPPLEMENTARY INFORMATION: The following listing provides certain key information concerning the funding availability opportunity.

Overview

- *Federal agency name:* Environmental Protection Agency.
- *Funding opportunity title:* Tribal Educational Outreach on Lead Poisoning and Baseline Assessment of Tribal Children's Existing and Potential Exposure to Lead.
- *Announcement type:* Notice of funds availability.
- *Funding opportunity number:* FON-T002.
- *Catalog of Federal Domestic Assistance (CFDA) number:* 66.715.
- *Dates:* All grant proposals must be received on or before August 15, 2005.

I. Funding Opportunity Description

A. Authority

Section 10 of the Toxic Substances Control Act (TSCA), as supplemented by Public Law No. 106-74, provides the authority for this grant program. It authorizes EPA to award grants for the purpose of conducting research, development, monitoring, education, training, demonstrations, and studies necessary to carry out the purposes of the Act. These funds are not eligible for use in a Performance Partnership Agreement.

B. Program Description

1. *Scope and purpose.* The purpose of these grants is to support Tribal lead educational outreach activities and the efforts of Indian tribes to identify children's risks to lead by conducting a baseline assessment of existing and/or potential lead exposures. The outreach activities may be provided to children, parents, daycare providers, and legal custodians on the potential health risks associated with lead exposure. As a result of the baseline assessment activities, Tribes may use the resulting data and information to evaluate whether there is a need to develop and implement an authorized Tribal lead-based paint program (40 CFR 745.324). The overall purpose of the grant program is to have an increased number of Tribal communities educated in lead poisoning prevention, a decreased number of Tribal children lead poisoned, and an increased number of Tribal children tested for lead

poisoning. Projects are expected to be completed within 2 years of award of the grant.

2. *Activities to be funded.* EPA will provide financial assistance in the form of grants to Indian tribes or Tribal consortia to conduct any or all of the following activities:

i. *Educational outreach activities.* EPA will provide financial assistance in the form of grants to Indian tribes or Tribal consortia to develop and conduct organized outreach efforts to educate Tribal families about the dangers to children from exposure to lead-based paint hazards, distribute educational information, and encourage Tribal families to have their children screened for lead poisoning and have their homes tested for lead hazards. Activities may include, but are not limited to, training medical professionals, developing culturally specific lead outreach materials, distributing pamphlets, and establishing an in-home education program to visit the homes of young Tribal children.

Tribes may develop their own outreach materials; however, the use and reproduction of pre-existing products is strongly encouraged and preferred. EPA is aware that many State, Tribal, and local departments of health and environmental protection, as well as advocacy groups and community development groups, have developed useful lead poisoning prevention materials to conduct educational outreach activities. EPA and other Federal agencies have developed, and currently provide, a wide range of outreach materials available from the National Lead Information Center (1-800-424-LEAD). Trained specialists at the Center can help identify specific types of lead awareness materials that already exist and thereby avoid spending the limited resources to recreate these materials. Grant funding may be used to reproduce existing lead educational outreach materials or to develop and implement a lead poisoning awareness and prevention program. Any new lead awareness materials developed must be consistent with the Federal (EPA, Department of Housing and Urban Development (HUD), and Centers for Disease Control and Prevention (CDC, formerly the Centers for Disease Control)) lead hazard awareness and poisoning prevention programs (<http://www.epa.gov/lead/>, <http://www.hud.gov/offices/lead/>, and <http://www.cdc.gov/nceh/lead/lead.htm>).

ii. *Baseline assessment activities.*

- *Conduct blood-lead screening of Tribal children age 6 years and under.* For blood-lead screening activities, the

focus should be on Tribal children between the ages of 12–36 months because blood-lead levels tend to be highest in this age group. More children in this age group have blood-lead levels above the level of concern, >10 micrograms/deciliter ($\mu\text{g}/\text{dL}$). The CDC's recommended level of concern that encourages followup activities is 10 $\mu\text{g}/\text{dL}$, with specific actions/interventions recommended at various elevated blood-lead levels. All blood-lead samples collected from Tribal children must be analyzed using a Clinical Laboratory Improvement Amendments (CLIA)-certified laboratory. Portable, hand-held blood-lead analyzers may be used, but must be operated by a laboratory that is CLIA-certified for moderately complex analysis. CLIA, published in 1992 (42 CFR part 405), is administered by the Centers for Medicare and Medicaid Services (CMS, formerly the Health Care Finance Administration). CLIA-certified laboratories must successfully participate in a testing proficiency program that is CLIA-approved. Information regarding CLIA may be downloaded from the CMS web site at <http://www.cms.gov/clia/>.

- *Conduct inspections and risk assessments of pre-1978 Tribal housing and/or child-occupied facilities for lead-based paint hazards.* (Housing and facilities may be owned or occupied by Tribal members.) This includes collection and analysis of paint, dust, and soil samples for hazardous lead levels. Inspections and risk assessments may only be conducted by individuals certified by EPA for Indian country in the EPA Region where the Tribe is located or certified by the recipient Tribe if the Tribe has received EPA program authorization. Inspections and risk assessments must be conducted according to the work practice standards found in 40 CFR 745.227 or those of the authorized Tribal program. Analysis of paint, dust, and soil samples must be conducted by a National Lead Laboratory Accreditation Program (NLLAP)-recognized laboratory. EPA has established the NLLAP to recognize laboratories that demonstrate the ability to analyze paint chip, dust, or soil samples for lead. A current list of NLLAP-recognized laboratories can be obtained by calling the National Lead Information Center at 1-800-424-LEAD.

- *Train workers to perform lead inspections and risk assessments.* Grant funds may be used for initial, refresher, or any other training and/or third party testing required to obtain certification (as discussed in Unit I.B.2.ii.) to perform lead-based paint inspections and risk assessments. Grant funds cannot be used to pay for any administrative fees

for certification to conduct lead inspections and/or risk assessments.

- *Compile and summarize demographic data collected from activities listed in Unit I.B.2.ii.* In order for Tribes to qualify for other Federal funds for lead activities, sufficient data need to be compiled and well organized. It is strongly recommended that Tribes develop or use an existing data management system (manual or automated) to collect and maintain the data collected during the project, including laboratory results and data on followup cases for Tribal children with elevated blood-lead levels. This information may be essential in determining if Tribes have the capacity for a Tribal lead program (40 CFR 745.324) and are eligible for other Federal funding for lead activities. (An existing Tribal tracking system, Tribal Relational Environmental Numeric Health Database System (TRENHDS), may be viewed or downloaded from <http://www.bluejaydata.com/trenhds>.) It is recommended that the data include: Tribe or Tribal consortium name and location; an identifier that protects the privacy of the child; age of housing in which the child resides; age of the child (in months); gender; sample media (blood, soil, dust, or paint); date of sample collection; method of sample collection (for blood samples indicate whether method was capillary or venous); laboratory analysis method and date; the levels of lead in blood (in micrograms per deciliter ($\mu\text{g}/\text{dL}$)), soil (in micrograms per gram ($\mu\text{g}/\text{g}$)), dust (in micrograms per square foot ($\mu\text{g}/\text{ft}^2$)), and paint (in $\mu\text{g}/\text{g}$ or milligrams per centimeter square (mg/cm^2)); the number of homes and/or child-occupied facilities where risk assessments or inspections were conducted; the number of paint, dust, and soil samples collected; and possible exposure routes from other sources (such as hobby materials, pottery, parent occupational exposure, special native foods, medications) for each Tribal child screened.

- *Travel to conferences.* Grant funds may be used to support travel expenses and attendance of key Tribal lead program personnel at EPA Regional and National Lead Conferences.

3. *Goal and objectives.* The objective of these grants is to support Tribal lead educational outreach and the efforts of Indian tribes to identify children's risks to lead by conducting a baseline assessment of existing and/or potential lead exposures. The outreach activities may be provided to children, parents, daycare providers, and legal custodians on the potential health risks associated with lead exposure. As a result of the

baseline assessment activities, Tribes may use the resulting data and information to evaluate whether there is a need to develop and implement an authorized Tribal lead-based paint program (40 CFR 745.324). Projects are expected to be completed within 2 years of award of the grant.

II. Award Information

The funding for the selected projects will be in the form of grants. The total funding available for awards in FY 2005 is approximately \$1.2 million.

Applicants may receive one grant for up to \$75,000 for educational outreach activities, or \$50,000 for baseline assessment activities, or \$125,000 for a combined grant proposal for both educational outreach and baseline assessment activities. Applicants must submit separate budget breakdowns for educational outreach and baseline assessment activities in combined grant proposals.

Final distribution of the funds will be dependent upon the number of qualified applicants, Tribal populations served by each grant, and other factors, as deemed appropriate by EPA (i.e., the evaluation criteria as stated in Unit V.A.). Tribes may use a portion of the grant funds for contractor support for these activities; however, contractor support may not account for more than 25% of the amount of the grant, except where contract services include blood-lead analysis, training, and/or lead-based paint inspections and risk assessments). EPA reserves the right to reject all proposals and make no awards under this announcement.

III. Eligibility Information

A. Threshold Eligibility Factors

There are no threshold eligibility factors under this grant.

B. Eligibility Criteria

To be eligible for consideration, proposals must come from Federally Recognized Indian Tribes or Tribal consortia only. Failure to meet this criteria will result in automatic disqualification of the proposal for funding. Federally Recognized Indian Tribes are listed in the **Federal Register** document published by the Bureau of Indian Affairs (BIA) on July 12, 2002 (67 FR 46327). There is no requirement that a Tribe provide documentation that it meets the treatment in a manner similar to a State (TAS) standard. After receiving two EPA awards under this program, Tribes are not eligible for additional awards under this grant program.

C. Cost Sharing or Matching

There are no requirements for matching funding under this grant program.

IV. Application and Submission Information

A. Address to Request Application Package

There are no application or proposal packages. No application forms are required to be submitted with the proposal.

B. Content and Form of Application Submission

Proposals must be typewritten, unbound, stapled or clipped in the upper left-hand corner, on white paper, and with page numbers. Proposals must include a work plan(s) as described in this unit. The work plan(s) may be for either educational outreach or baseline assessment activities or a combination, including both activities. However, only one proposal will be accepted from each Tribe or Tribal consortia in response to this notice. Each work plan must be 4–6 typed pages in length (excluding appendices). If a package consists of more than five pages, the package will be considered but the additional pages will not be reviewed. One page is one side of a single-spaced typed page. Submit one original and three double-sided copies of the proposal, including a contact name, return mailing address, and telephone number. All proposals must include a work plan organized and outlined as follows:

Section I.—Work Plan for Educational Outreach Grant Proposal

- *Title of project, table of contents, and summary.*
- *Educational outreach activities.* This section should include, but not be limited to, the following items/activities: Purpose, goal, and scope of the project; types of lead educational material that will be used and/or reproduced; types, if any, of lead educational materials that will be developed; distribution and delivery plans; and percentage estimate of the number of Tribal families who will receive the lead awareness information. The grant proposal must include a statement which describes how the effectiveness of the project will be determined. The proposal should be consistent with the overall purpose of the grant program: To have an increased number of Tribal communities educated in lead poisoning prevention, a decreased number of Tribal children lead poisoned, and an increased number of Tribal children tested for lead poisoning.

- *Project management.* Include a description of staff positions, roles, and responsibilities; a description of experience in or potential to conduct activities described in section B; efforts of partnership and

collaboration with other local-health agencies; extent of contractor support; schedule and/or a time line showing the major activities and estimated time frames for initiation and completion; and a budget summary.

- *Budget.* Provide a reasonable budget that is clearly identifiable with work plan activities.

- *Appendices.* The appendices must be no more than 10 pages total and follow the same paging and spacing description as provided in this outline.

- Resumes of key personnel (also include title, description, and reference name with telephone number) for work on previous or current grants or contracts within the last 5 years).

- Letters of support from Tribal representatives for Tribal consortia. For individual Tribes, include a letter or resolution from Tribal Council or Chairperson showing support for and commitment to the project. (If it is not possible to obtain a letter/resolution from the Tribal Council or Chairperson to submit with your application, an interim letter of explanation must be included with the application.) The letter/resolution will still be required prior to award of the grant.

- Detailed information on other lead-based paint or lead-related activities conducted by the Tribe or Tribal consortium.

Section II.—Work Plan for Baseline Assessment Grant Proposal

- *Title of project, table of contents, and summary.*

- *Baseline assessment activities.* This section should include the purpose, goal, and approach of the project. This section should also include a discussion of the separate phases of the project; the criteria for selecting properties to be inspected and/or to have risk assessments performed and children screened; methods to be used for data collection and quality control; and training and certification of individuals to perform lead-based paint evaluation activities. The grant proposal must include a statement which describes how the effectiveness of the project will be determined. EPA is extremely interested in knowing what actions Tribes plan to follow regarding monitoring, education, and/or treatment for children whose blood-lead levels are determined to be elevated (>10 µg/dL) while screened under baseline assessment activities conducted under this grant. It is important that the children who are found to have elevated blood-lead levels are treated. A description of specific steps and related information for followup activities must be included in this section.

- *Project management.* Include a description of staff positions, roles, and responsibilities; a description of experience in or potential to conduct activities described in section B; efforts of partnership and collaboration with other local-health agencies; extent of contractor support; schedule and/or time line showing the major activities and estimated time frames for initiation and completion; and a budget summary.

- *Budget.* Provide a reasonable budget that is clearly identifiable with work plan activities.

- *Appendices.* The appendices must be no more than 10 pages total and follow the same paging and spacing description as provided in this outline.

- Resumes of key personnel (also include title, description, and reference name with telephone number) for work on previous or current grants or contracts with the Federal Government within the last 5 years).

- Letters of support from Tribal representatives for Tribal consortia. For individual Tribes, include a letter or resolution from Tribal Council or Chairperson showing support for and commitment to the project. (If it is not possible to obtain a letter/resolution from the Tribal Council or Chairperson to submit with your application, an interim letter of explanation must be included with the application.) The letter/resolution will still be required prior to award of the grant.

- Detailed information on other lead-based paint or lead-related activities (if applicable).

The format for proposals submitted for combined baseline assessment and outreach activities must include both Sections I and II above.

C. Submission Dates and Times

The deadline for EPA's receipt of grant proposals is 5 p.m. eastern standard time on August 15, 2005.

D. Intergovernmental Review

Applicants should be aware that formal requests for assistance (i.e., SF-424 and associated documentation) may be subject to intergovernmental review under Executive Order 12372, "Intergovernmental Review of Federal Programs." Applicants should contact their State's single point of contact (SPOC) for further information. There is a list of these contacts at the following web site: <http://whitehouse.gov/omb/grants/spoc.html>. However, Executive Order 12372, does not apply to this assistance program since grant proposals will be submitted in lieu of comments on developing this program.

E. Funding Restrictions

Grant funding may not be used for the following:

1. Buying real property, such as land or buildings.

2. Lead hazard reduction activities, such as performing interim controls or abatement (as defined in 40 CFR 745.223).

3. Construction activities, such as renovation, remodeling, or building a structure.

4. Office equipment that costs more than 10% of the amount of the grant, such as a copying machine or a color printer.

5. Analysis equipment in excess of 10% of the amount of the grant.

6. Lead-based paint certification fees for individuals and firms.

7. Contractor support in excess of 25% of the amount of the grant award, except where contract services include blood-lead analysis, training, and/or lead-based paint inspections and risk assessments.

8. Duplication of any lead-related activities that have been previously funded by EPA, or other Federal Government sources.

9. Case-management costs, including treatment for Tribal children with elevated blood-lead levels (e.g., followup visits by a doctor or chelation therapy).

F. Other Submission Requirements

As indicated above, each proposal must include the original and three double-sided copies. Include a contact name, return mailing address, and telephone number on the proposal. Submit your proposal using one of the following methods:

By mail to: Darlene Watford, Program Assessment and Outreach Branch, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

By overnight/express or courier delivery service to: Darlene Watford, Program Assessment and Outreach Branch, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1301 Constitution Ave., NW., EPA West (Old Customs Bldg.), 4th Floor Connecting Wing, Room 4355, Washington, DC 20004-0001.

G. Confidential Business Information

Proposals should be clearly marked to indicate any information that is to be considered confidential. EPA will make final confidentiality decisions in accordance with Agency regulations in 40 CFR part 2, subpart B. All proposals received under this notice are subject to the dispute resolution process defined at 40 CFR 30.63 and part 31, subpart F.

V. Application Review Information

A. Criteria

All proposals will be reviewed, evaluated, and ranked by a selected panel of EPA reviewers based on the following criteria and points:

1. *Lead educational outreach*—i. *General (20 points).* The overall description of implementing the Tribal lead educational outreach program in the proposal must address the scope and

purpose of this notice of funding availability as detailed in Unit I.B.1. It must include reasonable and attainable goals and an approach that is clearly detailed. The proposal must describe the method that will be used to determine the effectiveness of the project. The proposal must provide detailed information on all lead-based paint or lead-related educational outreach activities for which the Tribe has received funding from any Federal, State, or local government. If the Tribe has conducted, or is currently working on a related project(s), a brief description of those projects, funding sources, primary commitments, and an indication as to whether those commitments were met must be included in the grant proposal. The description must also indicate how the proposed project is different from other funded work conducted by the Tribe(s) or unfunded work conducted by another entity (e.g., Indian Health Service, Superfund), and how the proposed project will not duplicate previous or on-going projects. It is important to note that funds cannot be awarded to conduct activities which have been previously funded through any other Federal grant program.

- ii. *Educational outreach activities (40 points).* The grant proposal should fully describe the proposed educational outreach efforts for Tribal Indian communities. The messages in the grant proposal should be consistent with EPA/HUD/CDC lead-based paint program policies, guidelines, regulations, and recommendations. The following elements will be specifically evaluated:

- Types of existing lead educational material to be used and/or reproduced (i.e., reports, pamphlets, brochures, video tapes, CD ROMs, etc.); types, if any, of lead awareness (educational) outreach materials that will be developed.

- Method of distribution of materials throughout the Tribal population.

- How the messages will be delivered, e.g., lecture, written material distribution, one-on-one interviews.

- Printing, special video taping, advertising (billboards, posters, flyers), collaboration with radio or television, or other methods used to reach the Tribal Indian population regarding the outreach effort.

- Estimate of the number of Tribal families who will receive the lead awareness information; efforts that will be employed to target hard-to-reach Tribal communities to inform families about childhood lead poisoning and screening, if applicable; the number of

people/families/medical personnel/etc., who will be reached.

- An indication as to whether the proposed educational outreach materials and activities are suitable for the target audience (i.e., appropriate language comprehension and cultural identification).

iii. *Project management (30 points)*. The grant proposal should describe the staff positions, roles, and responsibilities, and their qualifications. The following elements will also be evaluated: Resumes of key personnel; Tribal experience in or potential to conduct activities such as those described in the "Educational Outreach Activities" section; previous experience managing similar projects; and availability of references; access to properly trained staff and facilities to conduct the project; schedule for completing the project; and the extent of activities to be performed by a contractor.

iv. *Budget (10 points plus 5 bonus points)*. The evaluation will be based on the extent to which the proposed budget is reasonable, clear, and consistent with the intended use of the funds. Although matching funds are not required, up to five bonus points will be given to grant proposals indicating financial contributions and/or in-kind services provided to the project.

2. *Baseline assessment*—i. *General (20 points)*. The overall description of the Tribal lead baseline assessment program will be evaluated. The grant proposal must address the scope and purpose of this notice as detailed in Unit I.B.1. It must include reasonable and attainable goals and an approach that is clearly detailed. The proposal must include a statement which describes how the effectiveness of the project will be determined. The grant proposal must provide detailed information on all lead-based paint or lead-related activities for which the Tribe has received funding from any Federal, State, or local government.

ii. *Baseline assessment activities (40 points)*.

- *Blood-lead screening activities*. The grant proposal will be evaluated on the description of the sampling, collection, handling, and analysis activities; the data collection and tracking system, quality control measures; the description of the facility/facilities where the blood-lead sampling will occur (i.e., school, library, health department facility, clinic, private building, mobile van, etc.); and the estimated number and a percentage estimate of the number of Tribal children to be screened in the project. The evaluation will also be based on the

description of the method that will be used to solicit maximum participation of Tribal children; the methods (i.e., printing, video taping, collaboration with radio or television, etc.), to be used to reach the Indian population regarding the blood-lead screening effort; efforts to be used to ensure patient confidentiality; and a description of how the CLIA standards will be met.

- *Inspection/risk assessment of Tribal housing*. The proposal will be evaluated on the description of residential/child occupied properties that will undergo lead-based paint inspection and/or risk assessment; the selection criteria used to identify the properties; the description of methods used to reach Tribal population regarding lead paint inspections and/or risk assessment efforts; the description of inspection, risk assessment, and sampling and analysis procedures; the qualifications of inspection personnel; and the description of reporting procedures. All inspections and risk assessments must be conducted according to the work practice standards found in 40 CFR 745.227 or those of an authorized Tribal program.

- *Paint, dust, and soil testing*. The grant proposal evaluation will be based on the description of the sampling, collection, handling, and analysis activities; the description of the data that will be collected, tracked, and reported to EPA; the quality control measures implemented, including a description of how NLLAP-recognized laboratories will be used for analysis.

- *Training*. Use of EPA accredited training providers or training providers approved by an EPA authorized State or Tribe for risk assessments and inspections and use of inspectors and/or risk assessors certified by EPA or by an EPA authorized State or Tribe.

iii. *Project management (30 points)*. The grant proposal will be evaluated based on the description of the staff positions, roles and responsibilities, and their qualifications. The following elements will also be evaluated: Resumes of key personnel; Tribal experience in or potential to conduct activities such as those described in the "Inspection/risk assessment of tribal housing," and "Paint, dust, and soil testing" sections; previous experience managing similar projects; and availability of references; access to properly trained staff and facilities to conduct the project; schedule for completing the project; and the extent of activities to be performed by a contractor.

iv. *Budget (10 points plus 5 bonus points)*. The evaluation will be based on the extent to which the proposed budget

is reasonable, clear, and consistent with the intended use of the funds. Although matching funds are not required, up to five bonus points will be given to grant proposals indicating financial contributions and/or in-kind services provided to the project.

B. Review and Selection Process

Award decisions will be made on the basis of the proposals. Decisions on awarding the grant funds will be made based on the evaluation of the proposals using the criteria specified in Unit V.A. All proposals will be screened to ensure that they meet the eligibility requirement as stated in Unit III. Those not meeting the requirement will not be considered. EPA reserves the right to reject all proposals and make no awards.

The lead educational outreach and baseline assessment proposals (work plans) will be reviewed separately. The maximum rating score for each proposal will be 105 points (five bonus points for in-kind services). A Tribe or Tribal consortium that submits a combined proposal (for both the lead educational outreach and baseline assessment) may receive a grant for one, both, or none, depending on evaluation and ranking. The final funding decision will be made from a group of top rated proposals. The Agency reserves the right to reject all proposals and make no awards.

Assistance agreement competition-related disputes will be resolved in accordance with the dispute resolution procedures published in the **Federal Register** of January 26, 2005 (70 FR 3629) which can be found at: <http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/05-1371.htm>. Copies of these procedures may also be requested by contacting the agency contact below.

VI. Award Administration Information

A. Award Notices

The appropriate EPA Regional Lead Coordinator will mail a notification to the contact person identified in the proposal once all proposals have been reviewed, evaluated, and ranked. An applicant whose proposal is selected will be required to submit additional forms to EPA for grant application (such as Standard Form SF-424, Application for Federal Assistance). Specific information will be provided in the written notification from EPA. In addition, successful applicants will be required to certify that they have not been debarred or suspended from participation in Federal assistance awards in accordance with 40 CFR part 32. The application forms are available on line at <http://www.epa.gov/ogd/>

AppKit/application.htm. These forms should not be submitted with the proposals.

B. Administrative and National Policy Requirements

All environmental or health-related measurements or data generation (such as activities in baseline assessment) must adequately address the requirements of 40 CFR 31.45 relating to quality assurance/quality control. Information on EPA quality assurance requirements may be downloaded from the EPA Quality Staff web site at <http://www.epa.gov/quality>. To begin the process of developing the quality assurance documentation, a quality assurance project plan template has been developed that may be helpful to use as a guide. The template may be downloaded from the EPA/OPPT web site at <http://www.epa.gov/lead/new.htm>. For further EPA guidance on preparation of the quality documentation, please contact the appropriate EPA Regional Lead Contact listed below in this unit.

Region I: (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), Regional Contact: James M. Bryson, USEPA Region I, One Congress St., Suite 1100 (CPT), Boston, MA 02114-0203, telephone number: (617) 918-1524; fax number: (617) 918-1505; e-mail: bryson.jamesm@epa.gov.

Region II: (New Jersey, New York, Puerto Rico, and the Virgin Islands), Regional Contact: Lou Bevilacqua, USEPA Region II, MS-225, 2890 Woodbridge Ave., Edison, NJ 08837, telephone number: (732) 321-6671; fax number: (732) 321-6757; e-mail: bevilacqua.louis@epa.gov.

Region III: (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia), Regional Contact: Demian Ellis, USEPA Region III (3WC33), 1650 Arch St., Philadelphia, PA 19103-2029, telephone number: (215) 814-2088; fax number: (215) 814-3114; e-mail: ellis.demian@epa.gov.

Region IV: (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee), Regional Contact: Liz Wilde, USEPA Region IV, 61 Forsyth St., SW., Atlanta, GA 30303, telephone number: (404) 562-8528; fax number: (404) 562-8972; e-mail: wilde.liz@epa.gov.

Region V: (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin), Regional Contact: David Turpin, USEPA Region V (DT-8J), 77 W. Jackson Blvd., Chicago, IL 60604, telephone number: (312) 886-7836; fax number: (312) 353-4788; e-mail: turpin.david@epa.gov.

Region VI: (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas),

Regional Contact: Eva Steele, USEPA Region VI, 1445 Ross Ave., 12th Floor (6MD-RP), Dallas, TX 75202, telephone number: (214) 665-7211; fax number: (214) 665-6762; e-mail: steele.eva@epa.gov.

Region VII: (Iowa, Kansas, Missouri, and Nebraska), Regional Contact: Larry Stafford, USEPA Region VII, ARTD/RALI, 901 North 5th, Kansas City, KS 66101, telephone number: (913) 551-7394; fax number: (913) 551-7065; e-mail: stafford.larry@epa.gov.

Region VIII: (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming), Regional Contact: Amanda Hasty, USEPA Region VIII, 999 18th St., Suite 300, Denver, CO 80202, telephone number: (303) 312-6966; fax number: (303) 312-6044; e-mail: hasty.amanda@epa.gov.

Region IX: (Arizona, California, Hawaii, Nevada, American Samoa, and Guam), Regional Contact: Nancy Oien, USEPA Region IX (CMD-4), 75 Hawthorne St., San Francisco, CA 94105, telephone number: (415) 927-3780; fax number: (415) 947-3583; e-mail: oiennancy@epa.gov.

Region X: (Alaska, Idaho, Oregon, and Washington), Regional Contact: Barbara Ross, USEPA Region X, Solid Waste and Toxics Unit (WCM-128), 1200 Sixth Ave., Seattle, WA 98101, telephone number: (206) 553-1985, fax: (206) 553-8509, e-mail: ross.barbara@epa.gov.

C. Statutory Authority and Executive Order Reviews

Section 10 of TSCA, as supplemented by Public Law 106-74, authorizes EPA to award grants for the purpose of conducting research, development, monitoring, education, training, demonstrations, and studies necessary to carry out the purposes of the Act. Presently, these funds are not eligible for use in a Performance Partnership Agreement.

D. Reporting

The successful recipient must provide to EPA written progress reports within 30 days after the end of each quarter and a final report within 90 days after the end of the project periods. The specific information contained in the report will include at a minimum, a comparison of actual accomplishments to the objectives established for that period. The recipient must also submit annual financial reports to EPA. EPA may require additional progress reports which will be listed in the final award package.

VII. Agency Contacts

Darlene Watford, Program Assessment and Outreach Branch, National Program

Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-0516; e-mail address: watford.darlene@epa.gov.

VIII. Other Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are a Federally Recognized Indian Tribe or Tribal consortium. For the purposes of this notice, a partnership between two or more Federally Recognized Indian Tribes is considered a consortium. Potentially affected entities may include, but are not limited to:

American Indian and Alaskan Native Tribal Governments (921150).

Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the **Federal Register** document published by the BIA on July 12, 2002 (67 FR 46327), which lists all Federally Recognized Indian Tribes. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT-2005-0011. The official public docket consists of documents specifically referenced in this action and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B-102 Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566-1744 and the telephone number for the OPPT Docket, which is

located in the EPA Docket Center, is (202) 566-0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit VIII.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

You may also access this document at the Office of Pollution Prevention and Toxics Lead Home Page at <http://www.epa.gov/lead/new.htm>.

C. Information on Related Lead Grant Program

This notice is one of two EPA grant opportunities to conduct various lead-based paint activities. The second grant program, the lead-based paint section 404(g) lead grant program (Solicitation of Applications for Lead-Based Paint Program Grants; Notice of Availability of Funds), was made available to all States and Tribes through the EPA Regional Offices (see listing of EPA Offices under Unit VI.B.). Although a Tribe may apply to receive grant funding from both programs, they each have very distinct objectives. The grant program opportunities described in this notice may serve as a precursor to, but not as an equivalent or supplement to, the section 404(g) lead-based paint grant program. The section 404(g) lead-based paint grant program involves infrastructure development for the anticipated implementation of a lead-based paint training and certification program and does not include the activities (testing for lead in blood, paint, dust, or soil samples, or the general educational outreach activities) listed in this notice. Tribes may determine from the sample results and data interpretation that they obtain from the grant program described in this notice, that they have a need to develop a lead-based paint grant program and may apply for section 404(g) grant funds. Alternatively, a Tribe may decide that it is not in their best interest to pursue such a training and certification oversight program. Tribes or Tribal

consortia with an EPA-approved lead-based paint program may become eligible for other Federal funding opportunities for lead activities.

IX. Submission to Congress and the Comptroller General

Grant solicitations such as this are considered rules for the purpose of the Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*). The CRA 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 grant solicitation 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 its publication in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Lead, Lead-based paint, Grants, Indians, Native Americans, Maternal and child health, Tribal.

Dated: June 23, 2005.

Margaret Schneider,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 05-12953 Filed 6-29-05; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT-2005-0034; FRL-7722-9]

Polychlorinated Biphenyls; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will conduct a public meeting on polychlorinated biphenyls (PCBs) to discuss PCB remediation waste and related activities under the Toxic Substances Control Act (TSCA). Information obtained at the meeting will be considered by the Agency in preparing a response to the Office of Management and Budget (OMB) regarding a request for reform of PCB remediation waste disposal activities. **DATES:** The meeting will be held on July 18, 2005, from 9 a.m. to noon. EPA encourages attendees to pre-register for this public meeting by July 11, 2005.

Requests to give oral presentations at the meeting, identified by docket

identification (ID) number OPPT-2005-0034, must be received in writing on or before July 11, 2005.

Submit requests for special accommodations, identified by docket ID number OPPT-2005-0034, to the technical person on or before July 11, 2005.

ADDRESSES: The meeting will be held in EPA's East Bldg., Rm. 1153, at 1201 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Peggy Reynolds, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-0513; e-mail address: reynolds.peggy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who clean up and dispose of PCB remediation waste. Potentially affected entities may include, but are not limited to:

- Oil and Gas Extraction (NAICS 21111), e.g., Former and existing facilities with surfaces contaminated by PCBs.
- Electric Power Generation, Transmission and Distribution (NAICS 2211), e.g., Former and existing facilities with surfaces contaminated by PCBs.
- Construction (NAICS 23), e.g., Former and existing facilities with surfaces contaminated by PCBs.
- Food Manufacturing (NAICS 311), e.g., Former and existing facilities with surfaces contaminated by PCBs.
- Paper Manufacturing (NAICS 322), e.g., Former and existing facilities with surfaces contaminated by PCBs.
- Petroleum and Coal Products Manufacturing (NAICS 324), e.g., Former and existing facilities with surfaces contaminated by PCBs.
- Primary Metal Manufacturing (NAICS 331), e.g., Former and existing facilities with surfaces contaminated by PCBs.

- Rail Transportation (NAICS 48211), Former and existing facilities with surfaces contaminated by PCBs.

- Lessors of Real Estate (NAICS 5311), e.g., Former and existing facilities with surfaces contaminated by PCBs.

- Professional, Scientific and Technical Services (NAICS 54), e.g., Testing laboratories, environmental consulting.

- Waste Treatment and Disposal (NAICS 5622), Former and existing facilities with surfaces contaminated by PCBs.

- Repair and Maintenance (NAICS 811), e.g., Repair and maintenance of appliances, machinery, and equipment.

- Public Administration (NAICS 92), Federal, State, and local agencies.

Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may have an interest in this matter. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPPT-2005-0034. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566-1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566-0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments,

access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

C. How and to Whom Do I Submit A Request to Make an Oral Presentation?

You may submit a request to make an oral presentation electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line. Please ensure your request is submitted within the specified time frame. Requests received after that date will be marked "late." EPA is not required to consider late submissions.

1. *Electronically.* If you submit an electronic request as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information. This ensures that you can be identified as the submitter and allows EPA to contact you in case EPA needs further information.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit a request to make an oral presentation to EPA electronically is EPA's preferred method for receiving requests. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT-2005-0034. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your request.

ii. *E-mail.* Requests to make an oral presentation may be sent by e-mail to oppt.ncic@epa.gov, Attention: Docket ID Number OPPT-2005-0034. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail request directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the request that is placed in the official public docket, and made available in EPA's electronic public docket.

2. *By mail.* Send your request to make an oral presentation to: Document Control Office (7407M), Office of

Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

3. *By hand delivery or courier.* Deliver your request to make an oral presentation to: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT-2005-0034. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930.

II. Background

Congress directed OMB to prepare an annual report to Congress on the costs and benefits of Federal regulations. On February 20, 2004, OMB made the report "2004 Draft Report to Congress on the Costs and Benefits of Federal Regulations" publically available and requested public nominations for reforms (Ref. 1). One of the nominations that OMB received was from the Utilities Solid Waste Advisory Group (USWAG) (Ref. 2). USWAG contends EPA treats identical PCB remediation waste at concentrations less than 50 parts per million (ppm) differently. It believes that all PCB remediation wastes at concentrations less than 50 ppm should be managed in the same manner, "including being disposed in a municipal solid waste landfill." While EPA does not necessarily believe that the exact same PCB remediation waste is treated differently, it is reviewing these concerns to determine how to minimize any potential confusion. EPA is interested in obtaining stakeholder input on how to make the PCB remediation waste activities more transparent. To obtain this input, EPA is holding a public meeting. A brief background paper is available from the TSCA-Hotline (Ref. 3). The TSCA Hotline can be reached by telephone at (202) 554-1404 or by e-mail at TSCA-Hotline@epa.gov.

III. Meeting Procedures

Oral presentations will be limited to 10 minutes. In order to give an oral presentation follow the instructions in Unit I.C. A written copy of the oral presentation must be provided to the technical person listed under **FOR FURTHER INFORMATION CONTACT** at the public meeting for inclusion in the official public docket. Direct inquiries regarding oral presentations and the submission of written copies of these oral presentations to the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Seating at the meeting will be on a first-come basis. Special accommodations will be available for those requesting them on or before July 11, 2005.

Persons interested in attending the public meeting are encouraged to pre-register by calling the technical person listed under **FOR FURTHER INFORMATION CONTACT** and providing your name, organization, and telephone number by July 11, 2005. This advance request will assist in planning adequate seating and in securing access to the building. Meeting attendees are directed to use the EPA East entrance on Constitution Ave., near 12th St., NW., for direct access to the meeting room. Members of the public may attend without prior registration with the technical person, but pre-registration is encouraged.

IV. References

The following references have been placed in the official public docket that was established under docket ID number OPPT-2005-0034 for this action as indicated in Unit I.B.1.

1. OMB. 2004 Draft Report to Congress on the Costs and Benefits of Federal Regulations. **Federal Register** (69 FR 7987, February 20, 2004).
2. USWAG comments. Letter to Ms. Lorraine Hunt, OMB, from Joseph E. Shefchek, USWAG, dated May 20, 2004. Subject: Draft Report to Congress on the Costs and Benefits of Federal Regulation; Notice and Request for Comments.
3. EPA. Background Paper: PCB Remediation Waste.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Labeling, Polychlorinated biphenyls (PCBs), Reporting and recordkeeping requirements.

Dated: June 23, 2005.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 05-12916 Filed 6-29-05; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7929-9]

Science Advisory Board Staff Office; Notification of an Upcoming Closed Meeting of the Science Advisory Board's Scientific and Technological Achievement Awards Committee-Closed Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency's (EPA), Science Advisory Board (SAB) Staff Office announces a closed meeting of the SAB's Scientific and Technological Achievement Awards Committee to recommend to the Administrator the recipients of the Agency's 2005 Scientific and Technological Achievement Awards.

DATES: July 19-21, 2005.

ADDRESSES: This closed meeting will take place at the U.S. Environmental Protection Agency (EPA), Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Members of the public who wish to obtain further information regarding this announcement may contact Ms. Kathleen White, Designated Federal Officer, by telephone: (202) 343-9878 or e-mail at: white.kathleen@epa.gov.

The SAB Mailing address is: U.S. EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC, 20460. General information about the SAB as well as any updates concerning the meeting announced in this notice, may be found in the SAB Web site at <http://www.epa.gov/sab/panels/staarp.htm>.

SUPPLEMENTARY INFORMATION: *Summary:* Pursuant to Section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2, and section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6) EPA has determined that the meeting will be closed to the public. The purpose of the meeting is for the SAB to recommend to the Administrator the recipients of the Agency's 2005 Scientific and Technological Achievement Awards. These awards are established to honor and recognize EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, as exhibited in publication of their results in peer reviewed journals. This meeting is closed to the public because it is concerned with selecting

which employees are deserving of awards, a personnel matter with privacy concerns, which is exempt from public disclosure pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2, and section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6). In accordance with the provisions of the Federal Advisory Committee Act, minutes of the meeting will be kept for Agency and Congressional review.

Dated: June 20, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05-12935 Filed 6-29-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EDOCKET ID No.: ORD-2005-0020; FRL-7930-3]

Board of Scientific Counselors, Executive Committee Telecon Meeting—Summer 2005

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of an Executive Committee meeting (via conference call) of the Board of Scientific Counselors (BOSC). The conference call will focus on reviewing a draft report of the BOSC Particulate Matter/Ozone Research Subcommittee.

DATES: The conference call will be held on Wednesday, July 13, 2005 from 1 p.m. to 3 p.m., eastern time, and may adjourn early if all business is finished. Written comments, and requests for the draft agenda or for making oral presentations during the call will be accepted up to 1 business day before the conference call date.

ADDRESSES: Participation in the conference call will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the calls from Lorelei Kowalski, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Document Availability

Any member of the public interested in receiving a draft BOSC agenda or making an oral presentation during the meeting may contact Ms. Lorelei

Kowalski, Designated Federal Officer, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. In general, each individual making an oral presentation will be limited to a total of three minutes. The draft agenda can be viewed through EDOCKET, as provided in Unit I.A. of the **SUPPLEMENTARY INFORMATION** section.

Submitting Comments

Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Ms. Lorelei Kowalski, Designated Federal Officer, via telephone/voice mail at (202) 564-3408, via e-mail at kowalski.lorelei@epa.gov, or by mail at Environmental Protection Agency, Office of Research and Development, Mail Code 8104-R, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. **SUPPLEMENTARY INFORMATION:**

I. General Information

The purpose of this conference call is to review, discuss, and potentially approve a revised draft report prepared by the BOSC Particulate Matter/Ozone Research Subcommittee. The draft report was originally discussed at the BOSC Executive Committee meeting on June 2-3, 2005, and now reflects revisions due to comments made at the June meeting. Proposed agenda items for the conference call include, but are not limited to: Discussion of the Subcommittee's revisions to the charge questions and general report content. The meeting is open to the public.

Information on Services for the Handicapped: For information on access or services for individuals with disabilities, please contact Lorelei Kowalski at 202-564-3408 or kowalski.lorelei@epa.gov. To request accommodation of a disability, please contact Lorelei Kowalski, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

A. How Can I Get Copies Of Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. ORD-2005-0020. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Documents in the official public docket are listed in the index in EPA's electronic public docket and comment system, EDOCKET.

Documents may be available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copy of the draft agenda may be viewed at the Board of Scientific Counselors, Executive Committee Meeting—Summer 2005 Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the ORD Docket is (202) 566-1752.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EDOCKET. You may use EDOCKET at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper

receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EDOCKET.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EDOCKET at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, <http://www.epa.gov>, select "Information Sources," "Dockets," and "EDOCKET." Once in the system, select "search," and then key in Docket ID No. ORD-2005-0020. The system is an anonymous access system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to ORD.Docket@epa.gov, Attention Docket ID No. ORD-2005-0020. In contrast to EPA's electronic public docket, EPA's e-mail system is not an anonymous access system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and

made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: U.S. Environmental Protection Agency, ORD Docket, EPA Docket Center (EPA/DC), Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. ORD-2005-0020.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. ORD-2005-0020 (note: this is not a mailing address). Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.A.1.

Dated: June 23, 2005.

Kevin Y. Teichman,

Director, Office of Science Policy.

[FR Doc. 05-12944 Filed 6-29-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7930-4]

Eleventh Meeting of the World Trade Center Expert Technical Review Panel To Continue Evaluation on Issues Relating to Impacts of the Collapse of the World Trade Center Towers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The World Trade Center Expert Technical Review Panel (or WTC Expert Panel) will hold its eleventh meeting intended to provide for greater input on continuing efforts to monitor the situation for New York residents and workers impacted by the collapse of the World Trade Center (WTC). The panel members will help guide the EPA's use of the available exposure and health surveillance databases and registries to characterize any remaining exposures and risks, identify unmet public health needs, and recommend any steps to further minimize the risks associated with the aftermath of the WTC attacks. Panel meetings will be open to the public, except where the public interest requires otherwise. Information on the panel meeting agendas, documents

(except where the public interest requires otherwise), and public registration to attend the meetings will be available from an Internet web site. EPA has established an official public docket for this action under Docket ID No. ORD-2004-0003.

DATES: The eleventh meeting of the WTC Expert Panel will be held on Tuesday, July 12, 2005, from 9 a.m. to 5 p.m., Eastern Daylight Savings Time. On-site registration will begin at 8:30 a.m.

ADDRESSES: The WTC Expert Panel meeting will be held at St. John's University, 101 Murray Street, New York, NY in Room 123. A government-issued identification (e.g., driver's license) is required for entry.

FOR FURTHER INFORMATION CONTACT: For meeting information, registration and logistics, please see the panel's Web site <http://www.epa.gov/wtc/panel> or contact ERG at (781) 674-7374. The meeting agenda and logistical information will be posted on the Web site and will also be available in hard copy. For further information regarding the WTC Expert Panel, contact Ms. Lisa Matthews, EPA Office of the Science Advisor, telephone (202) 564-6669 or e-mail: matthews.lisa@epa.gov.

SUPPLEMENTARY INFORMATION:

I. WTC Expert Panel Meeting Information

Eastern Research Group, Inc., (ERG), an EPA contractor, will coordinate the WTC Expert Panel meeting. To attend the panel meeting as an observer, please register by visiting the Web site at: <http://www.epa.gov/wtc/panel>. You may also register for the meeting by calling ERG's conference registration line between the hours of 9 a.m. and 5:30 p.m. e.s.t. at (781) 674-7374 or toll free at 1-800-803-2833, or by faxing a registration request to (781) 674-2906 (include full address and contact information). Pre-registration is strongly recommended as space is limited, and registrations are accepted on a first-come, first-served basis. The deadline for pre-registration is July 7, 2005. Registrations will continue to be accepted after this date, including on-site registration, if space allows. There will be a limited time at the meeting for oral comments from the public. Oral comments will be limited to five (5) minutes each. If you wish to make a statement during the observer comment period, please check the appropriate box when you register at the Web site. Please bring a copy of your comments to the meeting for the record or submit them electronically via e-mail to meetings@erg.com, subject line: WTC.

II. Background Information

Immediately following the September 11, 2001, terrorist attack on New York City's World Trade Center, many federal agencies, including the EPA, were called upon to focus their technical and scientific expertise on the national emergency. EPA, other federal agencies, New York City and New York State public health and environmental authorities focused on numerous cleanup, dust collection and ambient air monitoring activities to ameliorate and better understand the human health impacts of the disaster. Detailed information concerning the environmental monitoring activities that were conducted as part of this response is available at the EPA Response to 9-11 Web site at <http://www.epa.gov/wtc/>.

In addition to environmental monitoring, EPA efforts also included toxicity testing of the dust, as well as the development of a human exposure and health risk assessment. This risk assessment document, Exposure and Human Health Evaluation of Airborne Pollution from the World Trade Center Disaster, is available on the Web at <http://www.epa.gov/ncea/wtc.htm>. Numerous additional studies by other Federal and State agencies, universities and other organizations have documented impacts to both the outdoor and indoor environments and to human health.

While these monitoring and assessment activities were ongoing and the cleanup at Ground Zero itself was occurring, EPA began planning for a program to clean and monitor residential apartments. From June until December 2002, residents impacted by WTC dust and debris in an area of about 1 mile by 1 mile south of Canal Street were eligible to request either federally-funded cleaning and monitoring for airborne asbestos or monitoring of their residences. The cleanup continued into the summer of 2003 by which time the EPA had cleaned and monitored 3,400 apartments and monitored 800 apartments. Detailed information on this portion of the EPA response is also available at <http://www.epa.gov/wtc/>.

A critical component of understanding long-term human health impacts is the establishment of health registries. The WTC Health Registry is a comprehensive and confidential health survey of those most directly exposed to the contamination resulting from the collapse of the WTC towers. It is intended to give health professionals a better picture of the health consequences of 9/11. It was established by the Agency for Toxic Substances and

Disease Registry (ATSDR) and the New York City Department of Health and Mental Hygiene (NYCDHMH) in cooperation with a number of academic institutions, public agencies and community groups. Detailed information about the registry can be obtained from the registry Web site at: <http://www.nyc.gov/html/doh/html/wtc/index.html>.

In order to obtain individual advice on the effectiveness of these programs, unmet needs and data gaps, the EPA has convened a technical panel of experts who have been involved with WTC assessment activities. Mr. E. Timothy Oppelt, EPA Acting Assistant Administrator for Research and Development, is serving as Interim Panel Chair. Dr. Paul Liroy, Professor of Environmental and Community Medicine at the Environmental and Occupational Health Sciences Institute of the Robert Wood Johnson Medical School-UMDNJ and Rutgers University, serves as Vice Chair. A full list of the panel members, a charge statement and operating principles for the panel are available from the panel Web site listed above. Panel meetings typically will be one- or two-day meetings, and they will occur over the course of approximately a two-year period. Panel members will provide individual advice on issues the panel addresses. These meetings will occur in New York City and nearby locations. All of the meetings will be announced on the Web site and by a **Federal Register** Notice, and they will be open to the public for attendance and brief oral comments.

The focus of the eleventh meeting of the WTC Expert Panel is to discuss EPA's Final Draft Proposed Sampling Program to Determine Extent of World Trade Center Impacts to the Indoor Environment, review results from the WTC signature validation study, continue discussion of remaining issues associated with the WTC Health Registry, and have opportunity for public comment. The sampling plan and additional information on meetings will be made available on the panel Web site at: <http://www.epa.gov/wtc/panel>.

III. How To Get Information on E-DOCKET

EPA has established an official public docket for this action under Docket ID No. ORD-2004-0003. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is

restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center, (EPA/DC) EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752; facsimile: (202) 566-1753; or e-mail: ORD.Docket@epa.gov.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Dated: June 23, 2005.

E. Timothy Oppelt,

Acting Assistant Administrator, Office of Research and Development.

[FR Doc. 05-12943 Filed 6-29-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2005-0150; FRL-7721-4]

Sethoxydim Risk Assessments; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments and related documents for the cyclohexenone herbicide sethoxydim, and opens a public comment period on these documents. The public also is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED), for sethoxydim through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket identification (ID) number OPP-2005-0150, must be received on or before August 29, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: James Parker, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 605-1525; fax number: (703) 308-7042; e-mail address: parker.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP-2005-0150. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet

under the “Federal Register” listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA’s electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select “search,” then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA’s electronic public docket. EPA’s policy is that copyrighted material will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA’s electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA’s electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA’s electronic public docket.

For public commenters, it is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA’s electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA’s electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA’s electronic public docket. Public comments that are mailed or delivered to the docket will be

scanned and placed in EPA’s electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA’s electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA’s policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA’s electronic public docket to submit comments to EPA electronically is EPA’s preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select “search,” and then key in docket ID number OPP–2005–0150. The system is an “anonymous access” system, which means EPA will not know your identity, e-mail address, or

other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2005–0150. In contrast to EPA’s electronic public docket, EPA’s e-mail system is not an “anonymous access” system. If you send an e-mail comment directly to the docket without going through EPA’s electronic public docket, EPA’s e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA’s e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0150.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0150. Such deliveries are only accepted during the docket’s normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA’s electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public

docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments, and related documents for sethoxydim, a cyclohexenone herbicide, and encouraging the public to suggest risk management ideas or proposals. Sethoxydim is a selective, postemergence herbicide for control of annual and perennial grasses. EPA developed the risk assessments for sethoxydim through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

EPA is providing an opportunity, through this notice, for interested

parties to provide comments and input on the Agency's risk assessments for sethoxydim. Such comments could address, for example, refinements to the ecorisk assessment.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to sethoxydim, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL-7357-9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For sethoxydim, a modified, 4-Phase process with 1 comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessments. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for sethoxydim. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products and either reregistering

products or taking other "appropriate regulatory action."

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 17, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05-12918 Filed 6-29-05; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2002-0302; FRL-7720-6]

Dichlorvos (DDVP) Revised Ecological Risk Assessment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's revised ecological risk assessment and start of the Phase 5 public comment period for the organophosphate pesticide Dichlorvos (DDVP). The public also is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing an Interim Reregistration Eligibility Decision (IRED) for DDVP through the full, 6-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before August 29, 2005.

ADDRESSES: Comments, identified by docket identification (ID) number OPP-2002-0302, may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Dayton Eckerson, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania

Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8038; fax number: (703) 308–8041; e-mail address: eckerson.dayton@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2002–0302. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA’s electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select “search,” then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA’s electronic public docket. EPA’s policy is that copyrighted material will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA’s electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA’s electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA’s electronic public docket.

For public commenters, it is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA’s electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA’s electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA’s electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA’s electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA’s electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on

the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA’s policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA’s electronic public docket to submit comments to EPA electronically is EPA’s preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select “search,” and then key in docket ID number OPP–2002–0302. The system is an “anonymous access” system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0302. In contrast to EPA’s electronic public docket, EPA’s e-mail system is not an “anonymous access” system. If you send an e-mail comment directly to the docket without going through EPA’s electronic public docket, EPA’s e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA’s e-mail system are included as part of the comment that is

placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2002-0302.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP-2002-0302. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is making available the Agency's revised ecological risk assessment, initially issued for comment through a **Federal Register** notice published on October 11, 2000 (65 FR 60430) (FRL-6750-4); a response to comments; and related documents for DDVP. EPA developed the ecological risk assessment for DDVP as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Dichlorvos is an organophosphate insecticide registered for indoor, terrestrial non-food, greenhouse (food and non-food) and domestic outdoor use. There are no agricultural crop uses for this chemical. Target pests are flies, gnats, mosquitoes, chiggers, ticks, cockroaches and other nuisance insect pests. For the turf and ornamental uses target pests also include armyworms, chinch bugs, clover mites, crickets, cutworms, grasshoppers, and sod webworms. Formulation types include baits, liquids and impregnated materials.

The majority of dichlorvos uses are indoors, including mushroom houses, greenhouses, commercial, residential

and industrial buildings, farm buildings, food handling establishments, trash receptacles, and wine cellars.

EPA is providing an opportunity, through this notice, for interested parties to provide risk management proposals or otherwise comment on risk management for DDVP. As described in the ecological risk assessment, the Agency has identified potential risks of concern from various DDVP use scenarios. For terrestrial species, acute and chronic risks were identified for birds and mammals from turf applications, flying insect applications, and bait applications. For certain aquatic species, turf application scenarios are expected to yield risks of concern. To adequately protect the environment it may be necessary to change current use and/or application practices.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's ecological risk assessment for DDVP. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as percent crop treated information, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide. In the DDVP docket, a document highlights the specific areas in which the Agency is requesting public input. Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to DDVP, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL-7357-9) explains that in conducting these programs, EPA is tailoring its public participation process

to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, DDVP is being reviewed through the full 6-Phase public participation process.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments and proposals will become part of the Agency Docket for DDVP. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

After considering comments received on the ecological risk assessment, and those on the the human health risk assessment due to be released for public comment shortly, EPA will develop and issue the DDVP IRED. The decisions presented in the IRED be supplemented by further risk mitigation measures when EPA considers its cumulative assessment of the organophosphate pesticides.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 17, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05-12952 Filed 6-29-05; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2005-0141; FRL-7719-4]

2-amino-4,5-dihydro-6-methyl-4-propyls-triazolo(1,5-alpha)pyrimidin-5-one (PP796); Notice of Filing a Pesticide Petition to Amend the Existing Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition by Syngenta Crop Protection, Inc. proposing to amend the established exemption from the requirement of a tolerance under 40 CFR 180.1065 for 2-amino-4,5-dihydro-6-methyl-4-propyls-triazolo(1,5-alpha)pyrimidin-5-one, which is also known as PP796, by increasing the amount that can be used to not more than 0.3 percent in formulation of paraquat dichloride.

DATES: Comments, identified by docket identification (ID) number OPP-2005-0141, must be received on or before August 1, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Karen Angulo, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 306-0404; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to

assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP-2005-0141. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made

available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this

unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2005-0141. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP-2005-0141. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office

of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2005-0141.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP-2005-0141. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and Federal Register citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 22, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Syngenta Crop Protection, Inc.

PP 5E6929

EPA has received a pesticide petition (5E6929) from Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27419-8300 proposing, pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, to amend the established exemption from the requirement of a tolerance under 40 CFR 180.1065 for 2-amino-4,5-dihydro-6-methyl-4-propyl-s-triazolo(1,5- α)pyrimidin-5-one (CAS

No. 27277-00-5). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition. 2-amino-4,5-dihydro-6-methyl-4-propyl-s-triazolo(1,5- α)pyrimidin-5-one is also known as "PP796," and shall be referred to as such in this document for ease of reading.

A. Residue Chemistry

1. *Plant metabolism.* Plant metabolism studies are generally not required for exemption from tolerance of an inert ingredient. The plant metabolism of PP796 has not been investigated. Since this inert is only utilized as an emetic in paraquat dichloride end use products that are utilized for non-selective weed control, plant residues of PP796 are expected to be non-detectable.

2. *Analytical method.* Analytical methods are generally not required for exemption from a tolerance of an inert ingredient. Methods have been developed and could be provided if requested. The requested use is not expected to result in detectable residues.

3. *Magnitude of residues.* Potential residues of PP796 in raw and or processed agricultural commodities as a result of the use of paraquat dichloride formulations containing up to 0.3 % w/w of this substance are expected to be minimal. The maximum concentration of PP796 (0.3% w/w) in paraquat dichloride formulations is much lower than the concentration of the co-formulated active ingredient (paraquat dichloride). Based on data presented in the Reregistration Eligibility Decision (RED) on paraquat dichloride, and on the expected relative concentrations of paraquat and PP796 on agricultural commodities would be approximately 110 times lower than paraquat dichloride (assuming the maximum of 0.3% w/w emetic in a technical containing 33.0% paraquat ion).

B. Toxicological Profile

1. *Acute toxicity.* Acute oral toxicity has been evaluated in rats. Groups of 5 male and 5 female rats received single oral doses of 100, 150 and 200 mg/kg/body weight of PP796. Moderate signs of toxicity were seen at 100 mg/kg, but all animals recovered by day 7. Marked signs of toxicity were seen at both 150 and 200 mg/kg, with 9/10 animals dosed with 150 mg/kg, and 8/10 animals dosed with 200 mg/kg, being found dead or

killed in extremis at day 2. All surviving animals had recovered by day 10. Clinical sign of toxicity included decreased activity, salivation, upward curvature of the spine, increased breathing rate, ptosis and stains around the mouth and nose. With no significant findings at post mortem, the median lethal dose is estimated as being between 100 and 150 mg/kg/body weight.

Acute dermal toxicity has been evaluated in rats. 2,000 mg/kg body weight of PP796 was applied to the skin of 5 male and 5 female rats for 24 hours, washed off, and the animals observed for signs of toxicity for 14 days. Other than an observation of slight erythema seen in one male rat on day 2, no signs of dermal irritation were noted. There were no mortalities, and with no macroscopic effects at post mortem, the acute dermal median lethal dose is considered to be > 2,000 mg/kg/day.

Skin irritation was evaluated in rats. PP796 caused slight irritation to rat skin and some evidence of dermal toxicity following repeated occluded application. Signs of irritation were evident after the 4th application when all animals developed erythema. In addition, all animals looked thin after the 5th application, one was subdued and another was hunched. One animal was found dead on the last day of the study (after a total dose of 0.6 mg/kg). Histopathological examination of the skin and selected major organs confirmed the irritant effect. With no obvious signs of chemical toxicity, the only systemic effects were severe involution of the thymus and spleen.

Eye irritation was evaluated on rabbits. Instillation of PP796 into the eyes of rabbits caused moderate initial pain and slight irritation. Treated eyes were examined at 1-2 hours and at 1-, 2-, 3-, 4-, and 7- days post instillation. Although no corneal damage was noted, transient iridial and conjunctival reactions were observed. With all signs of irritation clearing by day 2, PP796 is considered a slight eye irritant.

Skin sensitization potential was evaluated in guinea pigs. It has tested negative in a Stevens Ear/Flank test in guinea pigs and as such is not considered to be a strong skin sensitizer.

2. *Genotoxicity.* PP796 is non-mutagenic. It has tested negative in *Salmonella* Ames tests, both in the presence and absence of metabolic activation (Arochlor induced liver S9 fraction) with each of 5 tester strains (TA98, TA100, TA1535 and TA1538).

3. *Reproductive and developmental toxicity.* Developmental toxicity was evaluated in rabbits and rats. Tests on pregnant animals during organogenesis

showed no deformities in either rat or rabbit offspring, but at high doses in rabbit, PP796 was toxic to the dam resulting in spontaneous abortions.

i. *Rabbits.* Groups of 12 female rabbits were orally dosed days 6-18 of pregnancy with 0, 0.25, 0.75 and 1.25 mg/kg PP796. Half of the animals in each group were killed by day 28 and the fetuses removed. The dams were examined for signs of toxicity and macroscopic abnormalities. The fetuses were examined for soft tissue abnormalities before subsequent processing for skeletal examination. The remaining rabbits were allowed to litter and rear their offspring to 4 weeks post partum.

Dosing with 1.25 and 0.75 mg/kg caused an increase in the number of reabsorptions. No reabsorptions were seen at the 0.25 mg/kg level. Two rabbits receiving 1.25 mg/kg aborted day 20, and another one when killed day 29, had 6 reabsorptions and no viable fetuses. Of those receiving 0.75 mg/kg, one died day 18 (having 8 fetuses in utero) and another littered. The two higher dose levels also produced anorexia. Fewer offspring survived to 28 days of rabbits treated with 0.75 mg/kg. Only a small number of deformities were detected, including the presence of extra ribs, a common finding in this strain of rabbit.

PP796 induces vomiting in dogs at high doses. Although rabbits can not vomit, the high doses in this study resulted in poor appetite/anorexia.

In conclusion, PP796, is not teratogenic to rabbits, producing maternal toxicity at 1.25 and 0.75 mg/kg and only minimal fetal toxicity. The No Observable Effect Level (NOEL) = 0.25 mg/kg/day.

ii. *Rats.* Groups of 20 female rats were orally dosed days 6-15 of pregnancy with 0, 0.25 and 1.25 mg/kg of PP796. Half the rats were killed one day prior to parturition and the fetuses examined for soft tissue changes before being processed for skeletal examination. The remaining rats were allowed to litter and rear their offspring to weaning.

PP796 had no significant effect on stillbirths, reabsorption rates, litter size or mean offspring weight. There was however evidence of anorexia and a reduction in body weight gain in top dose females. Skeletal and soft tissue changes were within normal limits for the strain of rat. In conclusion, PP796 was not teratogenic to the rat and had little effect on pregnancy, littering or weaning. The NOEL = 0.25 mg/kg/day.

4. *Subchronic toxicity.* Subchronic toxicity was evaluated on rats and dogs.

i. *Rats.* 10 male and 10 female rats were orally dosed with 0, 0.25, or 1.25

mg/kg PP796 daily for 3 months. In this study 15 male and 15 female rats were similarly exposed to 5 mg/kg. At the end of the 3-month dosing period, 5 male and 5 female rats previously exposed to 5 mg/kg PP796 were maintained without treatment for a further 12 weeks to assess reversibility. There was a slight reduction in body weight gain in top dose male rats. Many top dose and a few mid dose rats salivated after dosing the first few weeks of treatment, but thereafter salivated after dosing. There were no treatment related effects on haematology (haemoglobin, packed cell volume, total white cell count, differential white cell count, platelets and mean cell haemoglobin) or on urine analysis. In terms of clinical chemistry, no treatment related effects were observed in AST, ICD or total protein. Slightly elevated levels of alkaline phosphatase were seen in male and female rats treated with 5 mg/kg PP796 on day 22. By day 36, the levels were statistically significantly different from the controls (Males $P < 0.05$; females $P < 0.001$), but by day 85, had returned to normal. Significantly increased serum urea levels were noted in female rats exposed to 5 mg/kg PP796 day 36 ($P < 0.001$) and day 85 ($P < 0.01$). Slightly increased serum urea levels were noted in male rats day 3 only ($P < 0.05$). At study termination (and termination of the recovery animals) there were no effects on organ weights and no histological changes attributable to treatment.

ii. *Dogs.* In this study 4 male and 4 female beagles were orally dosed with capsules containing 0, 0.15, 0.5, or 1.5 mg/kg PP796 daily for 3 months. From these animals 1 male and 1 female top dose animals were maintained on study for a further 6 weeks after dosing to assess recovery.

After the 5th week of treatment, many top dose animals salivated profusely before dosing. One male from the same group refused to eat days 9 and 10 of treatment. Vomiting occurred sporadically in 6 top dose and 3 mid-dose animals from day 9 onwards. One female top dose dog that was sick on several occasions and passed blood in its feces was found to have an ileo-caecal intussusception at post-mortem - a relatively common abnormality in this strain of dog. Examination of this animal's bone marrow smear showed megaloblastic hyperplasia - a finding consistent with poor intestinal absorption due to the ileo-caecal ulceration. Weight gains were similar in both control and treated males, while top dose females lost weight sporadically. There were no treatment related effects on haematology, urine

analysis, clinical chemistry or clinical pharmacology. Analysis of serum level concentrations showed PP796 to be well absorbed via the oral route.

At study termination (and termination of the recovery animals) there were no effects on organ weights. Macroscopically, many of the animals (both control and treated) were observed to have reddish areas in the lungs. These patches of pneumonia or nodules of inflammatory cells were attributed to the presence of nematodes caused by the animals not having been treated with anti-helminthics prior to the start of dosing. One additional top-dose female had a small cystadenoma in the thyroid.

Other than a similar nematode-related bronchopneumonia, no pathological changes attributable to PP796 were noted in the recovery animals.

In conclusion, PP796, when administered to rats and dogs at high doses produced no pathological changes, which could be attributed to treatment. The only effects being vomiting in dogs and elevated serum urea levels in female rats.

5. *Chronic toxicity.* Chronic toxicity was evaluated in mice. In this study 25 male and 25 female mice per group and controls were exposed to 5 and 20 ppm (1.25 and 5 mg/kg/day) PP796 in the diet for approximately 78 weeks. Although survival was good, statistically significant dose related reductions in body weight were evident at the high dose level. With no significant difference in the tumor incidence between control and treated animals, it may be concluded that PP796 is not carcinogenic to mice. The NOEL = 1.25 mg/kg/day.

6. *Animal metabolism.* PP796 is well absorbed following oral administration in the mouse, rat, guinea pig, and dog. With the exception of the rat, at least 70% of the administered dose was passed in the urine by 48 hours. The rat differs from the other species in passing a large proportion (43%) of the oral dose in the feces. It has been shown that biliary excretion is the major route in the rat and whole body autoradiography indicates that biliary excretion and reabsorption occurs in mice.

PP796 is extensively metabolized in all the above species, with the urine containing a metabolite in which the methyl group has been hydroxylated. In guinea pigs, it has been shown that serum and tissue levels of total radioactivity are steady over the period 0.25 to 4 hours after oral administration, with maximum levels at about 1 hour. The maximum serum level of PP796 is higher in guinea pigs (0.87 ug/ml) than in rats (0.17 ug/ml) or mice (0.06 ug/ml)

after an oral dose of 1 mg/kg. The mentioned metabolite is a minor component in the serum of all 3 species with 5, 4, and 7% of the total radioactivity in serum in the guinea pig, rat and mouse respectively.

Measurement of the concentration of PP796 in the serum of rats and dogs after prolonged dosing showed:

- i. No difference in the levels between sexes.
- ii. A linear dose - peak serum level response and a linear dose - area under the curve response in dogs throughout the range of doses tested (i.e. 0.15-1.5 mg/kg/day) with slopes of 0.26 ug/ml per 1 mg/kg dose and 1.18 ug.hr/ml per 1 mg/kg dose, respectively. Similar effects were noted in rats in the dose range up to 1.25 mg/kg with slopes of 0.11 ug/ml and 0.52 ug.hr/ml per 1 mg/kg dose, i.e. about half the response seen in dogs.
- iii. A biological half-life of < 3 hours in the dog.

There was no evidence to suggest that serum concentration significantly increased or decreased after prolonged administration, hence PP796 is unlikely to be cumulative.

7. *Metabolite toxicology.* The toxicity of metabolites of PP796 has not been studied. Given the level of anticipated exposure and the available animal metabolism data, it is unlikely metabolites of this inert will be of concern.

8. *Endocrine disruption.* There is no evidence that PP796 has hormone disrupting activity.

C. Aggregate Exposure

1. *Dietary exposure.* The residues of PP796 on raw agricultural commodities, due to application in paraquat dichloride formulations, are expected to be negligible. This is due to the low concentration in end use formulations (< 0.2% w/w) and the use pattern for paraquat dichloride, a nonselective herbicide. In the 1997 RED for paraquat dichloride the Theoretical Maximum Residue Concentrations (TMRC) were calculated for the then existing tolerances for paraquat dichloride. Based on the conservative approach (Tier 1), the chronic exposure of the U.S. population, and of the most highly exposed population subgroup (non-nursing infants less than 1-year old), to paraquat was calculated to be 0.000442 and 0.001398 mg/kg body weight/day, respectively (pg. 55 of RED Paraquat Dichloride).

A formulation that contained the maximum proposed amount of PP796 (0.3% w/w) would contain 110 times more paraquat ion than PP796 (assuming a technical containing 33.0%

w/w paraquat ion). Therefore, the theoretical chronic exposure can be estimated by dividing the paraquat exposure numbers by 110, resulting in 0.0000402 mg/kg body weight/day for the U.S. population and 0.000127 mg/kg body weight/day for the most exposed population (non-nursing infants (<1 years old).

i. *Food.* Exposures to PP796 from food are expected to be negligible.

ii. *Drinking water.* Exposures to PP796 from drinking water are expected to be negligible due to the low concentration in the end-use products. There are no aquatic uses of products containing paraquat dichloride.

2. *Non-dietary exposure.* End use products containing paraquat dichloride are restricted use pesticides. There are no residential or homeowner uses. Non-dietary exposure is expected to be negligible.

D. Cumulative Effects

PP796 is only approved for use in paraquat dichloride formulations. There is no evidence for a common mechanism of toxicity with other substances. Therefore, there is no expectation that the use of PP796 as an inert ingredient in paraquat formulations (up to 0.3 % w/w) would contribute to any cumulative toxicity arising from exposure to other substances having a common mechanism of toxicity.

E. Safety Determination

1. *U.S. population.* Based on the toxicity data presented and the very low level of exposure, Syngenta Crop Protection, Inc. believes that there is reasonable certainty that no harm will result to the general U.S. population by increasing the emetic level in paraquat dichloride formulations. PP796 is included in paraquat dichloride formulations as an added safety factor as required by USEPA. The 1987 *Guidance for the Reregistration of Pesticide Products Containing Paraquat Dichloride as the Active Ingredient* states on page 27 that "The Agency is continuing to require that an emetic cleared under 40 CFR 180.1001(b) and (c) be incorporated into all manufacturing use and end use products containing paraquat. Rationale: Based on the history of poisoning by accidental ingestion of paraquat and partial effectiveness of therapeutic treatment after exposure, the Agency determined that an emetic is needed in formulations to induce rapid vomiting thereby reducing absorption of paraquat." Syngenta Crop Protection, Inc. has developed a novel formulation which significantly improves acute oral

toxicity of paraquat dichloride formulations in vomiting species. This novel formulation improvement is largely accomplished by adding a gelling agent which slows the movement of paraquat into the intestine where most absorption occurs. Improving human safety is the primary reason for this request, as the emetic level is being increased to ensure adequate absorption from the gel in the stomach.

2. *Infants and children.* Based on the toxicity data presented and the very low level of exposure, Syngenta Crop Protection, Inc. believes that there is reasonable certainty that no harm will result to infants and children by increasing the emetic level in paraquat formulations. PP796 is included in paraquat dichloride formulations as an added safety factor as required by U.S. EPA.

F. International Tolerances

Import tolerances are not required for this inert ingredient. It is listed as a requirement in FAO Specification 56.302/TK (2003). The FAO specification requires that "An effective emetic, having the following characteristics, be incorporated into the technical. It must be rapidly absorbed (more rapidly than paraquat) and be quick acting. Emesis must occur in about half an hour in at least 50% of cases. It must be an effective (strong) stimulant of the emetic center of the brain, to produce effective emesis. The emetic effect should have a limited 'action period', of about two to three hours, to allow effective treatment of poisoning. It must act centrally on the emetic center in the brain. It must not be a gastric irritant because, as paraquat itself is an irritant, this could potentiate the toxicity of paraquat. It must be toxicologically acceptable. It must have a short half-life in the body (to comply with the need for a limited action period). It must be compatible with, and stable in, the paraquat formulation and not affect the herbicidal efficacy or occupational use of the product. To date, the only compound found to meet these requirements is 2-amino-4,5-dihydro-6-methyl-4-propyl-s-triazole-(1,5a)pyrimidin-5-one (PP796). PP796 must be present in the technical at not less than 0.8 g/l. The method for determination of PP796 content is available from the Plant Protection Officer, FAO Plant Production and Protection Division."

[FR Doc. 05-12922 Filed 6-29-05; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2005-0149; FRL-7718-9]

Indoxacarb; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.**SUMMARY:** This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.**DATES:** Comments, identified by docket identification (ID) number OPP-2005-0149, must be received on or before August 1, 2005.**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.**FOR FURTHER INFORMATION CONTACT:** Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-3194; e-mail address: brothers.shaja@epa.gov.**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP-2005-0149. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may

be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any

cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2005-0149. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP-2005-0149. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2005-0149.

3. *By hand delivery or courier.* Deliver your comments to: Public Information

and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP-2005-0149. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response.

You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 21, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner summary of the pesticide petitions is printed below as required by FFDCA section 408(d)(3). The summary of the petitions was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project No. 4

PP 5E6911 and PP 5E6926

EPA has received pesticide petitions (PP) 5E6911 and 5E6926 from Interregional Research Project No. 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902-3390 proposing, pursuant to section 408(d) of the (FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of indoxacarb, (S)-methyl 7-chloro-2,5-dihydro-2-[[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl]amino]carbonyl]indeno[1,2e][1,3,4]oxadiazine-4a(3H)-carboxylate] and its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2-[[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl]

amino]carbonyl]indeno [1,2-e] [1,3,4] oxadiazine-4a(3H)-carboxylate] in or on the following raw agricultural commodities:

1. PP 5E6911 proposes the establishment of tolerances for leafy greens, except spinach, subgroup 4A at 10 parts per million (ppm), spinach at 3.0 ppm, leafy petioles subgroup 4B at 1.5 ppm, fruit, pome, except pear, group 11 at 1.0 ppm, vegetable, tuberous and corm, subgroup 1C at 0.01 ppm, and okra at 0.5 ppm.

2. PP 5E6929 proposes the establishment of tolerances for pea, southern at 0.1 ppm; peppermint, tops at 10 ppm; and spearmint, tops at 10 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCa; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the

petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

The active ingredient in the end-use formulation, DuPont™ Avaunt® insecticide, is a 75:25 mixture of two isomers, indoxacarb (DPX-KN128) and IN-KN127. Only one of the isomers, indoxacarb (DPX-KN128), has insecticidal activity. Since the insecticidal efficacy is based on the concentration of indoxacarb (DPX-KN128), the application rates have been normalized on an indoxacarb (DPX-KN128) basis. The proposed tolerance expression includes both indoxacarb (DPX-KN128) and IN-KN127, and the residue method does not distinguish between the enantiomers. Therefore, residues are reported as the sum of indoxacarb (DPX-KN128) combined with IN-KN127. Residues of indoxacarb

(DPX-KN128) combined with IN-KN127 will be referred to as KN128/KN127.

1. *Plant metabolism.* The metabolism of indoxacarb in plants is adequately understood to support these tolerances. The only significant residue is the parent compound.

2. *Analytical method.* The plant residue enforcement method detects and quantitates indoxacarb in various matrices including sweet corn, lettuce, tomato, broccoli, apple, grape, cottonseed, tomato, peanut and soybean commodity samples by high performance liquid chromatography using ultra-violet detection (HPLC-UV). The limit of quantitation in the method allows monitoring of crops with indoxacarb residues at or above the levels proposed in these tolerances.

3. *Magnitude of residues.* The magnitude of residues for the proposed tolerances is adequately understood.

B. Toxicological Profile

| Guideline | Title | Results | Category |
|-----------|---------------------------|-------------------------------------------------------------------------------------------------|--------------|
| 870.1100 | Acute oral toxicity | Lethal Dose LD ₅₀ :1,730 mg/kg (male rat) LD ₅₀ : 268 mg/kg/ (female rat) | Category II |
| 870.1200 | Acute dermal toxicity | LD ₅₀ : >5,000 mg/kg (rat) | Category IV |
| 870.1300 | Acute inhalation toxicity | Lethal Concentration LC ₅₀ : >5.5 mg/L (male rat) (70% MUP) | Category IV |
| 870.2400 | Primary eye irritation | Effects reversed within 72 hours (rabbit) | Category III |
| 870.2500 | Primary dermal irritation | No irritation (rabbit) | Category IV |
| 870.2600 | Skin sensitization | Sensitizer (guinea pig) | |

Formulated products are slightly less acutely toxic than indoxacarb.

1. *Acute neurotoxicity study.* In an acute neurotoxicity study, indoxacarb exhibited decreased forelimb grip strength, decreased foot splay, and some evidence of slightly reduced motor activity, but only at the highest doses tested. The no observed adverse effect level (NOAEL) was 100 milligrams/kilogram (mg/kg) for males, and 12.5 mg/kg for females, based on body weight effects in females 50 mg/kg.

2. *Genotoxicity.* Indoxacarb, has shown no genotoxic activity in the following listed *in vitro* and *in vivo* tests: Ames-negative; *in vitro* mammalian gene mutation Chinese hamster ovary/hypoxanthine guanine phosphoribosyl transferase (CHO/HGPRT)-negative; *in vitro* unscheduled DNA synthesis-negative; *in vitro* chromosomal aberration-negative; and *in vivo* mouse micronucleus-negative.

3. *Reproductive and developmental toxicity.* The results of a series of studies

indicated that there were no reproductive, developmental or reproductive hazards associated with the use of indoxacarb. In a 2-generation rat reproduction study, the parental NOAEL was 1.5 mg/kg/day. The parental NOAEL was based on observations of reduced weight gain and food consumption for the higher concentration groups of the F₀ generation and potential treatment-related changes in spleen weights for the higher groups of the F₁ generation. There was no effect on mating or fertility. The NOAEL for fertility and reproduction was 6.4 mg/kg/day. The offspring NOAEL was 1.5 mg/kg/day, and was based on the reduced mean pup weights noted for the F₁ litters of the higher concentration groups. The effects on pup weights occurred only at a maternal effect level and may have been due to altered growth and nutrition in the dams. In studies conducted to evaluate developmental toxicity potential, indoxacarb was neither

reproductive nor uniquely toxic to the conceptus (i.e., not considered a developmental toxin). Developmental studies conducted in rats and rabbits demonstrated that the rat was more susceptible than the rabbit to the maternal and fetal effects of DPX-MP062. Developmental toxicity was observed only in the presence of maternal toxicity. The NOAEL for maternal and fetal effects in rats was 2 mg/kg/day based on body weight effects and decreased food consumption at 4 mg/kg/day. The NOAEL for developmental effects in fetuses was >4 mg/kg/day. In rabbits, the maternal and fetal NOAELs were 500 mg/kg/day based on body weight effects, decreased food consumption in dams and decreased weight and delayed ossification in fetuses at 1,000 mg/kg/day.

4. *Subchronic toxicity.* Subchronic 90-day feeding studies were conducted with rats, mice, and dogs. In a 90-day feeding study in rats, the NOAEL was

3.1 and 2.1 mg/kg/day for males and females, respectively. In male rats, the NOAEL was based on decreased body weight and nutritional parameters, mild hemolytic anemia and decreased total protein and globulin concentration. In female rats, the NOAEL was based on decreased body weight and food efficiency. In a subchronic neurotoxicity study in rats, there was no evidence of neurotoxicity at 11.9 and 6.09 mg/kg/day, the highest dose tested for males and females, respectively. The subchronic NOAEL in dogs (5.0 mg/kg/day, M/F) was based on hemolytic anemia. Erythrocyte values for most dogs were within a range that would be considered normal for dogs in a clinical setting. Mice were less sensitive to indoxacarb than the rats or dogs. NOAELs (23 mg/kg/day, males, 16 mg/kg/day, females) were based on mortality (males only); increased reticulocytes and Heinz bodies and decreased body weight, weight gain, food consumption, food efficiency; and increased clinical signs (leaning to one side and/or with abnormal gait or mobility) (females only). In a 28-day repeated dose dermal study, the NOAEL was 50 mg/kg/day based on decreased body weights, body weight gains, food consumption, and food efficiency in females, and changes in hematology parameters, the spleen and clinical signs of toxicity in both sexes in rats.

5. *Chronic toxicity.* Chronic studies with indoxacarb were conducted on rats, mice, and dogs to determine carcinogenic potential and/or chronic toxicity of the compound. Effects generally similar to those observed in the 90-day studies were seen in the chronic studies. Indoxacarb, was not carcinogenic in rats or mice. The chronic NOAEL in male rats was 5 mg/kg/day based on body weight and nutritional effects. In females, the NOAEL of 2.1 mg/kg/day was based on body weight and nutritional changes, as well as biologically significant hematologic changes at 3.6 mg/kg/day and above. Hemolytic effects were present only through the 6-month evaluation and only in females. The regenerative nature of indoxacarb-induced hemolytic anemia was demonstrated by the absence of significant changes in indicators of circulating erythrocyte mass at later evaluations. In mice, the chronic NOAEL of 2.6 mg/kg/day for males was based on decreased body weight and weight gain effects and food efficiency at 13.8 mg/kg/day and above. The NOAEL for females was 4.0 mg/kg/day based on body weight nutritional effects, neurotoxicity, and clinical signs

at 20 mg/kg/day. In dogs, the chronic NOAEL was about 2.3 and 2.4 mg/kg/day in males and females, respectively based on hemolytic effects similar to those seen in the subchronic dog study.

6. *Animal metabolism.* Animal metabolism has been studied in the rat, hen, and cow and is well understood. In contrast to crops, indoxacarb is extensively metabolized in animals.

i. *Poultry.* In poultry, hens were fed at 10 ppm/day for 5 days, 87-88% of the total administered dose was excreted; parent comprised 51-54% of the total dose in excreta. Concentrations of residues in eggs were low, 0.3-0.4 of the total dose, as were the concentrations of residues in muscle, 0.2% of the total dose. Parent and metabolite IN-JT333 were not detected in egg whites; only insecticidally inactive metabolites were identified. Parent and IN-JT333 were found in egg yolks; however, their concentrations were very low-0.01-0.02 ppm. Concentrations of parent and IN-JT333 in muscle were at or below the limit of quantitation, (LOQ) 0.01 ppm.

ii. *Poultry feeding study.* A poultry feeding study was not conducted for the initial section 3 registration because finite concentrations of residues would not be expected based on the low concentration of residues in the metabolism study. However, the Agency has required a poultry feeding study as a condition of registration for indoxacarb. The study was submitted on October 31, 2003. Once the Agency has determined the components of the tolerance expression, poultry meat, fat, by-products and egg tolerances will be proposed.

iii. *Cattle.* For the cow study, the cattle were fed at 10 ppm/day for 5-days; approximately 20% of the total administered dose was excreted in urine and 53-60% was excreted in feces in 5-days. Four-tenths to 1.2% of the total dose in urine was parent indicating extensive metabolism; parent represented 46-68% of the fecal activity. Thus, most residues were not absorbed; those residues that were absorbed were extensively metabolized. Less than 1% of the total administered dose was in milk, most of which was parent compound. The insecticidally active metabolite IN-JT333 was not found in milk. Residues in muscle represented less than 0.01% of the total administered dose most of which was parent. IN-JT333 was not detected in muscle. No other metabolites were seen above 10% of the dose, thus only parent and IN-JT333 were monitored in the cattle feeding study.

iv. *Cattle feeding study.* A cattle feeding study was conducted with indoxacarb at doses of 7.5 ppm, 22.5

and 75 ppm. The mean KN128/KN127 concentrations were proportional to the dosing level in whole milk, skim milk, cream, muscle, fat, liver and kidney. Based on final residue values for the respective commodities contributing to the cattle diet, the anticipated dietary burden in dairy cattle is 51.7 ppm and the anticipated dietary burden in beef cattle is 49.1 ppm. The proposed grape use will not increase the animal dietary burden. Based on standard curves constructed from data in the cattle feeding study, KN128/KN127 concentrations at the 51.7 ppm feeding level are 0.123 ppm for whole milk, 0.033 ppm for skim milk, and 1.46 ppm for cream. The KN128/KN127 concentrations at the 49.1 ppm feeding level are 0.046 ppm for muscle, 1.37 ppm for fat, 0.012 ppm for liver, and 0.026 ppm for kidney. Tolerances have been established at 1.5 ppm in fat (cattle, goat, horse, sheep and hog), 0.05 ppm in meat, 0.03 ppm in meat by-products, 0.15 ppm in milk, and 4.0 ppm in milk fat.

7. *Metabolite toxicology.* In rats, indoxacarb was readily absorbed at the low dose 5 mg/kg, but saturated at the high dose 150 mg/kg. Indoxacarb, was metabolized extensively, based on very low excretion of parent compound in bile and extensive excretion of metabolized dose in the urine and feces. Some parent compound remained unabsorbed and was excreted in the feces. No parent compound was excreted in the urine. The retention and elimination of the metabolite IN-JT333 from fat appeared to be the overall rate determining process for elimination of radioactive residues from the body. Metabolites in urine were cleaved products containing only one radiolabel, while the major metabolites in the feces retained both radiolabels. Major metabolic reactions included hydroxylation of the indanone ring, hydrolysis of the carboxylmethyl group from the amino nitrogen and the opening of the oxadiazine ring, which gave rise to cleaved products. Metabolites were identified by mass spectral analysis, NMR, UV and/or by comparison to standards chemically synthesized or produced by microsomal enzymes.

8. *Endocrine disruption.* Lifespan, and multi-generational bioassays in mammals, acute, and subchronic studies on aquatic organisms and wildlife did not reveal endocrine effects. Any endocrine related effects would have been detected in this definitive array of required tests. The probability of any such effect due to agricultural uses of indoxacarb is negligible.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. The chronic, and acute dietary exposure resulting from the currently approved use of indoxacarb on apples, crop group 5 brassica vegetables, cotton, pears, peppers, sweet corn, tomatoes, eggplant, alfalfa, head and leaf lettuce, peanuts, potatoes, soybeans, cranberries current section 18 use and the proposed uses on grapes, leafy brassica, leafy greens crop subgroup 4A except spinach, spinach, leaf petioles crop subgroup 4B, tuberous and corm vegetables crop subgroup 1C, pome fruits crop group 11 except pear, okra, pea southern and mint are well within acceptable limits for all sectors of the population.

Chronic dietary exposure. The Dietary Exposure Evaluation Model (DEEM), Exponent, Inc., formerly Novigen Sciences, Inc., Version 7.87, was used to conduct the chronic dietary exposure assessment for the U.S. general population with the RfD of 0.02 mg/kg/day based on a NOAEL of 2.0 mg/kg/day from the subchronic rat feeding study, the subchronic rat neurotoxicity study, and the chronic/carcinogenicity study and using an uncertainty factor of 100.

The analysis used overall mean field trial values, processing factors and projected peak percent crop treated values. Secondary residues in milk, meat and poultry products were also included in the analysis. The chronic dietary exposure to indoxacarb for the U.S. population is 0.000185 mg/kg/day. The exposure of the most highly exposed subgroup in the population, children age 1-2 years, is 0.000347 mg/kg/day. The exposure for all infants and females 20+ not pregnant and nursing is 0.000126 mg/kg/day and 0.000179 mg/kg/day respectively. The results of this analysis indicate large margins of safety for each population subgroup, and very low probability of effects resulting from chronic exposure to indoxacarb.

Acute dietary exposure. DEEM, Exponent, Inc., formerly Novigen Sciences, Inc., Version 7.87, was used to conduct the acute dietary exposure assessment for the U.S. general population with the RfD of 0.12 mg/kg/day based on the NOAEL of 12.5 mg/kg in the acute neurotoxicity study and an uncertainty factor of 100. The acute RfD for females 13–50 years of age is 0.02 mg/kg/day, based on the NOAEL of 2 mg/kg/day observed in the developmental rat toxicity study and using an uncertainty factor of 100.

The Tier 3, analysis used distributions of field trial residue data adjusted for projected peak percent crop treated. Secondary residues in milk, meat and poultry products were also included in

the analysis. The acute dietary exposure to indoxacarb for the U.S. population is 0.020267 mg/kg/day. The exposure of the most highly exposed subgroup in the population, children age 3–5 years, is 0.005358 mg/kg/day, and the exposure for all infants is 0.018458 mg/kg/day. The results of this analysis indicate large margins of safety for each population subgroup, and very low probability of effects resulting from acute exposure to indoxacarb.

ii. *Drinking water*. Indoxacarb, is highly unlikely to contaminate groundwater resources due to its immobility in soil, low water solubility, high soil sorption, and moderate soil half-life. Based on the PRZM/EXAMS and SCI-GROW models the estimated environmental concentrations (EECs) of indoxacarb and its *R*-enantiomer for acute exposures are estimated to be 6.84 parts per billion (ppb) for surface water and 0.0025 ppb for groundwater. The EECs for chronic exposures are estimated to be 0.316 ppb for surface water and 0.0025 ppb for groundwater. Drinking water levels of comparison (DWLOCs), theoretical upper allowable limits on the pesticides concentration in drinking water, were calculated to be much higher than the EECs. The chronic DWLOCs ranged from 198 to 697 ppb. The acute DWLOCs ranged from 440 to 3,890 ppb. Thus, exposure via drinking water is acceptable.

2. *Non-dietary exposure*. Indoxacarb, product registrations for residential non-food uses have been approved. Non-occupational, non-dietary exposure for DPX-MP062 has been estimated to be extremely small. Therefore, the potential for non-dietary exposure is insignificant.

D. Cumulative Effects

EPA's consideration of a common mechanism of toxicity is not necessary at this time because there is no indication that toxic effects of indoxacarb would be cumulative with those of any other chemical compounds. Oxadiazine chemistry is new, and indoxacarb has a novel mode of action compared to currently registered active ingredients.

E. Safety Determination

1. *U.S. population*. Dietary and occupational exposure will be the major routes of exposure to the U.S. population. The chronic dietary exposure to indoxacarb utilized 1% of the RfD for the U.S. general population. The acute dietary exposure to indoxacarb will utilize 17% of the aPAD acute population adjusted dose for the overall U.S. general population.

Using only Pesticide Handler Exposure Database levels A and B those with a high level of confidence, margin of exposures (MOEs) for occupational exposure are 650 for mixer/loaders, and 1,351 for airblast applicators worst-case. Based on the completeness and reliability of the toxicity data and the conservative exposure assessments, there is a reasonable certainty that no harm will result from the chronic and acute aggregate exposure of residues of indoxacarb, including all anticipated dietary exposure and all other non-occupational exposures for the U.S. general population.

2. *Infants and children*. The chronic dietary exposure to indoxacarb for the most highly exposed population subgroup, children ages 1–2 and 3–5, utilized 2% of the RfD. For all infants, the chronic exposure accounts for 1% of the RfD. For acute exposure at the 99.9th percentile, children ages 3–5 utilized 30% aPAD, and all infants utilized and 15% aPAD.

Residential uses of indoxacarb/DPX-MP062 have been approved and exposure is calculated to be extremely minimal. The estimated levels of indoxacarb in drinking water are well below the DWLOC. Based on (a) the completeness and reliability of the toxicity data; (b) the lack of toxicological endpoints of special concern; (c) the lack of any indication that children are more sensitive than adults to indoxacarb; and (d) the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure of residues of indoxacarb, including all anticipated dietary exposure and all other non-occupational exposures. Accordingly, there is no need to apply an additional safety factor for infants and children.

F. International Tolerances

To date, numerous tolerances exist for indoxacarb residues in various food and feed crops, and foods of animal origin in at least 25 countries.

[FR Doc. 05–12950 Filed 6–29–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[IN–162–1; FRL–7930–8]

Adequacy Status of Evansville, Indiana, 8-Hour Ozone Redesignation and Maintenance Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that EPA has found that the motor vehicle emissions budgets in the Evansville, Indiana 8-hour ozone redesignation request and maintenance plan are adequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the Evansville, Indiana area (which consists of Warrick and Vanderburgh Counties) can use the motor vehicle emissions budgets from the submitted 8-hour ozone redesignation request and maintenance plan for future conformity determinations. These budgets are effective July 15, 2005. The finding and the response to comments will be available at EPA's conformity Web site: <http://www.epa.gov/otaq/transp.htm>, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Life Scientist, Criteria Pollutant Section (AR-18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8777, Maietta.anthony@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we", "us" or "our" is used, we mean EPA.

Background

Today's notice is simply an announcement of a finding that we have already made. EPA Region 5 sent a letter to the Indiana Department of Environmental Management on June 7, 2005, stating that the motor vehicle emissions budgets for the year 2015, submitted for the Evansville, Indiana 8-hour ozone redesignation request and maintenance plan, are adequate. This finding has been announced on EPA's conformity Web site: <http://www.epa.gov/otaq/transp.htm>, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do.

Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance in making our adequacy determination.

Dated: June 16, 2005.

Margaret Guerriero,

Acting Regional Administrator, Region 5.

[FR Doc. 05-12939 Filed 6-29-05; 8:45 am]

BILLING CODE 6560-50-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Friday, July 8, 2005, 10 a.m. Eastern Time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and
2. EEOC Repositioning Plan: Field Offices

Note: In accordance with the Sunshine Act, the open session of the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663-7100 (voice) and (202) 663-4074 (TTY) at any time for information on these meetings.

FURTHER INFORMATION CONTACT: Stephen Llewellyn, Acting Executive Officer on (202) 663-4070.

Dated: June 24, 2005.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 05-12986 Filed 6-28-05; 10:20 am]

BILLING CODE 6750-06-M

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 July 25, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. *CNLBancshares, Inc.*, Orlando, Florida; to by acquire 100 percent of the outstanding shares of CNLBank, First Coast, Jacksonville, Florida (in organization).

2. *Heritage First Bancshares, Inc.*, Rome, Georgia; to become a bank

holding company by acquiring 100 percent of the outstanding shares of DeKalb Bank, Crossville, Alabama.

In connection with this application, Applicant has also filed a notice to retain 100 percent of the outstanding shares of Heritage First Bank, Rome, Georgia, and thereby engage in operating a federal savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

3. *Heritage First Bancshares, Inc.*, Rome, Georgia, to retain its wholly-owned subsidiary, Heritage First Bank, a federal savings association, Rome, Georgia, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *FirstBank Corporation*, Alma, Michigan; to acquire 100 percent of the voting shares of Keystone Financial Corporation, Kalamazoo, Michigan, and thereby indirectly acquire Keystone Community Bank, Kalamazoo, Michigan.

Board of Governors of the Federal Reserve System, June 24, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05-12897 Filed 6-29-05; 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 July 14, 2005.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *John M. Morrison*, Florida Intangible Trust, Golden Valley, Minnesota, and Julie Morrison-Arne of Long Lake, Minnesota, trustee, to acquire control of Central Bancshares, Inc., Golden Valley, Minnesota, and thereby indirectly acquire control of Central Bank, Stillwater, Minnesota.

Board of Governors of the Federal Reserve System, June 24, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05-12898 Filed 6-29-05; 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. 1843(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 Web site at <http://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 July 21, 2005.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414;

1. *AztecAmerica Financial Group, Inc.*, Berwyn, Illinois; to become a bank holding company by acquiring 100

percent of the voting shares of AztecAmerica Bank (in organization), Berwyn, Illinois.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. *Community Bancorp*, Las Vegas, Nevada; to acquire 100 percent of the voting shares of Bank of Commerce, Henderson, Nevada.

Dated: Board of Governors of the Federal Reserve System, June 21, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05-12629 Filed 6-29-05; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0248]

General Services Administration Acquisition Regulation; Information Collection; Solicitation Provisions and Contract Clauses, Placement of Orders Clause, and Ordering Information Clause

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding solicitation provisions and contract clauses, placement of orders clause, and ordering information clause. The clearance currently expires on September 30, 2005.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: August 29, 2005.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Procurement Analyst, Contract Policy Division, GSA, at telephone (202) 501-1900, or via e-mail to linda.nelson@gsa.gov.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090-0248, Solicitation provisions and contract clauses, Placement of Orders clause, and Ordering Information clause, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision of Federal Supply Service's (FSS's) Stock, Special Order, and Schedules Programs. These mission responsibilities generate requirements that are realized through the solicitation and award of various types of FSS contracts. Individual solicitations and resulting contracts may impose unique information collection and reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting program objectives.

B. Annual Reporting Burden

Respondents: 6,493.

Hours Per Response: .25.

Total Burden Hours: 1,623.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208-7312. Please cite OMB Control No. 3090-0248, Solicitation provisions and contract clauses, Placement of Orders clause, and Ordering Information clause, in all correspondence.

Dated: June 24, 2005.

Julia Wise,

Director, Contract Policy Division.

[FR Doc. 05-12899 Filed 6-29-05; 8:45 am]

BILLING CODE 6820-61-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N-0515]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Medical Device Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Medical Device Labeling Regulations" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 1, 2005 (70 FR 16824), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910-0485. The approval expires on June 30, 2008. A copy of the supporting statement for this information collection is available on the Internet at <http://www.fda.gov/ohrms/dockets>.

Dated: June 23, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05-12907 Filed 6-29-05; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N-0558]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Evaluating the Safety of Antimicrobial New Animal Drugs With Regard to Their Microbiological Effects on Bacteria of Human Health Concerns

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by August 1, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202-395-6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA-250), Food and Drug Administration, 5600 Fishers Lane, rm. 4B-41, Rockville, MD 20857, 301-827-1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Evaluating the Safety of Antimicrobial New Animal Drugs with Regard to Their Microbiological Effects on Bacteria of Human Health Concern (OMB Control Number 0910-0522)

In the **Federal Register** of January 6, 2005 (70 FR 1253), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received on this information collection.

Description: This guidance discusses an approach for assessing the safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern. In particular, the guidance describes methodology that sponsors of antimicrobial new animal drug applications for food-producing animals may use to complete a qualitative antimicrobial resistance risk assessment. This risk assessment should be submitted to FDA for the purposes of evaluating the safety of the new animal drug to human health. The guidance document outlines a process for integrating relevant information into an overall estimate of risk and discusses possible risk management strategies.

Table 1 of this document represents the estimated burden of meeting the reporting requirements. The burden

estimates for these information collection requirements are based on information provided by the Office of New Animal Drug Evaluation, Center for Veterinary Medicine. The guidance document describes the type of

information that should be collected by the drug sponsor when completing the antimicrobial resistance risk assessment. FDA will use the risk assessment and supporting information to evaluate the safety of original (21 CFR 514.1) or

supplemental (21 CFR 514.8) NADAs for antimicrobial drugs intended for use in food-producing animals.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

| Antimicrobial Risk Assessments | No. of Respondents | Annual Frequency of Response | Total Annual Responses | Hours per Response | Total Hours |
|------------------------------------------------------------------------------------------------------------------------------------------|--------------------|------------------------------|------------------------|--------------------|---------------|
| Hazard Identification (initial scoping of issues; relevant bacteria, resistance determinants, food products; preliminary data gathering) | 15 | 1 | 15 | 30 | 450 |
| Release Assessment (literature review; review of research reports; data development; compilation, and presentation) | 10 | 1 | 10 | 1,000 | 10,000 |
| Exposure Assessment (identifying and extracting consumption data; estimating probability of contamination on food product) | 10 | 1 | 10 | 8 | 80 |
| Consequence Assessment (review ranking of human drug importance table) | 10 | 1 | 10 | 4 | 40 |
| Risk Estimation (integration of risk components; development of potential arguments as basis for overall risk estimate) | 10 | 1 | 10 | 12 | 120 |
| Risk Management (discussion of appropriate risk management activities) | 10 | 1 | 10 | 30 | 300 |
| Total Burden | | | | | 10,990 |

¹There are no capital costs and operating and maintenance costs associated with this collection of information.

FDA estimates that on an annual basis an average of 15 NADAs (including original applications and major supplements) would be subject to information collection under this guidance. This estimate is based on the number of reviews completed between October 2003 and October 2004. During that period, microbial food safety for approximately 15 antimicrobial NADAs (including original and major supplements) was evaluated. This estimate excludes NADAs for antimicrobial drug combinations, generic drug applications (ANADAs), and certain supplemental NADAs.

Dated: June 23, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05-12910 Filed 6-29-05; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2001N-0275 (formerly Docket No. 01N-0275)]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Performance Standard for Diagnostic X-Ray Systems and Their Major Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Performance Standard for Diagnostic X-Ray Systems and Their Major Components" has been approved by the

Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT:

Peggy Robbins, Office of Management Programs (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1223.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of June 10, 2005 (70 FR 33998 at 34012), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910-0564. The approval expires on December 31, 2006. A copy of the supporting statement for

this information collection is available on the Internet at <http://www.fda.gov/ohrms/dockets>.

Dated: June 23, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05-12911 Filed 6-29-05; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D-0118]

International Conference on Harmonisation; Guidance on Q5E Comparability of Biotechnological/Biological Products Subject to Changes in Their Manufacturing Process; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Q5E Comparability of Biotechnological/Biological Products Subject to Changes in Their Manufacturing Process." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The purpose of the guidance is to provide principles for assessing the comparability of biotechnological/biological products before and after changes are made in the manufacturing process for the drug substance or drug product. The guidance is intended to assist in the collection of relevant technical information that serves as evidence that the manufacturing process changes will not have an adverse impact on the quality, safety, and efficacy of the drug product.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written comments on the guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. Submit written requests for single copies of the guidance to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and

Manufacturers Assistance (HFM-40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448. The guidance may also be obtained by mail by calling the CBER Voice Information System at 1-800-835-4709 or 301-827-1800. Send one self-addressed adhesive label to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Barry Cherney, Center for Drug Evaluation and Research (HFD-122), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-827-1790; or Andrew Chang, Center for Biologics Evaluation and Research (HFM-340), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-496-4833.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG-1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers

Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of March 30, 2004 (69 FR 16580), FDA published a notice announcing the availability of a draft tripartite guidance entitled "Q5E Comparability of Biotechnological/Biological Products Subject to Changes in Their Manufacturing Process." The notice gave interested persons an opportunity to submit comments by May 19, 2004.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in November 2004.

The document provides guidance on the principles for assessing the comparability of biotechnological/biological products before and after changes are made in the manufacturing process for the drug substance or drug product. The document does not prescribe any particular analytical, nonclinical, or clinical strategy. The main focus of the document is on quality aspects.

This guidance is being issued consistent with FDA's good guidance practices regulations (21 CFR 10.115). The guidance represents the agency's current thinking on Q5E comparability of biotechnological/biological products subject to changes in their manufacturing process. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

Note that FDA may have existing guidance on this or related topics, such as "FDA Guidance Concerning Demonstration of Comparability of Human Biological Products, Including Therapeutic Biotechnology-derived Products," available at <http://www.fda.gov/cber/gdlns/comptest.txt>.

II. Comments

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

III. Electronic Access

Persons with access to the Internet may obtain the document at <http://www.fda.gov/ohrms/dockets/default.htm>, <http://www.fda.gov/cder/guidance/index.htm>, or <http://www.fda.gov/cber/reading.htm>.

Dated: June 22, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05-12908 Filed 6-29-05; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004P-0295]

Determination That ZYVOX (Linezolid) Tablets, 400 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that ZYVOX (linezolid) tablets, 400 milligrams (mg), were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for linezolid tablets, 400 mg.

FOR FURTHER INFORMATION CONTACT: Nicole Mueller, Center for Drug Evaluation and Research (HFD-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved

under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is typically a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

ZYVOX (linezolid) tablets, 400 mg, are the subject of approved NDA 21-130 held by Pharmacia and Upjohn Co., a subsidiary of Pfizer, Inc. ZYVOX (linezolid) tablets, 400 mg, are indicated for the treatment of certain infections caused by susceptible strains of certain microorganisms.

In a citizen petition dated July 9, 2004 (Docket No. 2004P-0295), submitted under 21 CFR 10.30, Lachman Consultant Services, Inc., requested that the agency determine, as described in § 314.161, whether ZYVOX (linezolid) tablets, 400 mg, were withdrawn from sale for reasons of safety or effectiveness. The holder of the NDA for ZYVOX (linezolid) tablets never marketed the 400 mg strength. In previous instances, the agency has determined that, for purposes of §§ 314.161 and 314.162, never marketing an approved drug product is equivalent to withdrawing the drug from sale (see 67 FR 79640, December

30, 2002 (addressing a relisting request for Diazepam Autoinjector)).

The agency has determined that Pfizer's ZYVOX (linezolid) tablets, 400 mg, were not withdrawn from sale for reasons of safety or effectiveness. FDA has reviewed its files for records concerning the withdrawal of ZYVOX (linezolid) tablets, 400 mg, from sale. There is no indication that the decision not to market ZYVOX (linezolid) tablets, 400 mg, commercially is a function of safety or effectiveness concerns, and the petitioner has identified no data or information suggesting that ZYVOX (linezolid) tablets, 400 mg, pose a safety risk. FDA has independently evaluated relevant literature and data for possible concerns regarding the safety or effectiveness of this drug product. FDA has found no information that would indicate that this product was withdrawn for reasons of safety or effectiveness.

For the reasons outlined, FDA determines that Pfizer's ZYVOX (linezolid) tablets, 400 mg, were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list ZYVOX (linezolid) tablets, 400 mg, in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to ZYVOX (linezolid) tablets, 400 mg, may be approved by the agency.

Dated: June 22, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05-12909 Filed 6-29-05; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Research Review Subcommittee of the Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a subcommittee of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Subcommittee: Research Review Subcommittee of the Blood Products Advisory Committee

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 22, 2005, from 8 a.m. to 5 p.m.

Location: Holiday Inn Gaithersburg, Two Montgomery Village Ave., Gaithersburg, MD 20879.

Contact Person: William Freas or Pearlline K. Muckelvene, Center for Biologics Evaluation and Research, (HFM-71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-827-0314, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 3014519516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 22, 2005, the subcommittee will listen to presentations to further a dynamic, responsive, and cutting edge research program at the Office of Blood Research and Review, Center for Biologics Evaluation and Research (CBER), that facilitates development of safe and effective biological products. The subcommittee's recommendations will be publicly discussed at a future meeting of the Blood Products Advisory Committee. Information regarding CBER's scientific program is outlined in its Strategic Plan of 2004 and is available to the public on the Internet at: <http://www.fda.gov/cber/inside/mission.htm>. Information regarding FDA's Critical Path to New Medical Products is available to the public on the Internet at: <http://www.fda.gov/oc/initiatives/criticalpath/>.

Procedure: On July 22, 2005, from 8 a.m. to 1:15 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by July 14, 2005. Oral presentations from the public will be scheduled between approximately 12:15 p.m. and 1:15 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by July 14, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Subcommittee Deliberations: On July 22, 2005, from 2:15 p.m. to 5 p.m., the meeting will be closed to the public. The meeting will be closed to

permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) and to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). The subcommittee will discuss the internal research programs in the Office of Blood Research and Review, CBER.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact William Freas or Pearlline K. Muckelvene at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 23, 2005.

Sheila Dearybury Walcoff,
Associate Commissioner for External Relations.

[FR Doc. 05-12962 Filed 6-29-05; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D-0133]

“Guidance for Industry: Assessing Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection;” Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled “Guidance for Industry: Assessing Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection” dated June 2005. This guidance document provides revisions to the previously published recommendations for assessing donor suitability and product safety when donors are diagnosed with or suspected of West Nile Virus (WNV) infection based on symptoms and laboratory tests. This guidance revises recommended deferral periods for such donors, and updates information on component retrieval and quarantine. This guidance finalizes the

draft “Guidance for Industry: Assessing Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection” dated April 2005 and supersedes the final “Guidance for Industry: Revised Recommendations for the Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection” dated May 2003. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing the guidance entitled “Guidance for Industry: Discontinuation of Donor Deferral Related to Recent Fever with Headache as a Symptom of West Nile Virus Infection,” dated May 2005.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM-40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 301-827-1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>.

FOR FURTHER INFORMATION CONTACT: Brenda R. Friend, Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448, 301-827-6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled “Guidance for Industry: Assessing Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection,” dated June 2005. FDA developed the information in this guidance after consulting with other Public Health Service Agencies of the Department of Health and Human Services.

This guidance does the following things:

- Applies to donors of blood and blood components intended for transfusion;

- Applies to donors of blood components intended for use in further manufacturing into injectable products or noninjectable products, including recovered plasma, Source Leukocytes, and Source Plasma;

- Provides updated scientific data;
- Recommends new deferral periods for donors who are diagnosed with or suspected of WNV infection; and

- Describes the use of the investigational nucleic acid test (NAT) for WNV in deferring reactive donors.

This guidance supersedes "Guidance for Industry: Revised Recommendations for the Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection" dated May 2003, and finalizes the draft "Guidance for Industry: Assessing Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection" dated April 2005.

In the **Federal Register** of April 20, 2005 (70 FR 20575), FDA announced the availability of the draft guidance of the same title. FDA received several comments on the April 2005 draft guidance and those comments were considered when finalizing the guidance. A summary of changes to the guidance includes the following items: (1) Modifies recommendations on followup testing and reentry of reactive donors, (2) adds recommendations on component retrieval and quarantine for presumptive viremic donors, and (3) discusses preliminary laboratory data indicating WNV infectivity in blood cultures of NAT reactive individuals who were also seropositive for WNV antibodies. In addition, editorial changes were made to improve clarity. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing the guidance entitled "Guidance for Industry: Discontinuation of Donor Deferral Related to Recent Fever with Headache as a Symptom of West Nile Virus Infection," dated May 2005. The May 2005 guidance is no longer necessary because the guidance that is the subject of this notice does not contain the recommendation to defer donors based on recent fever with a headache as a symptom of WNV infection.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be

used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in this guidance was approved under OMB control number 0910–0338; 21 CFR 606.170(b) has been approved under OMB control number 0910–0116; and 21 CFR 606.171 has been approved under OMB control number 0910–0458.

III. Comments

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

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either <http://www.fda.gov/cber/guidelines.htm> or <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: June 24, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–12960 Filed 6–29–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002D–0467]

“Guidance for Industry: Discontinuation of Donor Deferral Related to Recent Fever with Headache as a Symptom of West Nile Virus Infection”; Withdrawal of Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of a guidance entitled “Guidance for Industry: Discontinuation

of Donor Deferral Related to Recent Fever with Headache as a Symptom of West Nile Virus Infection” (May 2005 guidance) that was issued on May 6, 2005. A guidance entitled “Guidance for Industry: Assessing Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection,” dated June 2005, is being announced elsewhere in this issue of the **Federal Register**, and supersedes the May 2003 guidance entitled “Guidance for Industry: Revised Recommendations for the Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection” (May 2003 guidance) (68 FR 25897).

DATES: June 30, 2005.

FOR FURTHER INFORMATION CONTACT:

Brenda R. Friend, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 23, 2005 (70 FR 29529), FDA announced the availability of the May 2005 guidance. This guidance removed FDA's previous recommendation concerning deferral of donors of Whole Blood and blood components for transfusion and for further manufacturing use on the basis of a specific donor question related to West Nile Virus infection (i.e., to defer donors each year between June 1 and November 30 when the donor reports a history of fever with headache in the past week). Donor deferral based on this information was originally recommended in the May 2003 guidance. The guidance entitled “Guidance for Industry: Assessing Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection,” dated June 2005, announced elsewhere in this issue of the **Federal Register**, supersedes the May 2003 guidance and does not recommend donor deferral based upon a reported history of fever with headache in the week prior to donation. Therefore, the May 2005 guidance is being withdrawn because it is no longer necessary.

Dated: June 24, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–12961 Filed 6–29–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Notice of Availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for the Turnbull National Wildlife Refuge, and Notice of Public Meetings****AGENCY:** Fish and Wildlife Service.**ACTION:** Notice of Availability and Notice of Public Meetings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that a Draft Comprehensive Conservation Plan and Environmental Assessment (Draft CCP/EA) for Turnbull National Wildlife Refuge (Refuge) is available for review and comment. This Draft CCP/EA, prepared pursuant to the National Wildlife Refuge System Administration Act, as amended, and the National Environmental Policy Act of 1969, describes the Service's proposal for managing the Refuge for the next 15 years. Proposed changes to Refuge management include: adding an elk hunting program; adding a youth waterfowl hunt; establishing a land conservation program with potential Refuge expansion; and expanding the interpretive, environmental education, wildlife viewing, and wildlife photography facilities and programs. The draft compatibility determinations for several different public uses are also available for review with the Draft CCP/EA.

DATES: Written comments must be received at the address below by August 29, 2005. Public open houses will be held:

1. July 12, 5–8 pm, Spokane Falls Community College, Spokane, Washington.

2. July 13, 5–8 pm, Cheney High School, Cheney, Washington.

ADDRESSES: Comments on the Draft CCP/EA should be addressed to: Nancy Curry, Refuge Manager, Turnbull National Wildlife Refuge, 26010 S. Smith Road, Cheney, Washington 99004. Comments may also be submitted at the public meetings or via electronic mail to FW1PlanningComments@fws.gov. Please type "Turnbull NWR CCP" in the subject line. The public meeting locations are:

1. Spokane Falls Community College, 3410 W. Fort George Wright Dr., Student Union Building #17, Lounge AB, Spokane, Washington.

2. Cheney High School, 460 N. 6th St., Cheney, Washington.

FOR MORE INFORMATION CONTACT: Nancy Curry, Refuge Manager, Turnbull

National Wildlife Refuge, 26010 S. Smith Road, Cheney, Washington 99004, phone number (509) 235-4723.

SUPPLEMENTARY INFORMATION: Copies of the Draft CCP/EA may be obtained by writing to U.S. Fish and Wildlife Service, Attn: Sharon Selvaggio, Pacific Northwest Planning Team, 16507 Roy Rogers Road, Sherwood, Oregon, 97140. Copies of the Draft CCP/EA may be viewed at Turnbull National Wildlife Refuge, 26010 S. Smith Rd, Cheney, Washington 99004. The Draft CCP/EA will also be available for viewing and downloading online at <http://pacific.fws.gov/planning>. Printed documents will be available for review at the following libraries: Cheney Public Library at 610 1st Street, Cheney Washington, and the Spokane County Public Library at 906 West Main St., Spokane, Washington.

Background

Turnbull National Wildlife Refuge (Refuge) is located in the eastern Washington in the southwest corner of Spokane County and protects a portion of the extensive Channeled Scablands geological formation. Turnbull Refuge contributes substantially to the conservation of fish, wildlife, and native habitats of the Channeled Scablands. The Refuge protects much of the remaining intact wetland habitat of the Channeled Scablands, and provides important breeding habitat for many waterfowl, particularly redhead ducks, and other waterbirds. The Refuge contains one of the few remaining protected blocks of the rare Palouse Steppe habitat. Ponderosa pine and aspen habitat are also found here. Wildlife conservation is the priority of National Wildlife Refuge System lands.

Purpose and Need for Action

The purpose of the CCP is to provide a coherent, integrated set of management actions to help attain the Refuge vision, goals, and objectives. The CCP identifies the role the Refuge should play in support of the mission of the National Wildlife Refuge System, explains the Service's management actions, and provides a basis for Refuge budget requests.

Alternatives

The Draft CCP/EA identifies and evaluates four alternatives for managing Turnbull National Wildlife Refuge for the next 15 years. The proposed action is to implement Alternative 3 as described in the Draft EA. Alternative 3 best achieves the Refuge's purposes, vision and goals; contributes to the Refuge System mission; addresses significant issues and relevant

mandates; and is consistent with principles of sound fish and wildlife management.

Alternative 1. No Action Alternative

The No Action alternative, required by the National Environmental Policy Act, provides a baseline from which to compare the action Alternatives (Alternatives 2, 3, and 4). Under Alternative 1, Refuge management practices already underway or funded would continue. The current low-to-moderate level of recreational services and activities would continue to be provided. An active Environmental Education program would continue, but could fluctuate without a stable staff base. Most casual Refuge users would find short trails with little or no interpretive material. A visitor contact station would not be built. Hunting programs would not be initiated. The Service would actively encourage conservation within a 21,396-acre Stewardship Area as outlined in the 1999 Habitat Management Plan. The intent of the Stewardship Area would be to encourage voluntary conservation and restoration of habitats to provide mutual benefits to local aquatic resources and upland habitats. However, no additional staff for stewardship or outreach would be added. The Approved Refuge Boundary would not be changed under this alternative.

Alternative 2. Moderate Recreation Increase

Under Alternative 2, the Environmental Education program would be moderately expanded and additional opportunities for wildlife observation, photography, and interpretive opportunities would be available. Four miles of trail would be added, and most viewpoints would be supported with interpretive signs. A small visitor contact point would be added to the current office space. The Environmental Education program facilities would be enlarged at their current location. Contingent upon approval of a Hunting Plan and publishing rules in the **Federal Register**, the Refuge would offer an elk hunting program annually. Hunting season length, number of permits, and seasons offered would vary according to the level of aspen damage observed on the Refuge each year. The Service would actively encourage conservation within a Stewardship Area of approximately 44,536 acres surrounding the Refuge. The intent of the Stewardship Area would be to encourage voluntary conservation and habitat restoration, to benefit local aquatic resources and

upland wildlife habitats, through outreach activities and technical assistance. The Refuge would not acquire any properties outside the existing Approved Refuge Boundary.

Alternative 3. Recreation With Aquatic and Biodiversity Stewardship (Proposed Action)

Under this alternative, the Environmental Education program would be expanded, with greater numbers of students both on and off Refuge offered the opportunity to learn about the wildlife and ecology of the Channeled Scablands and Turnbull Refuge. Additional classroom space would be added, allowing the Refuge to accommodate two classes at the same time. The trail network would be expanded by approximately four miles and two additional viewpoints would be added. A small visitor contact point would be established inside new office space. Using the old highway roadbed, a designated bike trail would be established along Cheney-Plaza Road to link the Columbia Plateau Trail with the Public Use Area. Contingent upon approval of a Hunting Plan and publishing rules in the **Federal Register**, the Refuge would offer an annual elk hunting program and youth waterfowl hunt. The hunt would occur during the State's special season for youths, now occurring in mid-September. The new waterfowl hunting program would emphasize education, possibly requiring a waterfowl identification or natural history class for youths participating in the hunt. The Refuge would consider expanding the waterfowl hunt in the future once more fall waterfowl habitat has been restored in the vicinity of the Refuge. The Service would actively encourage conservation within a Stewardship Area, as described under Alternative 2. In addition, the Service would seek protection within the National Wildlife Refuge System of up to 12,000 acres by fee, easement, or agreement from willing sellers on priority lands within the Stewardship Area. Priority lands include adjoining lands that are most critical for protection of Refuge water quality and quantity; have the highest quality steppe, pine, and wetland habitat; and provide the best opportunities for wetlands restoration or protection.

Alternative 4. High Conservation and High Recreation Opportunities

Under Alternative 4, the Environmental Education program would be expanded, with greater numbers of students both on and off Refuge offered the opportunity to learn about the wildlife and ecology of the

Channeled Scablands and Turnbull Refuge. Trails would be expanded as under Alternative 3. Six additional viewpoints would be added. A new moderately sized visitor and interpretive center would be built or leased, designed in concert with a new expanded environmental education facility. With partner's assistance, a designated loop bike trail would be established through the Refuge to link the Columbia Plateau Trail with the Public Use Area. Contingent upon approval of a Hunting Plan and publishing rules in the **Federal Register**, the Refuge would offer an elk hunting program and a waterfowl hunting program during the State's general duck season. Turkey hunting may also be considered during the next 15 years, depending on turkey population trends. The Service would actively encourage conservation within a Stewardship Area, as described under Alternative 2. In addition, the Service would seek protection of up to 25,000 acres within the National Wildlife Refuge System by fee, easement, or agreement from willing sellers on priority lands within the Stewardship Area.

Under all alternatives, habitat and fire management practices on the Refuge would continue as described under the Habitat Management Plan and the Fire Management Plan.

Public Comments

Public comments are requested, considered, and incorporated throughout the planning process. A previous notice was published in the **Federal Register** concerning this Draft CCP/EA on March 2, 2000. After the review and comment period ends for this Draft CCP/EA, comments will be analyzed by the Service and addressed in revised planning documents. All comments received from individuals, including names and addresses, become part of the official public record and may be released. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6(f)], and Service and Departmental policies and procedures.

Dated: June 22, 2005.

Carolyn A. Bohan,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 05-12804 Filed 6-29-05; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-020-1320-EL]

Notice of Availability of the Record of Decision for the Gray Mountain Coal Lease Land Use Analysis and Final Environmental Impact Statement, Coal Lease By Application KYES-51002, KT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Gray Mountain Final Environmental Impact Statement (FEIS), Coal Lease By Application (LBA) KYES-51002.

ADDRESSES: Copies of the document are available for public inspection at the following BLM office locations: Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Bureau of Land Management-Eastern States, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Gobat, Deputy State Director for Natural Resources, BLM-Eastern States at (703) 440-1727; or Mr. Stuart Grange, Mining Engineer, Jackson Field Office at (601) 977-5400.

SUPPLEMENTARY INFORMATION: The BLM is issuing a ROD for leasing the Federal coal tracts that were considered for leasing in the Gray Mountain FEIS. The ROD covered by this NOA is for coal LBA KYES-51002 and addresses leasing an estimated 5.66 million tons of in-place Federal coal administered by the BLM-Eastern States, underlying approximately 1210.4 acres of Federal surface in the Daniel Boone National Forest, Leslie County, Kentucky.

Because the Assistant Secretary of the Interior, Lands and Minerals Management, has concurred in this decision it is not subject to appeal to the Interior Board of Land Appeals, as provided in 43 CFR part 4. This decision is the final action of the Department of the Interior.

Michael D. Nedd,

State Director, Eastern States.

[FR Doc. 05-12933 Filed 6-29-05; 8:45 am]

BILLING CODE 4310-PN-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[CA-310-0777 XQ]

Notice of Public Meeting: Northeast California Resource Advisory Council**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northeast California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Thursday and Friday, Aug. 18 and 19, in the Conference Room of the Bureau of Land Management's Eagle Lake Field Office, 2950 Riverside Dr., Susanville, Calif. On Aug. 18, the meeting begins at 10 a.m. for a field tour on public lands managed by the BLM Eagle Lake Field Office and discussions about wild horse management and a rail banking proposal. The public is welcome on the tour, but they must provide their own transportation and lunch. On Aug. 19, the meeting begins at 8 a.m. at the BLM Eagle Lake Field Office. Time for public comments has been set aside for 1 p.m. on Aug. 19.

FOR FURTHER INFORMATION CONTACT: Tim Burke, Field Manager, BLM Alturas Field Office, 708 West 12th St., Alturas, CA, (530) 233-4666; or BLM Public Affairs Officer Joseph J. Fontana, telephone (530) 252-5332.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northeast California and Northwest Nevada. At this meeting, agenda topics will include an update on the BLM process to develop new land use plans for the Eagle Lake, Alturas and Surprise field office jurisdictions, a discussion about private property within Wilderness Study Areas, a rail banking update and a status report on the Sagebrush-Steppe Ecosystem Restoration Project. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited.

Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: June 22, 2005.

Joseph J. Fontana,*Public Affairs Officer.*

[FR Doc. 05-12869 Filed 6-29-05; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[AK-910-1310PP-ARAC]

Notice of Public Meeting, Alaska Resource Advisory Council**AGENCY:** Bureau of Land Management, Alaska State Office, Interior.**ACTION:** Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Aug. 10, 2005, at the Orca Lodge in Cordova, Alaska, beginning at 10 a.m. The public comment period will begin at 1 p.m.

FOR FURTHER INFORMATION CONTACT: Danielle Allen, Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513. Telephone (907) 271-3335 or e-mail *Danielle_Allen@ak.blm.gov*.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, topics we plan to discuss include:

- Bering Glacier research.
- Land use planning.
- National Petroleum Reserve—Alaska.
- Other topics the Council may raise.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation,

transportation, or other reasonable accommodations, should contact BLM.

Julia Dougan,*Associate State Director.*

[FR Doc. 05-12891 Filed 6-29-05; 8:45 am]

BILLING CODE 4310-JA-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-287 (Review)]

Raw In-Shell Pistachios From Iran**AGENCY:** International Trade Commission.**ACTION:** Scheduling of a full five-year review concerning the antidumping duty order on raw in-shell pistachios from Iran.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on raw in-shell pistachios from Iran would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: Effective Date: June 23, 2005.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202-205-3179 or *fred.fischer@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server <http://www.usitc.gov>. The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On June 6, 2005, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of

the Act should proceed (70 FR 35116, June 16, 2005). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on September 20, 2005, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on October 11, 2005, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 29, 2005. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral

presentations should attend a prehearing conference to be held (if needed) at 9:30 a.m. on October 4, 2005, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is September 29, 2005. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is October 20, 2005; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before October 20, 2005. On November 18, 2005, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 22, 2005, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be

accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 24, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–12895 Filed 6–29–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America v. George Gabriel et al.*, Civil Action No. 05–00836–KI (D. Oregon), was lodged with the United States District Court for the District of Oregon on June 8, 2005.

The proposed Consent Decree concerns a complaint filed by the United States against George Gabriel, The Palette Ranch, a general partnership, Dave Turner, d/b/a Turner Excavating Company, S.P. Cramer & Associates, Inc., and Ken Witty, pursuant to the Clean Water Act, 33 U.S.C. 1311, and the Endangered Species Act, 16 U.S.C. *et seq.*, to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act and the Endangered Species Act by discharging pollutants without a permit into waters of the United States.

The Consent Decree resolves those allegations by requiring (a) Restoration and preservation of areas damaged by the unauthorized discharges at the Site; (b) enhancement of other wetlands at the Site; (c) payment of civil penalties; and (d) performance of supplemental projects within the watershed to benefit the environment and the community.

The Department of Justice will receive written comments relating to the proposed Consent Decree for a period of

thirty (30) days from the date of the publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Attention: Michael J. Zevenbergen, Attorney, Environmental Defense Section, Seattle Field Office, c/o NOAA/Damage Assessment, 7600 Sand Point Way NE., Seattle, WA 98115, and should refer to *United States of America v. George Gabriel et al.*, DJ Reference No. 90-5-1-4-590. In addition, the proposed Consent Decree may be viewed at <http://www.usdoj.gov/enrd/open.html>.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court, 1000 SW. Third Avenue, Room 740, Portland, OR 97204.

Letitia J. Grishaw,

*Chief, Environmental Defense Section,
Environment and Natural Resources Division,
United States Department of Justice.*

[FR Doc. 05-12866 Filed 6-29-05; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: records of acquisition and disposition, registered importers of arms, ammunition and implements of war on the U.S. Munitions Imports List.

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 August 29, 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 Debbie Lee, Firearms and Explosives Import Branch, Room 5300, 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:* Records of Acquisition and Disposition, Registered Importers of Arms, Ammunition and Implements of War on the U.S. Munitions Imports List.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF REC 7570/1. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The records are of imported items that are on the United States Munitions Import List. The importers must register with ATF and must file an intent to import specific items as well as certify to the Bureau that the items were in fact received. The records are maintained at the registrant's business premises where they are available for inspection by ATF officers during compliance inspections or criminal investigations.

(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 50 respondents will take 5 hours to maintain the records.

(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: June 27, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05-12887 Filed 6-29-05; 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: Application and permit for importation of firearms, ammunition and implements of war.

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 71, page 19785 on April 14, 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 August 1, 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:* Application and Permit for Importation of Firearms, Ammunition and Implements of War

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: ATF F 6, Part 1 (5330.3A). 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: Individuals or households. Other: Business or other for-profit, Federal Government, State, local or tribal government. The form is used to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. It is also used to secure authorization to import such articles and serves as authorization to the U.S. Customs Service to allow these articles entry into the United States.

(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 11,000 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 5,500 estimated 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: June 27, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05-12915 Filed 6-29-05; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Pretesting Activities for Surveys for Implementing the Prison Rape Elimination Act of 2003.

The Department of Justice (DOJ), Office of Justice Programs (OJP) 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 73, page 20174 on April 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 August 1, 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:* New Information Collection.

(2) *Title of the Form/Collection:* Pretesting Activities for Surveys for Implementing the Prison Rape Elimination Act of 2003.

(3) *Agency Form Number, if Any, and the Applicable Component of the Department Sponsoring the Collection:* Form Number: None. Bureau of Justice Statistics, Office of Justice Programs, Department of Justice.

(4) *Affected Public Who Will be Asked or Required to Respond, as Well as a Brief Abstract:* Primary: Individuals or households. Other: State, Local, or Tribal Government, Federal Government, Business or other for-profit, Not-for-profit institutions. The work under this clearance will be used to develop surveys to produce estimates for the incidence and prevalence of sexual assault within correctional facilities as required under the Prison Rape Elimination Act of 2003 (Pub. L. 108-79).

(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 8,472 respondents will spend approximately 30 minutes on average responding to the pretesting activities.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* There are an estimated 4,308 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: June 27, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05-12912 Filed 6-29-05; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Civil Justice Survey of State Courts, 2005.

The Department of Justice (DOJ), Office of Justice Programs (OJP) 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 70, page 19503 on April 13, 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 August 1, 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:* Existing Collection In Use Without an OMB Control Number.

(2) *Title of the Form/Collection:* Civil Justice Survey of State Courts, 2005.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: CJSC. Bureau of Justice Statistics, Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, local or tribal governments. The Civil Justice Survey of State courts, 2005. (CJSC 05) is the only collection effort that provides basic information on civil cases adjudicated in state trial courts in a sample of the Nation's 75 most populous counties. Information collected includes the types of claims brought by litigants in civil disputes, plaintiff win rates, compensatory and punitive damage awards, case processing time, and post verdict activity. The CJSC 05 provides policymakers, researchers, and lawyers with an opportunity to examine how civil lawsuits are processed in state courts.

(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 information will be collected on a total of 30,000 civil cases from 46 responding counties. Annual cost to the respondents is based on the number of hours involved in providing information from court records for the jury trial, bench trial, and non-trial data collection forms. Public reporting burden for this collection of information is estimated to average 30 minutes per data collection form. The estimate of hour burden is based on prior CJSC surveys.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 15,000 hours.

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: June 27, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05-12913 Filed 6-29-05; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: National Computer Security Survey (NCSS).

The Department of Justice (DOJ), Office of Justice Programs (OJP) 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 70, page 19505 on April 13, 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 August 1, 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:* This is a new information collection.

(2) *Title of the Form/Collection:* National Computer Security Survey.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: NCSS-1, NCSS-1s, and NCSS-1c. Bureau of Justice Statistics, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Businesses or other for-profit organizations. Other: Not-for-profit institutions. The National Computer Security Survey collects information on the nature and prevalence of computer crime and resulting losses experienced by businesses nationwide. It also collects other information including types of computer security technology and practices used by businesses, routes used to access systems, whether incidents were reported to authorities, reasons for not reporting, and types of offenders. 42 U.S.C. 3711 *et seq.* authorizes the Department of Justice to collect and analyze statistical information concerning crime, juvenile delinquency, and the operation of the criminal justice system and related aspects of the civil justice system and to support the development of information and statistical systems at the Federal, State, and local levels.

(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 36,000 respondents will each complete a 1.6-hour data collection form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 57,775 total annual 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: June 27, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05-12914 Filed 6-29-05; 8:45 am]

BILLING CODE 4410-18-P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 05-10]

Extension of Comment Period on Interim Environmental Guidelines

AGENCY: Millennium Challenge Corporation.

SUMMARY: The Millennium Challenge Corporation (MCC) is extending until July 15, 2005, the period for interested persons to submit comments on the March 4, 2005 Notice of Interim Environmental Guidelines For Public Comment (**Federal Register**, Vol. 70, No. 42, pp. 10690-10693). In the March 4, 2005 Notice, MCC published the full text of its interim Environmental Guidelines and asked for public comments over a 90 day period. This period is being extended through July 15, 2005.

DATES: Submit comments before or by July 15, 2005.

FOR FURTHER INFORMATION CONTACT: Public comments should be submitted through the MCC Web site at <http://www.mcc.gov> or in writing addressed to: Public Comment on Environmental Guidelines, Millennium Challenge Corporation, 875 Fifteenth Street, NW., Washington, DC 20005.

Dated: June 24, 2005.

Frances C. McNaught,

Vice President, Domestic Relations, Millennium Challenge Corporation.

[FR Doc. 05-12893 Filed 6-29-05; 8:45 am]

BILLING CODE 9210-0L-P

NATIONAL CAPITAL PLANNING COMMISSION

Senior Executive Service; Performance Review Board; Members

AGENCY: National Capital Planning Commission.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

SUMMARY: Section 4314(c) of Title 5, U.S.C. (as amended by the Civil Service Reform Act of 1978) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards (PRB) to review, evaluate and make a final recommendation on performance appraisals assigned to individual members of the agency's Senior Executive Service. The PRB established for the National Capital Planning Commission also makes recommendations to the agency head regarding SES performance awards, rank awards and bonuses. Section 4314(c)(4) requires that notice of appointment of Performance Review Board members be published in the **Federal Register**.

The following persons have been appointed to serve as members of the Performance Review Board for the National Capital Planning Commission: Kent E. Baum, Jill Crumpacker, Patricia E. Gallagher and Rosita Parkes from June 24, 2005 to June 24, 2007.

FOR FURTHER INFORMATION CONTACT: Barry S. Socks, Executive Officer, National Capital Planning Commission, 401 Ninth Street, NW., Suite 500, Washington, DC 20576, (202) 482-7209.

Dated: June 23, 2005.

Barry S. Socks,

Executive Officer.

[FR Doc. 05-12865 Filed 6-29-05; 8:45 am]

BILLING CODE 7520-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos 50-259, 50-260, and 50-296]

Tennessee Valley Authority (TVA) Browns Ferry Nuclear Plant, Units 1, 2, and 3; Notice of Availability of the Final Supplement 21 to the Generic Environmental Impact Statement for the License Renewal of Browns Ferry Nuclear Plants, Units 1, 2, and 3

Notice is hereby given that the U.S. Nuclear Regulatory Commission (Commission) has published a final plant-specific supplement to the "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (GEIS), NUREG-1437, regarding the renewal of operating licenses DPR-33, DPR-52, and DPR-68 for an additional 20 years of operation at Browns Ferry Nuclear Plant, Unit 1, 2 and 3 (BFN). BFN is located in Limestone County, Alabama, 16 km (10

mi) southwest of Athens, Alabama. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. As discussed in Section 9.3 of the final Supplement 21, based on (1) The analysis and findings in the GEIS; (2) the TVA Environmental Report; (3) consultation with Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments; the recommendation of the staff is that the Commission determine that the adverse environmental impacts of license renewal for Units 1, 2, and 3 at BFN are not so great that preserving the option of license renewal for energy-planning decision makers would be unreasonable.

The final Supplement 21 to the GEIS is available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at <http://www.nrc.gov/reading-rm/adams.html>. The accession number for the final Supplement 21 to the GEIS is ML051730443. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff by telephone at 1-800-397-4209, or

301-415-4737, or by e-mail at pdrc@nrc.gov. In addition, the Athens-Limestone Public Library, 405 East South Street, Athens, Alabama, has agreed to make the final plant-specific supplement to the GEIS available for public inspection.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Masnik, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC, 20555-0001. Dr. Masnik may be contacted at 1-800-368-5642, extension 1191 or via e-mail at MTM2@nrc.gov.

Dated at Rockville, Maryland, this 23rd day of June, 2005.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. E5-3434 Filed 6-29-05; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982 (47 FR 596 and 47 FR 600), the U.S. Nuclear Regulatory

Commission (NRC) published in the **Federal Register** final amendments to 10 CFR parts 71 and 73 (effective July 6, 1982), that require advance notification to Governors or their designees by NRC licensees prior to transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in part 73 is for spent nuclear reactor fuel shipments and the notification for part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR part 73).

The following list updates the names, addresses, and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the **Federal Register** on or about June 30 to reflect any changes in information.

Questions regarding this matter should be directed to Rosetta O. Virgilio, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (Internet Address: rov@nrc.gov) or at 301-415-2367.

Dated at Rockville, Maryland this 1st day of June 2005.

For the U.S. Nuclear Regulatory Commission.

Paul H. Lohaus,

Director, Office of State and Tribal Programs.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

| State | Part 71 | Part 73 |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| Alabama | Colonel W. M. Coppage, Director, Alabama Department of Public Safety, 301 South Ripley Street, P.O. Box 1511, Montgomery, AL 36104, (334) 242-4394, 24 hours: (334) 242-4128. | Same |
| Alaska | Kim Stricklan, P.E., Solid Waste Program Manager, Alaska Department of Environmental, Conservation, 555 Cordova Street, Anchorage, AK 99501, (907) 269-1099, 24 hours: (907) 457-1421. | Same |
| Arizona | Aubrey V. Godwin, Director, Arizona Radiation Regulatory Agency, 4814 South 40th Street, Phoenix, AZ 85040, (602) 255-4845, ext. 222, 24 hours: (602) 223-2212. | Same |
| Arkansas | Bernard Beville, Division of Radiation Control and Emergency Management, Arkansas Department of Health, 4815 West Markham Street, Mail Slot #30, Little Rock, AR 72205-3867, (501) 661-2301, 24 hours: (501) 661-2136. | Same |
| California | Captain Andrew R. Jones, California Highway Patrol, Enforcement Services Division, 444 North 3rd St., Suite 310, P.O. Box 942898, Sacramento, CA 94298-0001, (916) 445-1865, 24 hours: 1-(916) 845-8931. | Same |
| Colorado | Captain Allan Turner, Hazardous Materials Transport Safety & Response, Colorado State Patrol, 700 Kipling Street, Suite 1000, Denver, CO 80215-5865, (303) 239-4546, 24 hours: (303) 419-8577. | Same |
| Connecticut | Edward L. Wilds, Jr., Ph.D., Director, Division of Radiation, Department of Environmental Protection, 79 Elm Street, Hartford, CT 06106-5127, (860) 424-3029, 24 hours: (860) 424-3333. | Same |
| Delaware | David B. Mitchell, J.D., Secretary, Department of Safety & Homeland Security, P.O. Box 818, Dover, DE 19903, (302) 744-2665, 24 hours: Cell (302) 222-6590. | Same |
| Florida | Harlan W. Keaton, Administrator, Bureau of Radiation Control, Environmental Radiation Program, Department of Health, P.O. Box 680069, Orlando, FL 32868-0069, (407) 297-2095. | Same |
| Georgia | Captain Bruce Bugg, Special Projects Coordinator, Law Enforcement Division, Georgia Department of Motor Vehicle Safety, P.O. Box 80447, 2206 East View Parkway, Conyers, GA 30013, (678) 413-8834, 24 hours: (404) 655-7484. | Same |

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

| State | Part 71 | Part 73 |
|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| Hawaii | Laurence Lau, Deputy Director for Environmental Health, State of Hawaii Department of Health, P.O. Box 3378, 1250 Punchbowl Street, Honolulu, HI 96813, (808) 586-4424, 24 hours: (808) 247-2191. | Same |
| Idaho | Lieutenant William L. Reese, Deputy Commander, Commercial Vehicle Safety, Idaho State Police, P.O. Box 700, Meridian, ID 83680-0700, (208) 884-7222, 24 hours: (208) 846-7500. | Same |
| Illinois | Gary N. Wright, Assistant Director, Illinois Emergency Management Agency, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 785-9868, 24 hours: (217) 782-7860. | Same |
| Indiana | Superintendent Paul Whitesell, Ph.D., Director, Indiana State Police, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, IN 46204, 24 hours: (317) 232-8248. | Same |
| Iowa | David Miller, Administrator, Homeland Security Advisor, Iowa Emergency Management Division, Hoover State Office Building, Level A, 1305 East Walnut Street, Des Moines, IA 50319, 24 hours: (515) 281-3231. | Same |
| Kansas | Frank H. Moussa, M.S.A., Technological Hazards Administrator, Department of the Adjutant General, Division of Emergency Management, 2800 SW Topeka Boulevard, Topeka, KS 66611-1287, (785) 274-1408, 24 hours: (785) 296-8013. | Same |
| Kentucky | Robert L. Johnson, Manager, Radiation Health Branch, Cabinet for Health and Family Services, 275 East Main Street, Mail Stop HS-1C-A, Frankfort, KY 40621-0001, (502) 564-7818, ext. 3697, 24 hours: (502) 667-1637. | Same |
| Louisiana | Captain Robert Pinero, Louisiana State Police, 7919 Independence Boulevard, P.O. Box 66614 (#A2621), Baton Rouge, LA 70896-6614, (225) 925-6113, ext. 270, 24 hours: (877) 925-6595. | Same |
| Maine | Colonel Craig Poulin, Chief of the State Police, Maine Department of Public Safety, 42 State House Station, Augusta, ME 04333, (207) 624-7000. | Same |
| Maryland | Michael Bennett, Director, Electronic Systems Division, Maryland State Police, 1201 Reisterstown Road, Pikesville, MD 21208, (410) 653-4229, 24 hours: (410) 653-4200. | Same |
| Massachusetts | Robert J. Walker, Director, Radiation Control Program, Massachusetts Department of Public Health, 90 Washington Street, Dorchester, MA 02121, (617) 427-2944 ext. 2001, 24 hours: (617) 427-2913. | Same |
| Michigan | Captain Dan Atkinson, Commander, Field Operations Division, Michigan State Police, 714 South Harrison Road, East Lansing, MI 48823, (517) 336-6136, 24 hours: (517) 336-6100. | Same |
| Minnesota | John Kerr, Assistant Director, Administration and Recovery Branch, Minnesota Division of Homeland Security & Emergency Management, 444 Cedar Street, Suite 223, St. Paul, MN 55101-6223, (651) 296-0481, 24 hours: (651) 649-5451. | Same |
| Mississippi | Robert R. Latham, Jr., Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39296-4501, (601) 960-9020, 24 hours: (601) 352-9100. | Same |
| Missouri | Ronald M. Reynolds, Director, Emergency Management Agency, P.O. Box 116, Jefferson City, MO 65102-0016, (573) 526-9101, 24 hours: (573) 751-2748. | Same |
| Montana | Dan McGowan, Administrator, Montana Disaster & Emergency Services Division, P.O. Box 4789, Helena, MT 59604-4789, 24 hours: (406) 841-3911. | Same |
| Nebraska | Major Bryan J. Tuma, Nebraska State Patrol, P.O. Box 94907, Lincoln, NE 68509-4907, (402) 479-4950, 24 hours: (402) 471-4545. | Same |
| Nevada | Stanley R. Marshall, Chief, Bureau of Health Protection Services, Nevada State Health Division, 1179 Fairview Drive, Suite 201, Carson City, NV 89701-5405, (775) 687-5394, ext. 276, 24 hours: (775) 688-2830. | Same |
| New Hampshire | Lieutenant Stephen A. Kace, Highway Patrol and Enforcement Bureau, New Hampshire Department of Safety, James H. Hayes Building, 33 Hazen Drive, Concord, NH 03305, (603) 271-2091, 24 hours: (603) 271-3636. | Same |
| New Jersey | Kent Tosch, Chief, Bureau of Nuclear Engineering, Department of Environmental Protection, P.O. Box 415, Trenton, NJ 08625-0415, (609) 984-7700, 24 hours: (609) 658-3072. | Same |
| New Mexico | Don Shainin, Hazards Materials Coordinator, New Mexico Department of Public Safety, Office of Emergency Management, P. O. Box 1628, Santa Fe, NM 87504-1628, (505) 476-9681, 24 hours: (505) 476-9635. | Same |
| New York | James W. Tuffey, Executive Deputy Director, New York State Emergency Management Office, 1220 Washington Avenue, Building 22—Suite 101, Albany, NY 12226-2251, (518) 457-2222, 24 hours: (518) 457-2200. | Same |
| North Carolina | Lieutenant Mark Dalton, Special Operations Section, North Carolina Highway Patrol, 1142 SE Maynard, Cary, NC 27511, (919) 319-1523, 24 hours: (919) 733-3861. | Same |
| North Dakota | Terry L. O'Clair, Director, Division of Air Quality, North Dakota Department of Health, 1200 Missouri Avenue, P.O. Box 5520, Bismarck, ND 58506-5520, (701) 328-5188, 24 hours: (701) 328-9921. | Same |
| Ohio | Carol A. O'Claire, Chief, Radiological Branch, Ohio Emergency Management Agency, 2855 West Dublin Granville Road, Columbus, OH 43235-2206, (614) 799-3915, 24 hours: (614) 889-7150. | Same |
| Oklahoma | Commissioner Kevin L. Ward, Oklahoma Department of Public Safety, P.O. Box 11415, Oklahoma City, OK 73136-0145, (405) 425-2001, 24 hours: (405) 425-2323. | Same |

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

| State | Part 71 | Part 73 |
|-----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Oregon | Ken Niles, Assistant Director, Oregon Department of Energy, 625 Marion Street, NE, Salem, OR 97301-3742, (503) 378-4906, 24 hours: (503) 378-6377. | Same |
| Pennsylvania | John Bahnweg, Director of Operations and Training, Pennsylvania Emergency Management Agency, 2605 Interstate Drive, Harrisburg, PA 17110-3321, (717) 651-2001. | Same |
| Rhode Island | Terrence Mercer, Associate Administrator, Motor Carriers Section, Division of Public Utilities and Carriers, 89 Jefferson Boulevard, Warwick, RI 02888, (401) 941-4500, Ext. 150, 24 hours: (401) 465-2170. | Same |
| South Carolina | Henry J. Porter, Assistant Director, Division of Waste Management, Bureau of Land and Waste Management, Department of Health & Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 896-4245, 24 hours: (803) 253-6488. | Same |
| South Dakota | Kristi Turman, Director of Operations, Emergency Management Agency, 118 W. Capitol Avenue, Pierre, SD 57501-5070, (605) 773-3231. | Same |
| Tennessee | Elgan Usrey, Manager, Technical Division, Tennessee Emergency Management Agency, 3041 Sidco Drive, Nashville, TN 37204-1502, (615) 741-2879. After hours: (Inside TN) 1-800-262-3400, (Outside TN) 1-800-258-3300. | Same |
| Texas | Richard A. Ratliff, P.E., L.M.P., Radiation Program Officer, Division of Regulatory Services, Texas Department of State Health Services, 1100 West 49th Street, Mail Code 2827, Austin, TX 78756-3189, (512) 834-6679, 24 hours: (512) 458-7460. | Colonel Thomas A. Davis, Director, Texas Department of Public Safety, Attn: EMS Preparedness Section, P.O. Box 4087, Austin, TX 78773-0223, (512) 424-7771, 24 hours: (512) 424-2208 |
| Utah | Dane Finerfrock, Director, Division of Radiation Control, Department of Environmental Quality, 168 North 1950 West, P.O. Box 144850, Salt Lake City, UT 84114-4850, (801) 536-4257, After hours: (801) 536-4123. | Same |
| Vermont | Commissioner Kerry L. Sleeper, Department of Public Safety, 103 South Main Street, Waterbury, VT 05671-2101, (802) 244-8718, 24 hours: (802) 244-8727. | Same |
| Virginia | Brett A. Burdick, Director, Technological Hazards Division, Department of Emergency Management, Commonwealth of Virginia, 10501 Trade Court, Richmond, VA 23236, (804) 897-6500, ext. 6569, 24 hours: (804) 674-2400. | Same |
| Washington | Steven L. Kalmbach, Assistant State Fire Marshal, Washington State Patrol Fire Protection Bureau, P.O. Box 42600, Olympia, WA 98504-2600, (360) 570-3119, 24 hours: 1-800-409-4755. | Same |
| West Virginia | Colonel H. E. Hill, Jr., Superintendent, West Virginia State Police, 725 Jefferson Road, South Charleston, WV 25309, (304) 746-2111. | Same |
| Wisconsin | Johnnie L. Smith, Administrator, Wisconsin Emergency Management, P.O. Box 7865, Madison, WI 53707-7865, 608-242-3210, 24 hour: (608) 242-3232. | Same |
| Wyoming | Captain Vernon Poage, Support Services Officer, Commercial Carriers, Wyoming Highway Patrol, 5300 Bishop Boulevard, Cheyenne, WY 82009-3340, (307) 777-4317, 24 hours: (307) 777-4321. | Same |
| District of Columbia | Gregory B. Talley, Program Manager, Radiation Protection Division, Bureau of Food, Drug & Radiation Protection, Department of Health, 51 N Street, NE, Room 6025, Washington, DC 20002, (202) 535-2320, 24 hours: (202) 535-2180. | Same |
| Puerto Rico | Esteban Mujica, Chairman, Environmental Quality Board, P.O. Box 11488, San Juan, PR 00910, (787) 767-8056 or (787) 767-8181. | Same |
| Guam | Fred M. Castro, Administrator, Guam Environmental Protection Agency, P.O. Box 22439 GMF, Barrigada, Guam 96921, (671) 457-1658 or 1659, 24 hours: (671) 635-9500. | Same |
| Virgin Islands | Dean C. Plaskett, Esq., Commissioner, Department of Planning and Natural Resources, Cyril E. King Airport, Terminal Building—Second Floor, St. Thomas, Virgin Islands 00802, (340) 774-3320, 24 hours: (340) 774-5138. | Same |
| American Samoa | Peter Peshut, Manager, Technical Services, American Samoa Environmental Protection Agency, P.O. Box PPA, Pago Pago, American Samoa 96799, (684) 633-2304, 24 hours: (684) 622-7106. | Same |
| Commonwealth of the Northern Mariana Islands. | John Castro, Director, Department of Environmental Quality, Commonwealth of Northern, Mariana Islands Government, P. O. Box 501304, Saipan, MP 96950, (670) 664-8500 or 8501, 24 hours: (670) 287-1526. | Same |

[FR Doc. 05-12903 Filed 6-29-05; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION**Final Regulatory Guide: Issuance, Availability**

The U.S. Nuclear Regulatory Commission (NRC) has issued a revision to an existing guide in the agency's

Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the

staff needs in its review of applications for permits and licenses.

Revision 5 of Regulatory Guide 1.101, "Emergency Response Planning and Preparedness for Nuclear Power Reactors," provides guidance to licensees and applicants concerning emergency response planning activities and interactions. This guidance describes a voluntary method that the NRC staff considers acceptable for complying with the NRC's recently amended regulatory requirements in Appendix E to Title 10, Part 50, of the *Code of Federal Regulations* (10 CFR Part 50), particularly as they relate to exercise requirements for co-located licensees.

The NRC published the substance of this revised guide for public comment on July 24, 2003, in a **Federal Register** notice (68 FR 43673) concerning proposed amendments to the NRC's emergency planning regulations governing the domestic licensing of production and utilization facilities, as specified in Appendix E to 10 CFR Part 50. Following the closure of the 75-day public comment period on October 7, 2003, the staff resolved all stakeholder comments in the course of preparing the final rule (70 FR 3591, effective April 26, 2005) and Revision 5 of Regulatory Guide 1.101.

The NRC staff encourages and welcomes comments and suggestions in connection with improvements to published regulatory guides, as well as items for inclusion in regulatory guides that are currently being developed. You may submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415-5144.

Requests for technical information about Revision 5 of Regulatory Guide 1.101 may be directed to Daniel M. Barss at (301) 415-2922 or by e-mail to DMB1@nrc.gov.

Regulatory guides are available for inspection or downloading through the NRC's public Web site in the Regulatory Guides document collection of the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/doc->

collections/. Revision 5 of Regulatory Guide 1.101 is also available electronically through the NRC's Agencywide Documents Access and Management System (ADAMS) at <http://www.nrc.gov/reading-rm/adams.html>, under Accession No. ML050730286. Note, however, that the NRC has temporarily limited public access to ADAMS so that the agency can complete security reviews of publicly available documents and remove potentially sensitive information. Please check the NRC's Web site for updates concerning the resumption of public access to ADAMS.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland; the PDR's mailing address is USNRC PDR, Washington, DC 20555-0001. The PDR can also be reached by telephone at (301) 415-4737 or (800) 397-4205, by fax at (301) 415-3548, and by e-mail to PDR@nrc.gov. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Reproduction and Distribution Services Section; by E-mail to DISTRIBUTION@nrc.gov; or by fax to (301) 415-2289. Telephone requests cannot be accommodated.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 20th day of June, 2005.

For the U.S. Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Regulatory Research.

[FR Doc. E5-3435 Filed 6-29-05; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-03793]

Issuer Delisting; Notice of Application of Canada Southern Petroleum Ltd. To Withdraw Its Common Stock, No Par Value, From Listing and Registration on the Boston Stock Exchange, Inc.

June 23, 2005.

On June 14, 2005, Canada Southern Petroleum Ltd., continued under the Alberta Business Corporations Act

("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 12d2-2(d) thereunder,² to withdraw its common stock, no par value ("Security"), from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

On March 14, 2005, the Board of Directors ("Board") of the Issuer approved preambles and resolutions to withdraw the Security from listing and registration on BSE and the Pacific Exchange, Inc. ("PCX"). In making the decision to withdraw the Security from BSE, the Issuer stated that the following reasons factored into the Board's decision: (1) The Security (formerly known as "Limited Voting Shares" when the Issuer was domiciled in Nova Scotia, Canada) was originally listed for trading on the BSE and PCX to facilitate the secondary market trading of the Security in the U.S. until the Security was authorized for quotation on the Nasdaq SmallCap ("Nasdaq") marketplace in the 1990s; (2) The overwhelming majority of the U.S. trading volume in the Security occurs on Nasdaq, with very little (if any) trading volume occurring on BSE and PCX; (3) the Security will continue to trade in the U.S. on Nasdaq and in Canada on the Toronto Stock Exchange, so that the Issuer's U.S. and Canadian shareholders will not suffer a material decrease in market liquidity because of the planned withdrawal; and (4) the Issuer intends to enjoy cost savings of at least \$3,000 per year because it will no longer be required to pay annual listing maintenance fees to BSE and PCX.

The Issuer stated in its application that it has complied with BSE rules by complying with all applicable laws in effect in the province of Alberta, Canada, the jurisdiction in which the Issuer was continued effective March 2, 2005, and by filing with BSE the required documents governing the withdrawal of securities from listing and registration on BSE.

The Issuer's application relates solely to withdrawal of the Security from listing on BSE and from registration under Section 12(b) of the Act,³ and shall not affect its obligation to be registered under Section 12(g) of the Act.⁴

Any interested person may, on or before July 19, 2005, comment on the facts bearing upon whether the application has been made in

¹ 15 U.S.C. 78j(d).

² 17 CFR 240.12d2-2(d).

³ 15 U.S.C. 781(b).

⁴ 15 U.S.C. 781(g).

accordance with the rules of BSE, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/delist.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include the File Number 1-03793 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-9303.

All submissions should refer to File Number 1-03793. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5-3439 Filed 6-29-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-03793]

Issuer Delisting; Notice of Application of Canada Southern Petroleum Ltd. To Withdraw Its Common Stock, No Par Value, From Listing and Registration on the Pacific Exchange, Inc.

June 23, 2005.

On June 14, 2005, Canada Southern Petroleum Ltd., continued under the

Alberta Business Corporations Act ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 12d2-2(d) thereunder,² to withdraw its common stock, no par value ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX").

On March 14, 2005, the Board of Directors ("Board") of the Issuer approved preambles and resolutions to withdraw the Security from listing and registration on PCX and the Boston Stock Exchange, Inc. ("BSE"). In making the decision to withdraw the Security from PCX, the Issuer stated that the following reasons factored into the Board's decision: (1) The Security (formerly known as "Limited Voting Shares" when the Issuer was domiciled in Nova Scotia, Canada) was originally listed for trading on the BSE and PCX to facilitate the secondary market trading of the Security in the U.S. until the Security was authorized for quotation on the Nasdaq SmallCap ("Nasdaq") marketplace in the 1990s; (2) the overwhelming majority of the U.S. trading volume in the Security occurs on Nasdaq, with very little (if any) trading volume occurring on BSE and PCX; (3) the Security will continue to trade in the U.S. on Nasdaq and in Canada on the Toronto Stock Exchange, so that the Issuer's U.S. and Canadian shareholders will not suffer a material decrease in market liquidity because of the planned withdrawal; and (4) the Issuer intends to enjoy cost savings of at least \$3,000 per year because it will no longer be required to pay annual listing maintenance fees to PCX and BSE.

The Issuer stated in its application that it has complied with PCX rules by complying with all applicable laws in effect in the province of Alberta Canada, the jurisdiction in which the Issuer was continued effective March 2, 2005, and by filing with PCX the required documents governing the withdrawal of securities from listing and registration on PCX.

The Issuer's application relates solely to withdrawal of the Security from listing on PCX and from registration under Section 12(b) of the Act,³ and shall not affect its obligation to be registered under Section 12(g) of the Act.⁴

Any interested person may, on or before July 19, 2005, comment on the facts bearing upon whether the

application has been made in accordance with the rules of PCX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/delist.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include the File Number 1-03793 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-9303.

All submissions should refer to File Number 1-03793. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5-3440 Filed 6-29-05; 8:45 am]

BILLING CODE 8010-01-P

¹ 15 U.S.C. 78l(d).

² 17 CFR 240.12d2-2(d).

³ 15 U.S.C. 78l(b).

⁴ 15 U.S.C. 78l(g).

⁵ 17 CFR 200.30-3(a)(1).

⁵ 17 CFR 200.30-3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release 34-51911; File No. 600-23]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Order Approving an Extension of Temporary Registration as a Clearing Agency

June 23, 2005.

The Securities and Exchange Commission ("Commission") is publishing this notice and order to solicit comments from interested persons and to extend the Fixed Income Clearing Corporation's ("FICC") temporary registration as a clearing agency through June 30, 2006.¹

On May 24, 1988, pursuant to Sections 17A(b) and 19(a) of the Act² and Rule 17Ab2-1 promulgated thereunder,³ the Commission granted the Government Securities Clearing Corporation ("GSCC") registration as a clearing agency on a temporary basis for a period of three years.⁴ The Commission subsequently extended GSCC's registration through June 30, 2003.⁵

On February 2, 1987, pursuant to Sections 17A(b) and 19(a) of the Act⁶ and Rule 17Ab2-1 promulgated thereunder,⁷ the Commission granted MBS Clearing Corporation ("MBSCC") registration as a clearing agency on a temporary basis for a period of eighteen months.⁸ The Commission subsequently extended MBSCC's registration through June 30, 2003.⁹

¹ FICC is the successor to MBS Clearing Corporation and Government Securities Clearing Corporation.

² 15 U.S.C. 78q-1(b) and 78s(a).

³ 17 CFR 240.17Ab2-1.

⁴ Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.

⁵ Securities Exchange Act Release Nos. 25740 (May 24, 1988), 53 FR 19639; 29236 (May 24, 1991), 56 FR 24852; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; 36508 (November 27, 1995), 60 FR 61719; 37983 (November 25, 1996), 61 FR 64183; 38698 (May 30, 1997), 62 FR 30911; 39696 (February 24, 1998), 63 FR 10253; 41104 (February 24, 1999), 64 FR 10510; 41805 (August 27, 1999), 64 FR 48682; 42335 (January 12, 2000), 65 FR 3509; 43089 (July 28, 2000), 65 FR 48032; 43900 (January 29, 2001), 66 FR 8988; 44553 (July 13, 2001), 66 FR 37714; 45164 (December 18, 2001), 66 FR 66957; and 46135 (June 27, 2002), 67 FR 44655.

⁶ *Supra* note 2.

⁷ *Supra* note 3.

⁸ Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

⁹ Securities Exchange Act Release Nos. 25957 (August 2, 1988), 53 FR 29537; 27079 (July 31, 1989), 54 FR 34212; 28492 (September 28, 1990), 55 FR 41148; 29751 (September 27, 1991), 56 FR 50602; 31750 (January 21, 1993), 58 FR 6424; 33348 (December 15, 1993), 58 FR 68183; 35132 (December 21, 1994), 59 FR 67743; 37372 (June 26, 1996), 61 FR 35281; 38784 (June 27, 1997), 62 FR

On January 1, 2003, MBSCC was merged into GSCC and GSCC was renamed FICC.¹⁰ The Commission subsequently extended FICC's temporary registration through June 30, 2005.¹¹

On May 31, 2005, FICC requested that the Commission extend FICC's temporary registration until such time as the Commission is prepared to grant FICC permanent registration.¹²

The Commission today is extending FICC's temporary registration as a clearing agency in order that FICC may continue to provide its users clearing and settlement services as a registered clearing agency. During the third quarter of 2005, the Commission expects to publish a release requesting comment on granting FICC permanent registration as a clearing agency. FICC acts as the central clearing entity for the U.S. Government securities trading and financing marketplaces and provides for the safe and efficient clearance and settlement of transactions in mortgage-backed securities. 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 600-23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number 600-23. 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

36587; 39776 (March 20, 1998), 63 FR 14740; 41211 (March 24, 1999), 64 FR 15854; 42568 (March 23, 2000), 65 FR 16980; 44089 (March 21, 2001), 66 FR 16961; 44831 (September 21, 2001), 66 FR 49728; 45607 (March 20, 2002), 67 FR 14755; and 46136 (June 27, 2002), 67 FR 44655.

¹⁰ Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 (December 24, 2002) File Nos. [SR-GSCC-2002-07 and SR-MBSCC-2002-01].

¹¹ Securities Exchange Act Release Nos. 48116 (July 1, 2003), 68 FR 41031 and 49940 (June 29, 2004), 69 FR 40695.

¹² Letter from Nikki Poulos, Vice President and General Counsel, FICC (May 23, 2005).

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, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at <http://www.ficc.com>. 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 600-23 and should be submitted on or before July 21, 2005.

It is therefore ordered that FICC's temporary registration as a clearing agency (File No. 600-23) be and hereby is extended through June 30, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹³

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5-3431 Filed 6-29-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51902; File No. SR-ISE-2005-19]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Its Membership Dues Fee

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 15, 2005, the International Securities Exchange ("ISE" 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

¹³ 17 CFR 200.30-3(a)(1506).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

have been prepared by the Exchange. The proposed rule change has been filed by ISE as establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2)⁴ thereunder, which renders the proposal effective upon filing with the Commission. On June 15, 2005, the Exchange filed Amendment No. 1 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.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its Schedule of Fees to (i) institute a monthly percentage fee for computer gateways provided to members instead of a flat fee, (ii) increase certain computer network fees to cover associated equipment costs, and (iii) delete references to an expired "refresh" program. The text of the proposed rule change is available on the ISE's Web site (<http://www.iseoptions.com>), at the ISE'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 ISE 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 ISE 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 Exchange's

Schedule of Fees to (i) institute a monthly percentage fee for computer gateways provided to members instead of a flat fee, (ii) increase certain computer network fees to cover associated equipment costs, and (iii) delete references to an expired "refresh" program.

• *Gateway Fees:* The Exchange provides its members with "gateway" equipment which includes switches, servers and routers that they use to connect to the ISE. The Exchange finances these gateways through a lease with a vendor. The Exchange currently charges its members a flat monthly fee for these gateways. If a member returns these gateways to ISE early, ISE remains obligated under its lease with the vendor, which results in additional cost to the Exchange. The proposed fee schedule will enable ISE to increase the number of different configurations of gateway equipment available to members. As a result, members will not be able to obtain gateway equipment that best suits their needs. Additionally, the proposed fee schedule will also allow ISE to offset any increased cost that the Exchange may incur in the event a member returns any gateway equipment early and to cover the Exchange's administrative costs. Accordingly, ISE proposes charging members a monthly fee of 4.75 percent of ISE's costs of leasing the gateway equipment from its vendor.⁶ The Exchange believes that this proposed change will enable it to maintain control over price fluctuations, technology changes in equipment, and the costs associated with early equipment returns. The Exchange also proposes to add a level of granularity to its equipment installation, change, and removal fees. Rather than applying the fees to cabinets generally, the Exchange proposes to charge per piece of equipment. The Exchange expects the proposed fee change to have minimal impact to its members. For example, the monthly fee for member that currently leases 2 routers with 2 T-1 lines, 2 switches and 2 gateways will decrease by \$29. Whereas, the monthly fee for a member who leases the same configuration above but with 4 gateways will increase by \$86.⁷

⁶ The commission notes that in Amendment No. 1, ISE added language to Exhibit 5 to clarify that the 4.75% fee is based solely on the cost of the specific equipment leased by such member.

⁷ These are just two examples of fees charged by the Exchange. Members have many options in the gateway equipment they lease from the Exchange based on their business model. The fee charged by the Exchange is entirely dependent on the number and type of gateway equipment leased by a member.

• *Network Fees.* The Exchange proposes to increase its line connection charges for T-1 and T-3 lines to cover the cost of routers that enable members to link with the Exchange and the Exchange to link with its telecommunications provider. Until now, the Exchange had not charged members a fee to cover the cost of these routers. Accordingly, ISE proposes to change the T-1 line connection fee from \$250 to \$300, and the T-3 line connection fee from \$1,250 to \$1,500. Additionally, the Exchange proposes to extend the "megabit fee" charged to members who connect via Ethernet to members who connect via all third-party managed service providers.

• *Expired "Refresh" Program.* The Exchange is deleting references to an expired member "refresh" program. That program, which was approved by the Commission on November 12, 2004,⁸ expired on November 30, 2004.

2. Statutory basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act¹¹ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹² because it establishes or changes a due, fee, or other charge imposed by the ISE. At any time within 60 days of the filing of the amended proposed rule change, the Commission may summarily abrogate such rule

⁸ See Securities Exchange Act Release No. 50658 (November 12, 2004), 69 FR 67768 (November 19, 2004).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ Amendment No. 1 made minor, non-substantive clarifying changes to the purpose section and Exhibit 5. These changes to the proposed rule change did not affect the fees originally proposed. The effective date of the original proposed rule change is April 15, 2005, and the effective date of the amendment is June 15, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 15, 2005, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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.¹³

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-ISE-2005-19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-ISE-2005-19. 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, 100 F Street, NE., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at the principal offices of the ISE. 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-ISE-2005-19 and should be submitted on or before July 21, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 05-12886 Filed 6-29-05; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51915; File No. SR-NASD-2003-168]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto Relating to the Release of Information Through the Public Disclosure Program

June 23, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 21, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD amended the proposed rule change on September 28, 2004, March 8, 2005, and April 12, 2005. 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

NASD is proposing to amend NASD IM-8310-2 to enhance investor protection by expanding the types of information NASD makes available through its public disclosure program; to address fairness and privacy concerns by excluding certain information currently disclosed through the program based on the status or disposition of the event; to provide, upon written request and subject to terms and conditions established by NASD, a compilation of publicly available information about NASD members; and to make conforming changes. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

IM-8310-2. NASD BrokerCheck Disclosure Program [Release of Disciplinary and Other Information Through the Public Disclosure Program]

(a) In response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephone listing, [the Association] NASD shall release information [contained in the Central Registration Depository] regarding a current or former member, an associated person, or a person who was associated with a member within the preceding two years, through [the] NASD's [Public Disclosure Program] *BrokerCheck* program. [Such information shall include:]

[(1) the person's employment history and other business experience required to be reported on Form U-4;]

[(2) currently approved registrations for the member or associated person;]

[(3) the main office, legal status, and type of business engaged in by the member; and]

[(4) an event or proceeding—

(A) required to be reported under item 14 on Form U-4;

(B) required to be reported under item 11 on Form BD; or

(C) reported on Form U-6.]

[The Association also shall make available through the Public Disclosure Program certain arbitration decisions against a member involving a securities or commodities dispute with a public customer. In addition, the Association shall make available in response to telephonic inquiries via the Public Disclosure Program's toll-free telephone listing whether a particular member is subject to the provisions of Rule 3010(b)(2). The Association shall not release through the Public Disclosure Program social security numbers, residential history information, or physical description information, or information that the Association is otherwise prohibited from releasing under Federal law.]

(b) *Except as otherwise provided in paragraph (c) below, NASD shall release:*

(1) *any information reported on the most recently filed Form U4, Form U5, Form U6, Form BD, and Form BDW (collectively "Registration Forms");*

(2) *currently approved registrations;*

(3) *certain summary information about arbitration awards against a member involving a securities or commodities dispute with a public customer;*

(4) *the most recently submitted comment, if any, provided to NASD by the person who is covered by the BrokerCheck program, in the form and*

¹³ See *supra* note 3.

in accordance with the procedures established by NASD, for inclusion with the information provided through the BrokerCheck program. Only comments that relate to the information provided through the BrokerCheck program will be included;

(5) information as to qualifications examinations passed by the person and date passed. NASD will not release information regarding examination scores or failed examinations;

(6) in response to telephonic inquiries via the BrokerCheck toll-free telephone listing, whether a particular member is subject to the provisions of Rule 3010(b)(2) ("Taping Rule");

(7) the information last reported on Registration Forms relating to customer complaints that are more than two (2) years old and that have not been settled or adjudicated, and customer complaints, arbitrations or litigations that have been settled for an amount less than \$10,000 (collectively, "Historic Complaints"), if the most recent Historic Complaint or currently reported customer complaint, arbitration or litigation is: Less than ten (10) years old and the person has a total of three (3) or more currently disclosable regulatory actions; currently reported customer complaints, arbitrations or litigations; Historic Complaints; or any combination thereof; and

(8) the name and succession history for current or former members.

(c) NASD shall not release:

(1) information reported as a Social Security number, residential history, or physical description; information that NASD is otherwise prohibited from releasing under Federal law; or information that is provided solely for use by regulators. NASD reserves the right to exclude, on a case-by-case basis, information that contains confidential customer information, offensive or potentially defamatory language or information that raises significant identity theft, personal safety or privacy concerns that are not outweighed by investor protection concerns;

(2) information reported on Registration Forms relating to regulatory investigations or proceedings if NASD has determined that the reported regulatory investigation or proceeding was vacated or withdrawn by the instituting authority;

(3) "Internal Review Disclosure" information reported on Section 7 of the Form U5;

(4) "Reason for Termination" information reported on Section 3 of Form U5;

(5) Form U5 information for fifteen (15) days following the filing of such information;

(6) the most recent information reported on a Registration Form, if NASD has determined that:

(A) the information was reported in error by a member, regulator or other appropriate authority;

(B) the information has been determined by regulators, through amendments to the uniform registration forms, to be no longer relevant to securities registration or licensure, regardless of the disposition of the event or the date the event occurred;

(7) information provided on Schedule E of Form BD.

(d) Upon written request, NASD may provide a compilation of information about NASD members, subject to terms and conditions established by NASD and after execution of a licensing agreement prepared by NASD. NASD may charge commercial users of such information reasonable fees as determined by NASD. Such compilations shall consist solely of information selected by NASD from Forms BD and BDW and shall be limited to information that is otherwise publicly available from the Commission.

IM-8310-3. Release of Disciplinary Complaints, Decisions and Other Information

[(b)](a) [The Association] NASD shall, in response to a request, release to the requesting party a copy of any identified disciplinary complaint or disciplinary decision issued by [the Association] NASD or any subsidiary or Committee thereof; provided, however, that each copy of:

(1) a disciplinary complaint shall be accompanied by the following statement: "The issuance of a disciplinary complaint represents the initiation of a formal proceeding by [the Association] NASD in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, you may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint."

(2) a disciplinary decision that is released prior to the expiration of the time period provided under the Rule 9000 Series for appeal or call for review within [the Association] NASD or while such an appeal or call for review is pending, shall be accompanied by a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by [the Association] NASD.

(3) a final decision of [the Association] NASD that is released prior

to the time period provided under the Act for appeal to the Commission or while such an appeal is pending, shall be accompanied by a statement that the findings and sanctions of [the Association] NASD are subject to review and modification by the Commission; and

(4) a final decision of [the Association] NASD that is released after the decision is appealed to the Commission shall be accompanied by a statement as to whether the effectiveness of the sanctions has been stayed pending the outcome of proceedings before the Commission.

[c](b)(1) [The Association] NASD shall release to the public information with respect to any disciplinary complaint initiated by the Department of Enforcement or the Department of Market Regulation of NASD [Regulation, Inc.], the NASD Regulation, Inc. Board of Directors, or the NASD Board of Governors containing an allegation of a violation of a designated statute, rule or regulation of the Commission, NASD, or Municipal Securities Rulemaking Board, as determined by the NASD Regulation, Inc. Board of Directors (a "Designated Rule"), and may also release such information with respect to any disciplinary complaint or group of disciplinary complaints that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD [Regulation, Inc.] *Regulatory Policy and Oversight* to be in the public interest.

(2) Information released to the public pursuant to subparagraph [c](b)(1) shall be accompanied by the statement required under subparagraph [(b)](a)(1).

[(d)](c)(1) NASD shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD Regulatory Policy and Oversight to be in the public interest. NASD also may release to the public information with respect to any

disciplinary decision issued pursuant to the Rule 9550 Series imposing a suspension or cancellation of the member or a suspension or bar of the association of a person with a member, unless NASD determines otherwise. NASD may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice. NASD also shall release to the public information with respect to any temporary cease and desist order issued pursuant to the Rule 9800 Series. NASD may release to the public information on any disciplinary decision issued pursuant to the Rule 9000 Series, not specifically enumerated in this paragraph, regardless of sanctions imposed, so long as the names of the parties and other identifying information is redacted.

(A) NASD shall release to the public, in unredacted form, information with respect to any disciplinary decision issued pursuant to the Rule 9300 Series that does not meet one or more of the criteria in [IM-8310-2(d)(1)] *IM-8310-2(c)(1)* for the release of information to the public, provided that the underlying decision issued pursuant to the Rule 9200 Series meets one or more of the criteria in [IM-8310-2(d)(1)] *IM-8310-2(c)(1)* for the release of information to the public, and information regarding such decision has been released to the public in unredacted form.

(B) In the event there is more than one respondent in a disciplinary decision issued pursuant to the Rule 9000 Series, and sanctions imposed on one or more, but not all, of the respondents meets one or more of the criteria in [Rule IM-8310-2(d)(1)] *IM-8310-2(c)(1)* for the release of information to the public, NASD shall release to the public, in unredacted form, information with respect to the respondent(s) who meet such criteria, and may release to the public, in redacted form, information with respect to the respondent(s) who do not meet such criteria. Notwithstanding the foregoing, NASD shall release to the public, in unredacted form, information with respect to any respondent in a disciplinary decision issued pursuant to the Rule 9300 Series if the sanctions imposed on such respondent in the underlying decision issued pursuant to the Rule 9200 Series meet one or more of the criteria for release of information to the public, and information with respect to that respondent has been released in unredacted form.

(2) Information released to the public pursuant to subparagraph [(d)] [(d)](c)(1) shall be accompanied by a statement to the extent required for that type of information under subparagraphs [(b)] (a)(2)-(4).

[(e)](d) If a decision issued pursuant to the Rule 9000 Series other than by the National Adjudicatory Council is not appealed to or called for review by the National Adjudicatory Council, the decision shall become effective on a date set by [the Association] NASD but not before the expiration of 45 days after the date of decision.

[(f)](e) Notwithstanding [paragraph e] *paragraph (d)*, expulsions and bars imposed pursuant to the provisions of Rules 9216 and 9270 shall become effective upon approval or acceptance by the National Adjudicatory Council, and information regarding any sanctions imposed pursuant to those Rules may be released to the public pursuant to paragraph [(d)] (c) immediately upon such approval or acceptance.

[(g)](f) No change in text.

[(h)](g) If a decision of [the Association] NASD imposing monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of a member from being associated with all members is appealed to the Commission, notice thereof shall be given to the membership and to the press as soon as possible after receipt by [the Association] NASD of notice from the Commission of such appeal and [the Association's] NASD's notice shall state whether the effectiveness of the Board's decision has been stayed pending the outcome of proceedings before the Commission.

[(i)](h) In the event an appeal to the courts is filed from a decision by the Commission in a case previously appealed to it from a decision of [the Association] NASD, involving the imposition of monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of a member from being associated with all members, notice thereof shall be given to the membership as soon as possible after receipt by [the Association] NASD of a formal notice of appeal. Such notice shall include a statement whether the order of the Commission has been stayed.

[(j)](i) Any order issued by the Commission of revocation or suspension of a member's broker/dealer registration with the Commission; or the suspension or expulsion of a member from [the Association] NASD; or the suspension or barring of a member or person associated with a member from

association with all broker/dealers or membership; or the imposition of monetary sanctions of \$10,000 or more shall be released to the public through a notice containing the effective date thereof sent as soon as possible after receipt by [the Association] NASD of the order of the Commission.

[(k)](j) Cancellations of membership or registration pursuant to [the Association's] NASD's By-Laws, Rules and Interpretative Material shall be released to the public as soon after the effective date of the cancellation as possible.

[(l)](k) Releases to the public referred to in paragraphs [(c)](b) and [(d)](c) above shall identify the NASD Rules and By-Laws [of the Association] or the SEC Rules violated, and shall describe the conduct constituting such violation. Releases may also identify the member with which an individual was associated at the time the violations occurred if such identification is determined by [the Association] NASD to be in the public interest.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend NASD IM-8310-2 to enhance investor protection by expanding the types of information that NASD makes publicly available through its BrokerCheck program and to address fairness and privacy concerns by excluding certain information that is currently disclosed based on the status or disposition of the event. The proposed rule change also addresses NASD's release of compilations of publicly available information about NASD members. In addition, the proposed rule change makes conforming changes to IM-8310-2.

Background

IM-8310-2(a) governs the information NASD releases to the public via its BrokerCheck program, which NASD established in 1988 to provide the public with information on the professional background, business practices, and conduct of NASD members and their associated persons. In 1990, with NASD's support, Congress passed legislation requiring NASD to establish and maintain a toll-free telephone number to respond to inquiries about members and associated persons. In 1998, NASD began providing certain administrative information, such as registration and employment history, online via NASD's Web site. In 2000, the Commission approved the most recent changes to IM-8310-2(a), which (1) established a two-year period for disclosure of information about persons formerly registered with NASD; (2) authorized release of information about terminated persons and firms that is provided on the Form U6 (the form regulators use to report disciplinary actions), if such matters would be required to be reported on Form U4 ("Uniform Application for Securities Industry Registration or Transfer") or Form BD ("Uniform Application for Broker-Dealer Registration"); and (3) provided for delivery of automated disclosure reports, which include information as reported by filers on the uniform forms.

In 2002, NASD initiated a comprehensive review of the information that NASD makes publicly available under IM-8310-2. This review included an evaluation of NASD's BrokerCheck program from the perspective of public investors regarding their experience in obtaining information as well as their assessment of the value of the information they received. NASD subsequently issued *Notice to Members* 02-74 (November 2002), seeking comment on, among other things, the possible expansion of information NASD makes available to the public.³

Proposed Rule Change

Information NASD Proposes to Release

With respect to current or former members, NASD proposes to release all administrative information reported on the most recently filed Form BD and Form BDW ("Uniform Application for Broker-Dealer Withdrawal"), except for social security numbers; residential history information; physical

description information; information that NASD is otherwise prohibited from releasing under Federal law; or information provided solely for use by regulators. Additionally, NASD would reserve the right to exclude, on a case-by-case basis, administrative or disclosure information that contains confidential customer information, offensive or potentially defamatory language, or information that raises significant identity theft, personal safety or privacy concerns. These disclosures would include, in addition to information currently released through the BrokerCheck program with respect to current and former members, information regarding control persons, direct and indirect owners, and information reported on Schedule D of Form BD, as well as certain information reported on Form BDW. NASD also proposes to release the most recently filed information reported by any regulator via the Form U6.

NASD also proposes to release summary information about certain arbitration awards against a member involving a securities or commodities dispute with a public customer. NASD currently releases summary information concerning arbitration awards issued by NASD arbitrators. NASD intends to continue to work with other regulators regarding disclosure of arbitration awards issued in other forums.

With respect to associated persons or persons who were associated with a member within the preceding two years, NASD proposes to release any administrative information reported on the most recently filed Form U4, except for social security numbers; residential history information; physical description information; information that NASD is otherwise prohibited from releasing under Federal law; or information provided solely for use by regulators. Again, NASD would reserve the right to exclude, on a case-by-case basis, administrative or disclosure information that contains confidential customer information, offensive or potentially defamatory language, or information that raises significant identity theft, personal safety or privacy concerns. NASD also proposes to release information with respect to the qualification examinations passed by an associated person and the date passed; however, NASD would not release examination scores or information regarding failed examinations.

Also, in the case of associated persons or persons who were associated with a member within the preceding two years, NASD proposes to release the most recently filed disclosure information reported on Form U4 and Form U5,

including the most recently filed disclosure information reported by any regulator via the Form U6, with certain exceptions, as described below.

NASD also proposes to provide associated persons or persons who were associated with a member within the preceding two years with the opportunity to provide a brief comment that would be included in the information NASD releases through the BrokerCheck program. Only comments that relate to the information provided through the BrokerCheck program would be included. Any such person who wishes to submit a comment would be required to submit a signed, notarized affidavit in the form specified by NASD. NASD would publish instructions for submitting comments on its Web site for such persons.⁴ NASD would review the affidavit to confirm relevance and compliance with the established instructions and add the comment (if it met these criteria) to the written report provided through the BrokerCheck program. The person submitting the comment would be able to replace or delete the comment in the same way. These comments also would be made available through the CRD system to participating regulators, and to any member firms that the person who submitted the comment is associated with or is seeking to be associated with, for as long as such information is available through the BrokerCheck program.⁵ Persons who are currently registered with a member firm would continue to be required to amend Form U4, where possible, instead of submitting a comment.

Information NASD Proposes Not to Release

NASD proposes not to release information about current or former members, associated persons or persons who were associated with a member within the preceding two years that has been reported on Forms U4, U5, U6, BD, and BDW relating to regulatory proceedings and investigations if the

⁴ Consistent with current practice, NASD would reserve the right to reject comments or redact information from a comment or a report, on a case-by-case basis, that contains confidential customer information, offensive or potentially defamatory language or information that raises significant identity theft, personal safety or privacy concerns that are not outweighed by investor protection concerns. NASD, in rare circumstances, has excluded or redacted information in cases involving stalking or terroristic threats.

⁵ The availability of such comments through the CRD system would parallel the availability of a report on a broker through the BrokerCheck program. For example, such comments would no longer be available through the CRD system if the broker has been out of the industry for more than two years.

³ See Section C below for a discussion of the comments received on *Notice to Members* 02-74 (November 2002).

reported regulatory proceeding or investigation was vacated or withdrawn by the instituting authority.

Additionally, NASD proposes not to release the most recent information reported on Forms U4, U5, U6, BD, and BDW if: (1) the information was reported in error by a member, regulator or other appropriate authority; or (2) the information has been determined by regulators, through amendments to the uniform registration forms, to be no longer relevant to securities registration or licensure, regardless of the disposition of the event or the date the event occurred.

With respect to information reported on the Form U5, NASD proposes not to release Form U5 information for 15 days following the filing of such information with NASD, in order to give persons on whose behalf the Form U5 was submitted an opportunity to file a Form U4 or submit a comment to NASD for inclusion with the information released pursuant to the BrokerCheck program regarding disclosure information reported on Form U5 and any amendments thereto. NASD would then release both the Form U5 disclosure and the person's comment, if any, to a requestor. NASD also proposes to continue its current practice of not releasing "Internal Review Disclosure" information reported by members, associated persons, or regulators on the most recently filed Form U5⁶ or the reason for termination provided in response to Question 3 on Form U5. However, under proposed IM-8310-2, information regarding certain terminations for cause (*i.e.*, those that meet the criteria in current Question 7F on Form U5) would be disclosed through the program. NASD currently does not release information reported on Schedule E of the Form BD. Under the proposed rule change, NASD would continue not to release this information.

Customer Complaint Information

The proposed rule change also would address the reporting of Historic Complaints, *i.e.*, customer complaints that are more than two years old and have not been settled or adjudicated, or customer complaints, arbitrations, or litigation that have been settled for an amount less than \$10,000. NASD proposes to release Historic Complaints only when the person has a total of

⁶ Although the response to the internal review question and related information reported on the associated disclosure reporting page would not be released, if the matter subject to the internal review is or becomes reportable under the investigation, termination or other disclosure questions, the disclosure made pursuant to these other disclosure questions would be released.

three or more currently disclosed regulatory actions; currently reported customer complaint, arbitration, or litigation disclosures; or Historic Complaint disclosures, or any combination thereof.⁷ Even then, if the most recent Historic Complaint or currently reported customer complaint disclosure (including any arbitration or litigation disclosure) is more than 10 years old, NASD proposes not to release any Historic Complaint information.

When the criteria for releasing Historic Complaints is met, *i.e.*, the person has a total of three or more currently reported regulatory action disclosures; currently reported customer complaint, arbitration, or litigation disclosures; Historic Complaint disclosures; or any combination thereof, all Historic Complaints, regardless of age, would be released provided that at least one of the currently reported customer complaint, arbitration, or litigation disclosures (if any) or Historic Complaints was filed within the past 10 years. Under such an approach, public investors would be able to determine for themselves whether a particular broker has demonstrated a pattern of conduct over the years and the significance, if any, they should attach to the Historic Complaint information.

Compilation of Information

The rule change also proposes that, upon written request, NASD may provide a compilation of information about NASD members, subject to terms and conditions established by NASD, and after execution of a licensing agreement prepared by NASD. NASD would be permitted to charge commercial users of such compilations reasonable fees as determined by NASD. Such compilations of information would consist of information selected by NASD from Forms BD and BDW and would be limited to information that is otherwise publicly available from the Commission.

Conforming Changes

The proposed rule change would conform subparagraph numbers in

⁷ NASD currently calculates the two-year period for disclosure of a customer complaint as of the date the customer complaint was first reported on Form U4 or Form U5. Under the proposed rule change, and consistent with the current interpretation of Form U4 and Form U5, NASD would consider this two-year period to begin on the date on which the member received the complaint, both for purposes of reportability on Form U4 and Form U5 and for purposes of disclosure pursuant to IM-8310-2. Accordingly, under the proposed rule change, a customer complaint that has not been settled or adjudicated within the past two years from the date on which the member received the complaint would cease to be reported on Forms U4 and U5 and would also become a Historic Complaint.

NASD IM-8210-2 as required by these amendments. Finally, NASD no longer refers to itself or its subsidiary, NASD Regulation, Inc., using its full corporate name, "the Association," "the NASD" or "NASD Regulation, Inc." Instead, NASD uses "NASD" unless otherwise appropriate for corporate or regulatory reasons. Accordingly, the proposed rule change would replace several references to "Association" in the text of the proposed rule change with "NASD."

Electronic Delivery of Written Reports

In connection with the proposed changes to NASD IM-8310-2, and the overall objectives of the public information review, NASD also considered the manner in which it releases information to the public via the BrokerCheck program. Currently, NASD makes written reports available by U.S. mail in printed (hard copy) form and by email in an electronic format upon receipt of a request via email or the established toll-free number. However, a number of practical issues have arisen regarding email delivery. For example, many Internet service providers limit the size of attachments that can be received by an individual via email. This limit effectively prevents NASD from providing written reports on the largest NASD-registered firms via email. Instead, NASD must send the reports via U.S. mail. As a result, investors are required to wait, sometimes for several days, before receiving the requested reports. The email limit also restricts NASD's opportunity to include explanatory material that would tend to increase the size of the report beyond the email size limits.

Accordingly, NASD plans to enhance the electronic delivery of written reports sent in response to inquiries via email or through the established toll-free number by replacing the current delivery approach with a link to a controlled-access server that would allow access to the requested report through a secure Internet session. Access to the information would be limited to the written report requested, and only the individual making the request would be granted access to the database. A requestor also would be able to view investor education materials that would aid him or her in understanding the written report. This planned electronic distribution system would allow NASD to provide investors with more immediate access to the requested information. This change would eliminate the additional step of emailing the requestor a passcode and requiring the requestor to reenter that passcode. Additionally, this change

should enable NASD to have the flexibility it needs to provide a report delivery solution that is more user-friendly, and that more efficiently meets investor needs in light of changing technology, while still providing safeguards against data piracy. NASD also would continue to accept requests for reports via the existing toll-free number and provide hard copy reports to those requestors.

2. Statutory Basis

NASD believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(i), which requires that NASD establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons and promptly respond to such inquiries in writing. NASD states that the proposed rule change is designed to accomplish these ends by broadening the types and, on balance, the amount of information released to the investing public through NASD's BrokerCheck program. At the same time, it would establish a principled basis for disclosure that would meet NASD's investor protection objectives, while fairly addressing the proprietary interests of firms and the privacy interests of their associated persons.

NASD would announce adoption of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval. Because the proposed rule change would require changes to the software application supporting NASD's BrokerCheck program, NASD would announce the effective date in a subsequent *Notice to Members*.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change, as amended, would result in 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

Notice to Members 02-74: Proposed Amendments Relating to Types of Information NASD Makes Public

In NASD *Notice to Members 02-74* (November 2002), NASD requested comment on a broad range of issues relating to information NASD makes public. This discussion will be limited to the comments that were received in connection with NASD's public disclosure program. There were a total of 58 commenters. Those who commented on NASD's public disclosure program were generally in favor of timely and accurate disclosure to the investing public, but they were also concerned about striking a fair balance between the need for quality disclosure and the legitimate privacy interests of firms and associated persons. NASD believes that it has addressed those concerns in the proposed rule change.

For example, NASD would not release social security numbers, residential history information, physical description information, information that NASD is otherwise prohibited from releasing under Federal law, or information provided solely for use by regulators. NASD would reserve the right to exclude, on a case-by case-basis, information that contains confidential customer information, offensive or potentially defamatory language, or information that raises significant identity theft, personal safety or privacy concerns. With respect to qualification examination information, NASD proposes to release information only as to examinations passed by an associated person and date passed and would not release information regarding examination scores or failed examinations. In addition, NASD proposes not to release "Internal Review Disclosure" information reported on the most recently filed Form U5.

Further, under proposed IM-8310-2, NASD would not release information reported by members, associated persons, or regulators, including information relating to regulatory proceedings, investigations, civil judicial actions, customer complaints, arbitrations, or litigation if the member or associated person prevailed in a final, adjudicatory proceeding as to the matter reported; the reported regulatory action, investigation, or criminal proceeding was dismissed, vacated or withdrawn by the authority instituting the action or proceeding; the information was reported in error by a member,

regulator, or the appropriate authority; or the information was determined by regulators, through amendments to the uniform registration forms, to be no longer relevant to securities registration or licensure, regardless of the disposition of the event or the date the event occurred. With respect to criminal proceedings, NASD would not release information reported by members, associated persons, or regulators if the information was reported in error by a member, regulator, or the appropriate authority; or the information was determined by regulators, through amendments to the uniform registration forms, to be no longer relevant to securities registration or licensure, regardless of the disposition of the event or the date the event occurred.

A number of commenters were concerned about the potential release of information that is no longer reportable on the current uniform forms. Under the proposed rule change, NASD would not release any disclosure that is no longer reportable on the current uniform forms such as bankruptcies that are more than 10 years old or liens that have been satisfied, except for Historic Complaints where the stated criteria, as further discussed below, have been met.

With respect to Historic Complaints, proposed IM-8310-2 would define "Historic Complaints" as the last filed information relating to customer complaints reported on a Form U4, Form U5, or Form U6 that are more than two years old that have not been settled or adjudicated, or customer complaints, arbitrations, or litigation that have been settled for an amount less than \$10,000. Among other things, commenters expressed the view that releasing Historic Complaints would be unhelpful and potentially misleading, on the basis that such information was outdated and no longer relevant.

In response to these commenters, NASD proposes to release historic customer complaint information only where the individual's record has demonstrated a pattern, as defined in proposed IM-8310-2. Proposed IM-8310-2 would provide that an individual must have a total of three or more currently disclosed regulatory actions; currently reported customer complaint, arbitration, or litigation disclosures; Historic Complaints; or any combination thereof, before NASD would consider releasing Historic Complaint information. If an individual has three or more disclosures, as described above, NASD would examine the age of any currently reported customer complaint, arbitration or litigation disclosure(s) and the age of any Historic Complaints. If the most

⁸ 15 U.S.C. 78o-3(b)(6).

recent Historic Complaint or currently reported customer complaint disclosure (including arbitration or litigation disclosure) is more than 10 years old, NASD proposes not to release any Historic Complaint information.

NASD would release Historic Complaints only when the person has a total of three or more currently disclosed regulatory actions; currently reported customer complaint, arbitration, or litigation disclosures; Historic Complaint disclosures; or any combination thereof, and at least one of the currently reported customer complaint disclosures (including arbitration or litigation disclosures) or Historic Complaints was filed within the past 10 years. In that case, all Historic Complaints, regardless of age, would be released. Releasing Historic Complaint disclosures on this basis would enable public investors to make an informed assessment as to whether a particular broker has demonstrated a pattern of conduct over the years. NASD believes that providing this information would allow public investors to determine for themselves the significance, if any, of the Historic Complaint(s).

NASD has also taken into account some commenters' concern about releasing Form U5 information, given the potential for public disclosure of allegedly defamatory material and the possibility that a broker may be in the process of suing his or her previous member firm over information reported on a Form U5 in connection with a wrongful termination or a defamation claim. Commenters also expressed the view that reasons for release from employment should not be public information unless the reason is reportable on the Form U4. NASD notes that proposed IM-8310-2 proposes to release only disclosure information reported on the Form U5. This means that under the proposed rule change, responses to current Question 3 (Full Termination) on the Form U5, regarding "Reason for Termination," would not be released, but information regarding terminations for cause that meet the criteria in current Question 7F on the Form U5 or current Question 14J on the Form U4 would be released.

A number of commenters suggested that brokers should be given the opportunity to respond before the information is released to the public. NASD has addressed commenters' concerns by proposing to delay the release of Form U5 information for 15 days, in order to give the broker an opportunity to file a Form U4 or submit a comment to NASD regarding any such disclosure. Both the Form U5 disclosure

and the broker's response would then be released to the public.

NASD proposes to provide associated persons or persons who were associated with a member within the preceding two years with the opportunity to provide a brief comment that would be included in the information NASD releases through the BrokerCheck program. Only comments that relate to the information provided through the BrokerCheck program would be included. Any such person who wishes to submit a comment would be required to submit a signed, notarized affidavit in the form specified by NASD. NASD would publish instructions for submitting comments on its Web site for such persons.⁹ The person submitting the comment would be able to replace or delete the comment in the same way. These comments would be made available through the CRD system to participating regulators, and to any member firms that the person who submitted the comment is associated with or is seeking to be associated with, for as long as such information is available through the BrokerCheck program. Persons who are currently registered with a member firm would be required to amend Form U4, where possible, instead of submitting a comment.

Notice to Members 02-74 also asked for comment on publishing comparative information, *i.e.*, putting information released to the public in context. The Notice stated that expanding the information available through the BrokerCheck program to include certain comparative information would help an investor better understand and evaluate the information on the specific broker or firm he or she may be interested in or how his or her broker or firm compares to the rest of the industry. This comparative information would not rate brokers or firms or specifically advise an investor whether or not to conduct business with a particular broker or firm. The commenters generally opposed this concept, stating that comparative information would confuse or potentially mislead the public.

In response, NASD notes that it does not intend to include comparative information with respect to particular persons or members in reports that would be available through the program and, therefore, publication of

⁹ Consistent with current practice, NASD would reserve the right to reject comments or redact information, on a case-by-case basis, that contains confidential customer information, offensive or potentially defamatory language or information that raises significant identity theft, personal safety or privacy concerns that are not outweighed by investor protection concerns.

comparative information would not be part of the proposed rule change to IM-8310-2. NASD plans instead to make educational materials and/or explanatory information available via the NASD Web site and through other means that would help investors understand the information they are receiving. This informational material may include generic statistical or comparative information.

Notice to Members 03-76: NASD Seeks Comments on Enhanced Access to NASD BrokerCheck (Formerly Known as NASD's Public Disclosure Program)

In *Notice to Members 03-76* (December 2003), NASD sought comment on proposed enhancements to the existing approach for the electronic delivery of written reports (email) used by the BrokerCheck program and received six comment letters in response. Generally, commenters expressed support for the proposed approach. Four commenters supported enhancing access in the manner described in the *Notice*. Another commenter supported enhancing access, but requested that NASD provide limited, direct Internet access to the information through a system that would allow persons to see limited portions of each member's records. One commenter did not support the proposed enhancement, stating that NASD should correct existing limitations in the current system, and specifically noting that, in his experience, the system's search engine appears to work better if the searcher has less information than more. This commenter also stated that the system was not helpful in finding information on branches and non-branch locations. NASD believes that its proposed enhancement to the electronic delivery of reports through the BrokerCheck program would improve the delivery of information through the BrokerCheck program and also give investors the opportunity to request and review a greater number of reports in a shorter period of time. The proposed delivery system also would give NASD the flexibility to more easily provide contextual and other investor education material as part of the program. NASD continues to consider additional ways to improve the delivery of information through BrokerCheck in response to investor needs.

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 self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, as amended, or

B. institute proceedings to determine whether the proposed rule change, as amended, 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-NASD-2003-168 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9309.

All submissions should refer to File Number SR-NASD-2003-168. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-NASD-2003-168 and should be submitted on or before July 21, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5-3437 Filed 6-29-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51921; File No. SR-NASD-2005-046]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Amending the Arbitration Fees Applicable to Certain Statutory Employment Discrimination Claims

June 24, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 8, 2005, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. On April 25, 2005, NASD filed Amendment No. 1 ("Amendment No. 1") to the proposed rule change.³ On June 23, 2005, NASD filed Amendment No. 2 ("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

NASD is proposing to amend the NASD Code of Arbitration Procedure ("Code") to amend the arbitration fees applicable to certain statutory employment discrimination claims.

¹⁰ 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 replaces the original rule filing its entirety.

⁴ See Amendment No. 2. Amendment No. 2 clarified certain aspects of the rule text.

Below is the text of the proposed rule change.⁵ Proposed new language is in *italics*.

* * * * *

10217. Fees

(a) For any claim of statutory employment discrimination submitted to arbitration that is subject to a predispute arbitration agreement, a party who is a current or former associated person shall pay a non-refundable filing fee according to the schedule of fees set forth in Rule 10332, provided that:

(1) In no event shall such a person pay more than \$200 for a filing fee;

(2) A member that is a party to such an arbitration proceeding under this rule shall pay the remainder of all applicable arbitration fees set forth in Rule 10332; and

(3) No party shall be required to remit a hearing session deposit.

(b) The arbitration fees described in paragraph (a)(2) are not subject to allocation in the award. The panel, however, may assess to a party who is a current or former associated person those costs incurred under Rules 10319, 10321, 10322, and 10326.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to limit the arbitration filing fees applicable to certain statutory employment discrimination claims.

The Rule 10210 Series contains special rules applicable to the

⁵ The rule change proposed in this filing will be renumbered as appropriate following Commission approval of the pending revisions to the NASD Code of Arbitration Procedure for Customer Disputes, see Securities Exchange Act Release No. 51856 (June 15, 2005), 70 FR 36442 (June 23, 2005) (SR-NASD-2003-158); and the NASD Code of Arbitration Procedure for Industry Disputes, see Securities Exchange Act Release No. 51857 (June 15, 2005), 70 FR 36430 (June 23, 2005) (SR-NASD-2004-011).

arbitration of employment discrimination claims. The rules, which set forth the procedures that relate specifically to statutory employment discrimination claims, supplement and, in some instances, supersede the provisions of the Code of Arbitration Procedure (Code) that apply to the arbitration of other employment disputes. The Rule 10210 Series, however, does not provide a separate fee schedule for statutory employment discrimination claims. Rather, Rule 10205, the Schedule of Fees for Industry and Clearing Controversies, provides in paragraph (a) that, "A party who is an associated person shall pay a non-refundable filing fee and shall pay a hearing session deposit in the amounts specified for customer claimants in Rule 10332." Consequently, associated persons who bring statutory employment discrimination claims pay according to the schedule of fees (which are based on the dollar value of the claim) set forth in Rule 10332.

During the 1990s, federal appeals courts were split on whether employers could require mandatory arbitration of statutory employment discrimination claims and then require the employee to pay all or part of the arbitrators' fees.⁶ Specifically, the courts disagreed as to whether requiring claimants in statutory employment discrimination claims to pay arbitral forum fees and expenses would prevent them from effectively vindicating their claims. Certain courts, such as the United States Court of Appeals for the District of Columbia Circuit, found that an employee could not be required to agree to arbitrate statutory claims if the agreement required the employee to pay all or even part of the arbitrator's fees and expenses.⁷ The court noted that "it would undermine Congress's intent to prevent employees who are seeking to vindicate statutory rights from gaining access to a judicial forum and then require them to pay for the services of an arbitrator when they would never be required to pay for a judge in court."⁸ On the other hand, the United States Court of Appeals for the Fifth Circuit found that although the allocation of

arbitration costs may not be used to prevent effective vindication of federal statutory claims, this does not mean that the assessment of any arbitral forum fees against an employee bringing such claims is prohibited.⁹

The United States Supreme Court considered the issue of fees in connection with the arbitration of federal statutory claims in 2000.¹⁰ The Supreme Court found that the existence of large arbitration costs could preclude a person from effectively vindicating his or her federal statutory rights in arbitration. Therefore, the Supreme Court established a case-by-case approach whereby a person can invalidate an arbitration agreement by showing that the arbitration would be prohibitively expensive. Since the respondent never presented any evidence regarding her likely arbitration costs, the Supreme Court did not specify how "detailed the showing of prohibitive expense must be before the party seeking arbitration must come forward with contrary evidence."¹¹

In order to ensure that associated persons who have statutory employment discrimination claims are able to effectively vindicate such claims, NASD is proposing to revise the arbitration fees applicable to certain statutory employment discrimination claims.¹² Specifically, a current or former associated person who brings a statutory employment discrimination claim that is subject to a predispute arbitration agreement will pay no more than a \$200 filing fee (which is non-refundable) at the time that the associated person asserts such a claim.¹³ The member that

⁹ *Williams v. Cigna Financial Advisors, Inc.* 197 F.3d 752, 763-64 (5th Cir. 1999) (citing *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991)).

¹⁰ *Green Tree Finance Corp. of Alabama v. Randolph*, 531 U.S. 79 (2000).

¹¹ *Id.* at 92.

¹² The new rule will apply only to disputes that are subject to a predispute arbitration agreement. The regular fee schedule set forth in Rule 10332 will apply to claims that are not subject to such an agreement. Thus, if a member does not require its employees to arbitrate employment disputes, but the employee chooses to file a statutory employment discrimination claim in arbitration, the employee will be subject to the regular fee schedule. See Rule 10201(b) (statutory employment discrimination claims that are not subject to a predispute arbitration agreement may be arbitrated only if all the parties agree to do so).

¹³ As previously mentioned, associated persons who have statutory employment discrimination claims currently pay the filing fees and hearing session deposits provided in Rule 10332 at the time that they file a claim. These charges, which are based on the amount of the claim, range from \$25 to \$600 for filing fees and from \$25 to \$1,200 for hearing session deposits. Under the proposed rule, the filing fee will continue to be based on the amount of the claim as set forth in Rule 10332, but will be capped at \$200. Thus, an associated person who files a claim requesting damages of \$4,000

is a party to a statutory employment discrimination arbitration proceeding will pay the remainder of the filing fee, if any, as well as all forum fees. While the filing and forum fees will not be subject to allocation by the arbitrator(s), the panel will have the ability, as it does currently under the Code, to allocate various costs associated with arbitration, including the adjournment of hearings (Rule 10319); the production of documents (Rules 10321 and 10322); the appearance of witnesses (Rule 10322); and the recording of proceedings (Rule 10326). In addition, arbitrators will still have the ability to allocate attorneys' fees, in accordance with applicable law, as currently provided for in Rule 10215.

NASD believes that the proposed rule will allow those associated persons who agree to arbitrate statutory employment discrimination claims as a condition of employment to pursue their rights in arbitration, because their filing fee will be limited to a maximum of \$200, which is comparable to the cost of filing a civil claim in state or federal court.¹⁴ At the same time, the proposed rule will not result in any additional delays or uncertainty in the arbitral process as it provides for a straightforward sliding-scale fee with a cap rather than a case-by-case analysis of such things as the claimant's ability to pay for arbitration and the cost differential between arbitration fees and court filing fees.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of provisions of Section 15A of the Act,¹⁵ in general and with Section 15A(b)(6) of the Act,¹⁶ in particular, which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule will serve the public interest in that it will ensure that filing and hearing session fees do not prevent associated persons from vindicating their statutory employment discrimination claims in arbitration.

would pay a \$50 filing fee, while the filing fee for a \$4 million claim would be \$200.

¹⁴ In October 2004, NASD surveyed the state and federal court filing fees for civil cases in the five states where it believes the largest number of NASD arbitrations are filed (California, Florida, Illinois, New York, and Texas). NASD found that, in these jurisdictions, the state court filing fees ranged from \$160 to \$305 and the federal court filing fee was \$150.

¹⁵ 15 U.S.C. 78o-3.

¹⁶ 15 U.S.C. 78o-3(b)(6).

⁶ Previously, the United States Supreme Court had determined that mandatory arbitration of employment discrimination claims was permissible so long as the prospective litigant could effectively vindicate his or her statutory cause of action in the arbitral forum, thereby allowing the statute to continue to serve both its remedial and deterrent function. *Gilmer v. Interstate/Johnson Land Corp.*, 500 U.S. 20, 28 (1991) (citing *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 637 (1985)).

⁷ *Cole v. Burns International Security Services, et al.*, 105 F.3d 1465 (D.C. Cir 1997).

⁸ *Id.*, at 1484.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, 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-NASD-2005-046 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-046. 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR-NASD-2005-046 and should be submitted on or before July 21, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5-3438 Filed 6-29-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51912; File No. SR-NSX-2005-03]

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing of Proposed Rule Change, and Amendments No. 1 and 2 Thereto, Relating to the Ongoing Qualification of the Members of NSX's Board of Directors

June 23, 2005.

Pursuant to Section 19(b)(1) of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 13, 2005, the National Stock ExchangeSM (the "Exchange" or "NSX"SM) 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 NSX. On June 10, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ On June 21, 2005, the

Exchange filed 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 amend Article V, Section 3 of its By-Laws which pertains to the ongoing qualification of the members of its Board of Directors ("Board"). Below is the amended text of the proposed rule change. Proposed new language is in *italics*.⁵

* * * * *

CODE OF REGULATIONS (BY-LAWS) OF NATIONAL STOCK EXCHANGE

* * * * *

ARTICLE V

Exchange Organization and Administration

* * * * *

Section 3. Vacancies

(a) Any intraterm vacancy that may occur on the Board caused by death, resignation or otherwise shall be filled by the Directors then in office by a person having the same qualifications, as set forth in Section 1 of Article V of these By-Laws, as those of the Director whose seat is vacant. The person selected to fill such vacancy shall serve the remaining term of office.

(b) *In the event any Director fails to maintain the qualifications of his designated category, as set forth in Section 1 of Article V of these By-Laws, of which failure the Board shall be the sole judge, the Director shall, upon determination of the Board that the Director is no longer qualified, cease to be a Director, his office shall become vacant and (effective upon the expiration of the grace period for requalification set forth in Subsection (1) below), the vacancy may be filled by the Board with a person who qualifies for the category in which the vacancy exists.*

(1) *A Director who fails to maintain the applicable qualifications will be allowed the later of (i) 45 days from the date when the Board determines the Director is no longer qualified or (ii)*

⁴ In Amendment No. 2, the Exchange revised the proposed rule text, as well as, the proposed rule change's statutory basis section.

⁵ The reference to "Independent Director" in proposed Article V, Section 3(b)(2) of the NSX By-Laws is based upon the Commission's prior approval of Securities Exchange Act Release No. 51765 (May 31, 2005), 70 FR 33238 (June 7, 2005) (SR-NSX-2005-02).

¹⁷ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange clarified certain language in Section 3(a) of the proposed rule change, made conforming changes to Exhibit 1 to the proposed rule change and corrected page numbering errors in the initial filing.

until the next regular Board meeting following the date when the Board makes such determination, in which to requalify and thereafter continue to serve the remainder of such Director's term. During any such period up until the time when the Director requalifies, the Director shall be deemed not to hold office and the seat formerly held by the Director shall be deemed to be vacant for all purposes. The Board shall be the sole judge of whether the Director has requalified.

(2) A Director (other than an Independent Director) whose membership has been suspended does not lose his qualification by reason of such suspension during the period of suspension.

* * * * *

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 proposal 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 is proposing to amend its By-Laws pertaining to the ongoing qualification of the members of its Board. Under the proposal, Article V, Section 3 of the NSX By-Laws would be amended to provide that if a Director fails to maintain the necessary qualifications of his respective category,⁶ the Director will cease to be

⁶ The Board is currently composed of thirteen voting Directors. Those Directors are categorized as follows: (a) the Exchange President; (b) two Proprietary Members with certificates, or executive officers of Proprietary Member organizations with certificates, who are Designated Dealers in the National Securities Trading System ('Designated Dealer Directors'); (c) one Proprietary Member with certificate or an executive officer of a Proprietary Member organization with certificate, who conducts a nonmember public customer business on the Exchange ('At-Large Director'); (d) the Chairman of [the Chicago Board Options Exchange] ('CBOE Director'); (e) the President of CBOE ('CBOE Director'); (f) four CBOE members or executive officers of CBOE member organizations ('CBOE Directors'); and (g) three representatives of issuers and investors who shall not be associated with any member of the Exchange or with any registered

a Director upon determination by the Board that the Director is no longer qualified and his office shall become vacant. The proposal will also provide the later of 45 days or until the next regular Board meeting for a Director who is no longer qualified for a designated category to requalify. During any period in which a Director is not qualified for a designated category, the Director shall be deemed not to hold office and the position formerly held by the Director shall be deemed vacant for all purposes. Under the proposal, the Board will be the sole judge of whether a Director is no longer qualified for his designated category and whether a Director has requalified. Effective upon the expiration of the grace period for requalification, the Board may also fill any resulting vacancy with a person who qualifies for the category in which the vacancy exists. Finally, the proposal would provide that a Director (other than an Independent Director) whose membership has been suspended does not lose his qualification by reason of such suspension during the period of suspension. Rather, such Director may remain a Director during the suspension unless he is removed.⁷

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, enhances the fair and efficient governance of the Exchange. Therefore, NSX believes the proposed rule change, as amended, furthers the objectives of Section 6(b) of the Act,⁸ in general, and Section 6(b)(3),⁹ in particular, in that it assures a fair representation of its members in the selection of its directors and administration of its affairs. The proposed rule change also furthers the objectives of Section 6(b)(1),¹⁰ in that it helps to assure that the Exchange is so organized and has the capacity to be

broker or dealer or with another self-regulatory organization, other than as a public trustee or director ('Public Directors'). Excepting affiliations with national securities exchanges, no two or more Directors may be partners, officers of directors of the same person or be affiliated with the same person." See Article V, Section 1.1 of the NSX By-Laws. The Exchange is proposing to make various changes to the composition of the Board in a separate rule proposal, which is currently pending before the Commission. See Securities Exchange Act Release No. 51765 (May 31, 2005), 70 FR 33238 (June 7, 2005) (SR-NSX-2005-02). Through that proposal, the composition of the Board is proposed to be revised to consist of the NSX Chief Executive Officer; three Member Directors; six Independent Directors; and three CBOE Directors.

⁷ A Director may be removed with cause by a majority vote of those individuals or entities entitled to vote to elect such Director. See Article V, Section 4 of the NSX By-Laws.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(3).

¹⁰ 15 U.S.C. 78f(b)(1).

able to carry out the purposes of the Act and to comply, and to enforce compliance by its members, with the Act.

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 inappropriate burden on competition.

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 in connection with the proposed rule change, as amended.

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, as amended; or

(b) Institute proceedings to determine whether the proposed rule change, as amended, 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-NSX-2005-03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NSX-2005-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 NSX. 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-NSX-2005-03 and should be submitted on or before July 21, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5-3432 Filed 6-29-05; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Proposed Information Collection.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on one new public information collection which will be submitted to OMB for approval.

DATES: Comments must be received on or before August 29, 2005.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, ABA-20, Room 613, Federal Aviation Administration, Information Systems and Technology Services Staff, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267-9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the FAA solicits comments on the following collection of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to approve the clearance of the following information collection.

Following is a summary of the new collection:

Title: *Automated Flight Service Station Customer Satisfaction Survey.* The proposed survey will be conducted to determine customer satisfaction with Lockheed Martin's provision of flight services through the contract that was competitively sourced in an OMB A-76 Circular Competitive Sourcing initiative. The results of the survey will be used as a measure in evaluating Lockheed Martin's performance of the service. Responses are voluntary solicited from the customers (primarily general aviation pilots). The estimated annual reporting burden is 1333 hours.

Dated: Issued in Washington, DC, on June 23, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, APF-100.

[FR Doc. 05-12884 Filed 6-29-05; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of an Environmental Assessment (EA) and Finding of No Significant Impact/Record of Decision (FONSI/ROD) Executed by the Federal Aviation Administration (FAA) for the Evaluation of Environmental Impacts Associated With a Proposed Extension of Runway 10R/28L for the Capital City Airport Located in Lansing, MI

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of availability of an EA and FONSI/ROD executed by the FAA for the evaluation of environmental impacts associated with a proposed extension of Runway 10R/28L for the

Capital City Airport located in Lansing, Michigan.

SUMMARY: The FAA is making available an EA and FONSI/ROD for the evaluation of environmental impacts associated with a proposed extension to runway 10R/28L executed by the FAA, for the Capital City Airport located in Lansing, Michigan.

Point of Contact: Mr. Brad Davidson, Environmental Protection Specialist, FAA Great Lakes Region, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174 (734) 229-2900.

SUPPLEMENTARY INFORMATION: The FAA is making available an EA and FONSI/ROD for the evaluation of environmental impacts associated with a proposed extension to Runway 10R/28L, executed by the FAA, for the Capital City Airport located in Lansing, Michigan. The purpose of the EA and FONSI/ROD was to evaluate potential environmental impacts arising from the proposed airport improvement project involving an extension to Runway 10R/28L.

These documents will be available during normal business hours at the following location: FAA Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174.

Due to current security requirements, arrangements must be made with the point of contact prior to visiting this office.

Issued in Detroit, Michigan, June 16, 2005.

Irene R. Porter,

Manager, Detroit Airport District Office, FAA, Great Lakes Region.

[FR Doc. 05-12885 Filed 6-29-05; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2000-8398]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA decision to renew the exemption from the vision requirement in the Federal Motor Carrier Safety Regulations for Mr. Thomas E. Howard. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has

¹¹ 17 CFR 200.30-3(a)(12).

concluded that granting this exemption will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemption for this commercial motor vehicle (CMV) driver.

DATES: This decision is effective June 30, 2005. Comments from interested persons should be submitted by August 1, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA-2000-8398 by any of the following methods:

- Web site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., 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.

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: Dr. Mary D. Gunnels, Office of Bus and Truck Standards and Operations, (202) 366-4001, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the "help" section of the DMS Web site. If you want us to

notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses Mr. Thomas E. Howard, who has requested renewal of his exemption in a timely manner. The FMCSA has evaluated his application for renewal on its merits and decided to extend the exemption for a renewable two-year period.

This exemption is extended subject to the following conditions: (1) That Mr. Howard have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that Mr. Howard is otherwise physically qualified under 49 CFR 391.41; (2) that Mr. Howard provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that Mr. Howard provide a copy of the annual 3 medical certification to the employer for retention in his driver's qualification file and retain a copy of the certification on his person while driving for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be valid for two years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) Mr. Howard fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it

was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing the Exemption

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), Mr. Howard has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 78256; 66 FR 16311; 68 FR 13360). He has requested timely renewal of the exemption and has submitted evidence showing that the vision in his better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of his record of safety while driving with his vision deficiency over the past two years indicates he continues to meet the vision exemption standards. These factors provide an adequate basis for predicting his ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Comments

The FMCSA will review comments received at any time concerning Mr. Howard's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning his safety record submit comments by August 1, 2005.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 69 FR 51346 (August 18, 2004). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: June 23, 2005.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 05-12877 Filed 6-29-05; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005 21688]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *JESSIE O'*.

SUMMARY: As authorized by Pub. L. 105-383 and Pub. L. 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005-21688 at <http://dms.dot.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105-383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before August 1, 2005.

ADDRESSES: Comments should refer to docket number MARAD 2005-21688.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will

be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR-830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *JESSIE O'* is: *Intended Use:* "Passenger vessel cruising, fishing, and sightseeing excursions."

Geographic Region: Eastern seaboard of New Jersey from Atlantic City South to Cape May, including the Delaware Bay and Tributaries.

Dated: June 22, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05-12936 Filed 6-29-05; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005 21687]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *SOUTHERN CROSS*.

SUMMARY: As authorized by Pub. L. 105-383 and Pub. L. 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005-21687 at <http://dms.dot.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105-383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an

unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before August 1, 2005.

ADDRESSES: Comments should refer to docket number MARAD-2005 21687. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR-830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *SOUTHERN CROSS* is:

Intended Use: "Carrying passengers for hire."

Geographic Region: California.

Dated: June 22, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05-12929 Filed 6-29-05; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2005-21675; Notice 1]

General Motors Corporation, Receipt of Petition for Decision of Inconsequential Noncompliance

General Motors Corporation (General Motors) has determined that certain model year 2005 vehicles that it

produced do not comply with S6 of 49 CFR 571.205, Federal Motor Vehicle Safety Standard (FMVSS) No. 205, "Glazing materials." General Motors 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), General Motors 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 General Motors' 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 7,326 model year 2005 Chevrolet Corvette coupes equipped with removable transparent Targa roofs. S6, certification and marking, of FMVSS No. 205 and the referenced Section 7 of ANSI/SAE Z26.1-1996 specify that the required identification and certification markings must be located on the glazing. On the subject vehicles, the required markings are present, but they are located on the frame of the Targa roof assembly, rather than on the glazing portion of the roof assembly.

General Motors believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. The petitioner states:

- The subject glazing meets all applicable performance requirements of FMVSS No. 205. There is no safety performance implication associated with this technical noncompliance.
- The certifications markings required by FMVSS No. 205 are provided on the frame of the subject Corvette Targa roof assemblies. This noncompliance relates only to the location of the required markings, not to their presence.
- Once assembled, the Targa roof frame and glazing are indivisible. For in-service repair, the roof assembly (glazing mounted in frame) is serviced as a unit. There is no service provision to replace only the frame or only the glazing. As a practical matter, therefore, marking the frame is functionally equivalent to marking the glazing.
- Given the small volume of service parts that will be needed and the high investment cost required to manufacture the subject Corvette roof assemblies, it is probable that all service parts will be manufactured by the same supplier as the original equipment parts. Accordingly, there is virtually no chance of uncertainty about the manufacturer of the subject parts, should a need to identify the manufacturer arise in the future.
- GM is not aware of any crashes, injuries, customer complaints or field reports associated with this condition.

General Motors also states that NHTSA has previously granted inconsequential noncompliance petitions involving the omission of FMVSS No. 205 markings and provides the following examples: Western Star Trucks (63 FR 66232, 12/1/1998), Ford Motor Company (64 FR 70116, 12/15/1999), Toyota Motor Corporation (68 FR 10307, 3/4/2003), and Freightliner LLC (68 FR 65991, 11/24/2003).

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: August 1, 2005.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

Issued on: June 23, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05-12876 Filed 6-29-05; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 558 (Sub-No. 8)]

Railroad Cost-of-Capital—2004

AGENCY: Surface Transportation Board.

ACTION: Notice of decision.

SUMMARY: On June 30, 2005, the Board served a decision to update its computation of the railroad industry's cost-of-capital for 2004. The composite after-tax cost-of-capital rate for 2004 is found to be 10.1%, based on a current cost-of-debt of 5.25%; a cost of common equity capital of 13.16%; and a capital structure mix comprised of 38.5% debt and 61.5% common equity. The cost-of-capital finding made in this proceeding will be used in a variety of Board proceedings.

EFFECTIVE DATE: This action is effective June 30, 2005.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, 202-565-1529. (Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339).

SUPPLEMENTARY INFORMATION: The cost-of-capital finding in this decision may be used for a variety of regulatory purposes. The Board's decision is posted on the Board's Web site, <http://www.stb.dot.gov>. In addition, copies of the decision may be purchased from ASAP Document Solutions by calling 202-306-4004 (assistance for the hearing impaired is available through FIRS at 1-800-877-8339), or by e-mail at asapdc@verizon.net.

Environmental and Energy Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of this action are to update the annual railroad industry cost-of-capital finding by the Board. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Authority: 49 U.S.C. 10704(a).

Decided: June 21, 2005.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. 05-12900 Filed 6-29-05; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2002-43

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2002-43, Determination of Substitute Agent for a Consolidated Group.

DATES: Written comments should be received on or before August 29, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to R. Joseph Durbala, (202) 622-3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Determination of Substitute Agent for a Consolidated Group.

OMB Number: 1545-1793.

Revenue Procedure Number: Revenue Procedure 2002-43.

Abstract: Revenue Procedure 2002-43 provides any instructions that apply to any designation of a substitute agent, notification of the existence of a default substitute agent, a request for the designation of a substitute agent, and request for replacement of a previously designated substitute agent. The instructions also provide for the automatic approval of requests by a

terminating common parent to designate its qualifying successor as a substitute agent.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Average Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 24, 2005.

Paul Finger,

IRS Reports Clearance Officer.

[FR Doc. E5-3428 Filed 6-29-05; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5498-SA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5498-SA, HSA, Archer MSA, or Medicare Advantage MSA Information.

DATES: Written comments should be received on or before August 29, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622-3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: HSA, Archer MSA, or Medicare Advantage MSA Information.

OMB Number: 1545-1518.

Form Number: 5498-SA.

Abstract: This form is used to report contributions to a medical savings account as required by Internal Revenue Code section 220(h).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 41,105.

Estimated Time Per Response: 10 min.

Estimated Total Annual Burden Hours: 6,988.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 24, 2005.

Paul Finger,

IRS Reports Clearance Officer.

[FR Doc. E5-3429 Filed 6-29-05; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form W-4V

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W-4V, Voluntary Withholding Request.

DATES: Written comments should be received on or before August 29, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622-3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Withholding Request.

OMB Number: 1545-1501.

Form Number: W-4V.

Abstract: If an individual receives any of the following government payments, he/she may voluntarily complete Form W-4V to request that the payer withhold Federal income tax. Those payments are unemployment compensation, social security benefits, tier I railroad retirement benefits, Commodity Credit Corporation loans, or certain crop disaster payments under the Agricultural Act of 1949 or title II of the Disaster Assistance Act of 1988.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and farms.

Estimated Number of Respondents: 19,700,000.

Estimated Time Per Respondent: 29 min.

Estimated Total Annual Burden Hours: 9,653,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate

of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 23, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5-3430 Filed 6-29-05; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0579]

Proposed Information Collection Activity; Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine children of Vietnam veterans with birth defects eligibility for vocational training benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 29, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@mail.va.gov*. Please refer to "OMB Control No. 2900-0579" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273-7079 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Vocational Training Benefits—Certain Children of Vietnam Veterans 38 CFR 21.8014).

OMB Control Number: 2900–0579.

Type of Review: Extension of a currently approved collection.

Abstract: Vietnam veterans' children born with certain birth defects may submit a written claim to request participation in a vocational training program. In order for VA to relate the claim to other existing VA records, the applicant must provide identifying information about him or herself and the natural parent who served in Vietnam. The information collected allows VA counselors to review the existing records and to schedule an appointment with the applicant for an evaluation.

Affected Public: Individuals or households.

Estimated Annual Burden: 15 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 60.

Dated: June 23, 2005.

By direction of the Secretary:

Loise Russell,

Director, Records Management Service.

[FR Doc. E5–3444 Filed 6–29–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0108]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine whether children's incomes can be excluded from consideration in determining a parent's eligibility for non-service-connected pension.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before *August 29, 2005*.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0108" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of

information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Report of Income From Property or Business, VA Form 21–185.

OMB Control Number: 2900–0108.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 21–4185 to report income and expenses that derived from rental property and/or operation of a business. VA uses the information to determine whether the claimant is eligible for VA benefits and, if eligibility exists, the proper rate of payment.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,700.

Dated: June 23, 2005.

By direction of the Secretary:

Loise Russell,

Director, Records Management Service.

[FR Doc. E5–3445 Filed 6–29–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0121]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the insured's

eligibility for continued disability insurance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 29, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: nancy.kessinger@mail.va.gov. Please refer to "OMB Control No. 2900-0121" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273-7079 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Obtaining Supplemental Information from Hospital or Doctor, VA FL 29-551b.

OMB Control Number: 2900-0121.

Type of Review: Extension of a currently approved collection.

Abstract: This form letter is used to request medical evidence from an insured's attending physician or hospital in connection with continuing disability insurance benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 61 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 244.

Dated: June 23, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. E5-3446 Filed 6-29-05; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0028]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Information and Technology, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Information and Technology (IT), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information used by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed (a) from service organizations requesting to be placed on VA's mailing lists for specific publications; (b) to request additional information from the correspondent to identify a veteran; (c) to request for and consent to release of information from claimant's records to a third party; and (d) to determine an applicant's eligibility to receive a list of names and addresses of veterans and their dependents.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 29, 2005.

ADDRESSES: Submit written comments on the collection of information to Dolly Jackson, Department of Veterans Affairs, Records Management Service (005E3), 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: dolly.jackson@mail.va.gov. Please refer to "OMB Control No. 2900-0028" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Dolly Jackson at (202) 273-8022 or FAX (202) 273-5981.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each

collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, IT invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of IT's functions, including whether the information will have practical utility; (2) the accuracy of IT's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Application of Service Representative for Placement on Mailing List, VA Form 3215.

b. Request for and Consent to Release of Information from Claimant's Records, VA Form 3288.

c. Request to Correspondent for Identifying Information, VA Form Letter 70-2.

d. 38 CFR 1.519(A) Lists of Names and Addresses.

OMB Control Number: 2900-0028.

Type of Review: Extension of a currently approved collection.

Abstract:

a. VA operates an outreach services program to ensure veterans and beneficiaries have information about benefits and services to which they may be entitled. To support the program, VA distributes copies of publications to Veterans Service Organizations' representatives to be used in rendering services and representation of veterans, their spouses and dependents. Service organizations complete VA Form 3215 to request placement on a mailing list for specific VA publications.

b. Veterans or beneficiaries complete VA Form 3288 to provide VA with a written consent to release his or her records or information to third parties such as insurance companies, physicians and other individuals.

c. VA Form Letter 70-2 is used to obtain additional information from a correspondent when the incoming correspondence does not provide sufficient information to identify a veteran. VA personnel use the information to identify the veteran, determine the location of a specific file, and to accomplish the action requested by the correspondent such as processing a benefit claim or file material in the individual's claims folder.

d. Title 38 U.S.C. 5701(f)(1) authorized the disclosure of names or addresses, or both of present or former members of the Armed Forces and/or their beneficiaries to nonprofit organizations (including members of Congress) to notify veterans of Title 38 benefits and to provide assistance to veterans in obtaining these benefits. This release includes VA's Outreach Program for the purpose of advising veterans of non-VA Federal State and local benefits and programs.

Affected Public: Individuals or households, Not for profit institutions, and State, local or tribal government.

Estimated Annual Burden: 22,700 hours.

a. Application of Service Representative for Placement on Mailing List, VA Form 3215—25 hours.

b. Request for and Consent to Release of Information From Claimant's Records, VA Form 3288—18,875 hours.

c. Request to Correspondent for Identifying Information, VA Form Letter 70—2—3,750 hours.

d. 38 CFR(A) 1.519 Lists of Names and Addresses—50 hours.

Estimated Average Burden Per Respondent:

a. Application of Service Representative for Placement on Mailing List, VA Form 3215—10 minutes.

b. Request for and Consent to Release of Information From Claimant's Records, VA Form 3288—7.5 minutes.

c. Request to Correspondent for Identifying Information, VA Form Letter 70—2—5 minutes.

d. 38 CFR(A) 1.519 Lists of Names and Addresses—60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Application of Service Representative for Placement on Mailing List, VA Form 3215—150.

b. Request for and Consent to Release of Information From Claimant's Records, VA Form 3288—151,000.

c. Request to Correspondent for Identifying Information, VA Form Letter 70—2—45,000.

d. 38 CFR(A) 1.519 Lists of Names and Addresses—50.

Dated: June 23, 2005.

By direction of the Secretary.

Loise Russell,

Records Management Service.

[FR Doc. E5-3447 Filed 6-29-05; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Environmental Hazards; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held August 1-2, 2005, in room C-7B at VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. The meeting will run from 8 a.m. to 4 p.m. each day and is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs on adverse health effects that may be associated with exposure to ionizing radiation and to make recommendations on proposed standards and guidelines regarding VA benefit claims based upon exposure to ionizing radiation.

On August 1, VA's Public Health and Environmental Hazards Office and Compensation and Pension Service will make presentations to the Committee. On August 2, the Committee will plan future activities and assign tasks to committee members.

Those who wish to attend should contact Ms. Bernice Green of the Department of Veterans Affairs, Compensation and Pension Service, 810 Vermont Avenue, SW., Washington, DC 20420, by phone at (202) 273-7210, or by fax at (202) 275-1728. The Committee will accept written comments, which can be addressed to Ms. Ersie Farber, Designated Federal Officer, at the Department of Veterans Affairs, Veterans Benefits Administration (21), 810 Vermont Avenue, NW., Washington, DC 20420. In all communication to the Committee, writers must identify themselves and state the organizations, associations, or persons they represent.

An open forum for verbal statements from the public will also be available in the afternoon each day. Each person who wishes to make a verbal statement before the Committee will be accommodated on a first come, first served basis and will be provided three (3) minutes to present the statement.

Dated: June 24, 2005.

By direction of the Secretary.

E. Philip Riggall,

Committee Management Officer.

[FR Doc. 05-12959 Filed 6-29-05; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 (Federal Advisory Committee Act) that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board will be held on August 22-25, 2005, at the Hamilton Crowne Plaza Hotel, 14th & K Streets NW., Washington, DC. The sessions are scheduled to begin at 8 a.m. and end at 5:30 p.m. each day.

The purpose of the Board is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public for the August 22 and August 24 sessions from 8 a.m. to 9 a.m. for the discussion of administrative matters, the general status of the program and the administrative details of the review process. The meeting will be closed on August 22-August 25 from 9 a.m. to 5:30 p.m. for the Board's review of research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b(c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under Sections 10(d) of the Public Law 92-463 as amended by Section 5(c) of the Public Law 94-109.

Those who plan to attend the open session should contact Dr. Denise Burton, Portfolio Manager, Rehabilitation Research and Development Service (122P), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, at (202) 254-0068

Dated: June 21, 2005.

By direction of the Secretary.

E. Philip Riggan,

Committee Management Officer.

[FR Doc. 05-12957 Filed 6-29-05; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Disability Benefits Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463, the Federal Advisory Committee Act, that the Veterans' Disability Benefits Commission has scheduled a meeting for July 22, 2005, in the Hamilton Ballroom on the lower level of the Hamilton Crowne Plaza, located on the corner of 14th and K Streets, at 1001-14th Street NW., Washington, DC 20005. The meeting will convene at 8:30

a.m. and conclude at 4:30 p.m. and is open to the public.

The purpose of the Commission is to carry out a study of the benefits under the laws of the United States that are provided to compensate and assist veterans and their survivors for disabilities and deaths attributable to military service. The Commission is dedicated to conducting a thorough, objective, and impartial analysis of the full range of programs that are intended to meet the needs of veterans. The Commission will receive briefings intended to provide an understanding of programs managed by VA and the Department of Defense (DoD) for disabled retirees and veterans and their survivors.

The agenda for July 22 includes remarks by the VA Under Secretary for Benefits, descriptions of military retiree and survivor populations receiving benefits, and briefings on the issue of

concurrent receipt of benefits, the disability rating processes used by VA and DOD, and the establishment of presumptions.

Interested persons may attend and present oral statements to the Commission. Interested parties can provide written comments for review by the Commission at any time to Mr. Ray Wilburn, Executive Director, Veterans' Disability Benefits Commission, 1101 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20004 or by e-mail at vetscommission@va.gov.

Information on the Commission may be found at <http://www.va.gov/vetscommission>.

Dated: June 24, 2005.

By Direction of the Secretary:

E. Philip Riggan,

Committee Management Officer.

[FR Doc. 05-12958 Filed 6-29-05; 8:45 am]

BILLING CODE 8320-01-M

Corrections

Federal Register

Vol. 70, No. 125

Thursday, June 30, 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 LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219-AB29

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

Correction

In rule document 05-10681 beginning on page 32868 in the issue of Monday, June 6, 2005 make the following corrections:

1. On page 32890, in the heading to Table VI-2 “ (μ/m^3) ” should read “ $(\mu g/m^3)$ ”.
2. On the same page, in the same table, under the “Metal” heading, in the last entry “522” should read “522.0”
3. On the same page, in the third column, seven lines from the bottom “MSHA s” should read “MSHA’s”.
4. On page 32891, in footnote 2, in the first column, in the third line “TC 1.3” should read “TC \approx 1.3”.
5. On page 32899, in the first column, in the first paragraph, three lines from

the bottom “(i.e., $\approx 240_{TC}$ ” should read “(i.e., $\approx 240_{TC}$ ”.

6. On page 32901, in the table, under the “Description” heading, in the fourth entry, in the second line “350” should read “359”.

7. On the same page, in the same table, under the “Key results” heading, in the fourth entry, in the second paragraph, in the first line “declined” should read “decline”.

8. On the same page, in the same table, under the same heading, in the fifth entry, in the last line “rhintisi” should read “rhinitis”.

9. On page 32902, in the table, under the “Description” heading, in the last entry, in the first line “disease” should read “diesel”.

10. On page 32906, in the first paragraph, seven lines from the bottom “” should read “—”.

11. On page 32909, in the table, under the “Agent(s) of toxicity” heading, in the fourth entry, in the second paragraph, in the last line “Sigma.” should read “Sigma Chemical Co., respectively.”.

12. On page 32930, in the table, under the “System name” heading, in the fourth entry “On-board” should read “On-board fuel burner”.

13. On the same page, in the same table, under the “Comments” heading, in the final entry, in the first line “yet fuel burner provides ” should read “yet provides ”.

14. On page 32936, in the table, under the “MSHA cost estimate” heading, in the last entry, in the second line “\$2.09 million.” should read “\$2.09 million:”.

15. On page 32944, in the second column, in the first full paragraph, in the fifth line “ (μ/m^3) ” should read “ $(\mu g/m^3)$ ”.

16. On page 32948, in the first column, in the first paragraph, the first two lines should read “have been reduced by a factor equal to $\sqrt{2}$ if such averaging had been performed. For example, if the analytical”.

17. On page 32949, in the first column, in the first full paragraph, in the tenth line “ $100 \times |X_1|$ ” should read “ $100 \times |X_1|$ ”.

18. On page 32951, in the first column, in the first paragraph, in the third line “ $(\sigma_\tau = 0.256)$ ” should read “ $(\sigma_\tau = 0.256)$ ”.

§57.5060 [Corrected]

19. On page 32966, in the second column, in §57.5060(a), in the seventh line “ $g/m^3)$ ” should read “ $\mu g/m^3)$ ”.

20. On the same page, in the same column, in §57.5060(b), in the 11th line “ $160_{TC} \mu g/m^3)$ ” should read “ $160_{TC} \mu g/m^3)$ ”.

§57.5075 [Corrected]

21. On page 32968, in the third column, the section heading should read “§57.5075—Diesel particulate records.”.

22. On the same page, in §57.5075(a), the table heading should read “Table 57.5075(a)—Diesel Particulate Recordkeeping Requirements”.

[FR Doc. C5-10681 Filed 6-29-05; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

**Thursday,
June 30, 2005**

Part II

Department of the Treasury

Fiscal Service

31 CFR Part 344

**U.S. Treasury Securities—State and Local
Government Series; Final Rule**

**Demand Deposit Securities of the State
and Local Government Series (SLGS);
Average Marginal Tax Rate and Treasury
Administrative Cost; Notice**

DEPARTMENT OF THE TREASURY**Fiscal Service****31 CFR Part 344**

[Department of the Treasury Circular, Public Debt Series No. 3–72]

U.S. Treasury Securities—State and Local Government Series

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Treasury) is issuing this final rule to revise the regulations governing State and Local Government Series (SLGS) securities. SLGS securities are non-marketable Treasury securities that are only available for purchase by issuers of tax-exempt securities. The changes in the final rule prohibit issuers of tax-exempt securities from engaging in certain practices that in effect use the SLGS program as a cost-free option. The final rule also makes other changes that are designed to improve the administration of the SLGS program.

DATES: This final rule is effective August 15, 2005.

FOR FURTHER INFORMATION CONTACT:

Keith Rake, Deputy Assistant Commissioner, Office of the Assistant Commissioner for Public Debt Accounting, Bureau of the Public Debt, 200 3rd St., P.O. Box 396, Parkersburg, WV 26106–0396, (304) 480–5101 (not a toll-free number), or by e-mail at <*opdasib@bpd.treas.gov*> or Edward Gronseth, Deputy Chief Counsel, Elizabeth Spears, Senior Attorney, or Brian Metz, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, Department of the Treasury, P.O. Box 1328, Parkersburg, WV 26106–1328, (304) 480–8692 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**I. Overview of Rulemaking**

On September 30, 2004, Treasury published a notice of proposed rulemaking (NPRM) with request for comments (69 FR 58756, September 30, 2004), proposing changes to the regulations governing U.S. Treasury securities of the State and Local Government Series (SLGS). Treasury intended those changes to address certain practices of investors in SLGS securities that Treasury considered to be an inappropriate use of the SLGS securities program. The comment period was extended to November 16, 2004 (69 FR 62229, October 25, 2004). Treasury received 20 comments by the end of the comment period. After careful

consideration of the comments, Treasury is now issuing a final rule that will be effective on August 15, 2005.

In the NPRM, Treasury proposed three main changes to the SLGS program: that it would be impermissible to invest an amount received from the redemption before maturity of a SLGS Time Deposit security at a higher yield, or to use an amount received from the sale of a marketable security to purchase a SLGS security at a higher yield; that subscriptions for purchase of SLGS securities, once submitted, could not be canceled; and that investors in SLGS securities would be required to use the SLGSafe service, Treasury's Internet site for SLGS securities transactions.

In the final rule, Treasury is adopting these proposed changes, but has made some modifications in response to the concerns raised in the comments. In addition, Treasury is changing how the SLGS rates are set. Currently, the SLGS rates are 5 basis points below the current Treasury borrowing rates, as shown in the daily SLGS rate table. In the final rule, SLGS securities rates are defined as 1 basis point below current Treasury borrowing rates, as released daily by Treasury in the SLGS rate table.

The following discussion provides background on the rulemaking, including a more detailed explanation of the specific proposals, addresses most of the comments on those proposals, and describes the changes in the final rule.

II. Background

SLGS securities are a type of non-marketable Treasury security that is available for purchase by state and local governments and other issuers of tax-exempt bonds. SLGS securities have been issued by Treasury since 1972. The purpose of the SLGS program is to assist state and local government issuers in complying with yield restriction and rebate requirements applicable to tax-exempt bonds under the Internal Revenue Code.

Generally, the arbitrage requirements under the Internal Revenue Code provide that with certain exceptions, the proceeds of a tax-exempt bond may not be invested at a yield that is materially higher than the yield on the bond. In the limited circumstances in which bond proceeds may be invested above the bond yield, the bond issuer generally is required to rebate to the Federal Government any earnings in excess of the bond yield.

SLGS securities may only be purchased with eligible funds. Purchasers of SLGS Time Deposit securities that bear interest may generally select any maturity period

from 30 days to 40 years, and any interest rate that does not exceed the applicable SLGS rate for that maturity published in the daily SLGS rate table. Since 1996, the maximum SLGS rates have been set at the current Treasury borrowing rate less 5 basis points. Purchasers of SLGS securities have the flexibility to structure the securities with specified payment dates and yields.

In 1996, Treasury revised the regulations governing SLGS securities to eliminate certain requirements that had been introduced at various times since 1972, and to make the program a more flexible and competitive investment vehicle for issuers (61 FR 55690, October 28, 1996). Under the 1996 regulations, Treasury also made a change to permit issuers to subscribe for SLGS securities and subsequently cancel the subscription, without a penalty, under certain circumstances.

In 1997, Treasury amended the regulations to prohibit the use of the SLGS program to create a cost-free option in certain circumstances (62 FR 46444, September 3, 1997). Treasury stated that it was inappropriate to use the SLGS securities program as an option and provided examples of unacceptable practices. These practices included, among others, subscribing for SLGS securities for an advance refunding escrow and simultaneously purchasing marketable securities for the same escrow, with the plan that the marketable securities would be sold if interest rates declined or the SLGS subscription would be canceled if interest rates did not decline.

In the proposed rule published on September 30, 2004 at 69 FR 58756, we indicated that we had become aware of several other practices involving SLGS securities that are also inappropriate uses of the securities and contrary to the purpose of the program. A number of regulatory changes were proposed to address these practices and other miscellaneous items.

One type of practice the NPRM addressed involves the redemption before maturity or sale of securities to reinvest at a higher yield. The "current Treasury borrowing rates" and corresponding SLGS rates are set once a day, whereas market interest rates may change throughout the day. In addition, although the SLGS rate table is released at 10:00 a.m. each day, SLGS rates have been set based on a Treasury yield curve determined the previous day. Some market participants have noted that the combination of a constant Treasury borrowing rate and fluctuating market interest rates creates arbitrage opportunities. SLGS investors have

utilized these arbitrage opportunities by redeeming SLGS securities before maturity and investing the redemption proceeds in higher-yielding SLGS or marketable securities, and by selling marketable securities and investing the sale proceeds in higher-yielding SLGS securities.

Another type of practice the NPRM addressed, involves the cancellation of subscriptions for the purchase of SLGS securities. A purchaser of SLGS securities may submit a subscription for purchase up to 60 days before the issue date. The subscriber locks in an interest rate based on the daily SLGS rate table on the day the subscription for purchase is submitted. If interest rates rise, subscribers often cancel their subscriptions in accordance with the current regulations and re-subscribe at a higher yield.

The NPRM and this final rule address these and other practices that provide to SLGS investors cost-free options or arbitrage opportunities that are not available in marketable securities. These practices impose substantial costs on the Federal Government. The changes in this final rule will make investments in SLGS securities more closely resemble investment opportunities available in Treasury marketable securities.

III. Proposals, Comments, and Final Rule

As noted above, by the close of the comment period, Treasury had received 20 comment letters on the NPRM. Commenters included state and local issuers, industry associations, financial advisors, and bond counsel. In general, most commenters disagreed with Treasury's proposals to limit the yield on reinvestments and to prohibit cancellation of subscriptions for purchase. A number of commenters made suggestions for modification of those requirements. Some commenters expressed approval of Treasury's proposal to require the use of the SLGSafe® Service ("SLGSafe"). Most of the comments are described in more detail below.

A. Proposals to Address Sale/ Redemption Before Maturity and Reinvestment and Related Practices

The current regulations do not prohibit the redemption before maturity of SLGS securities for the purpose of reinvestment at a higher yield. In the NPRM, Treasury stated that it had concluded that the practice of requesting redemption of SLGS securities before maturity to take advantage of relatively infrequent SLGS pricing was an inappropriate use of SLGS securities. Even if undertaken to

eliminate negative arbitrage (where bond proceeds have been invested at a yield that is less than the yield on the issuer's bond), Treasury considered the practice to be a cost-free option and inconsistent with the purpose of the program. Treasury stated that there is a direct cost to Treasury because Treasury is not being compensated for the value of the option; that the practice results in volatility in Treasury's cash balances and increases the difficulty of cash balance forecasting and thereby increases Treasury's borrowing costs; and that there are administrative costs. These same concerns apply to transactions in which an issuer sells marketable securities to acquire higher-yielding SLGS securities.

To eliminate these practices, the NPRM proposed several changes. First, the NPRM proposed several changes referred to below as "yield restrictions." Second, the NPRM proposed reducing the number of hours during which subscriptions and certain other transactions could be received in SLGSafe. Third, Treasury indicated that it planned to implement a non-regulatory change to make the rates specified in the daily SLGS rate table more current. Fourth, the NPRM proposed a new provision making it impermissible to purchase a SLGS security with a maturity longer than is reasonably necessary to accomplish a governmental purpose of the issuer.

1. Yield Restrictions

The proposed rule stated that for SLGS securities subscribed for on or after the date of publication of the final rule, it would be impermissible to invest any amount received from the redemption before maturity of a SLGS Time Deposit security at a yield that exceeds the yield used to determine the amount of redemption proceeds for such Time Deposit security. It would also be impermissible to purchase a SLGS security with any amount received from the sale or redemption (at the option of the holder) before maturity of any marketable security, if the yield on such SLGS security being purchased exceeds the yield at which such marketable security is sold or redeemed.

In addition, upon starting a subscription for a SLGS security, a subscriber would be required to certify that (A) if the issuer is purchasing a SLGS security with the proceeds of the sale or redemption (at the option of the holder) before maturity of any marketable security, the yield on such SLGS security does not exceed the yield at which such marketable security was sold or redeemed; and (B) if the issuer is purchasing a SLGS security with

proceeds of the redemption before maturity of a Time Deposit security, the yield on the SLGS security being purchased does not exceed the yield used to determine the amount of redemption proceeds for such redeemed security. Upon submission of a request for redemption before maturity of a Time Deposit security subscribed for on or after the date of publication of the final rule, the issuer would be required to certify that no amount received from the redemption would be invested at a yield that exceeds the yield used to determine the amount of redemption proceeds for such Time Deposit security. Treasury also proposed a definition of "yield" that would apply to the certifications and would require that, in comparing the yield of a SLGS security to the yield of a marketable debt instrument, the yield of the marketable debt instrument would be computed using the same compounding intervals and financial conventions used to compute interest on the SLGS security.

The majority of the commenters addressed this proposal. Thirteen commenters suggested that the proposed yield restrictions were unnecessary, given the other changes. One comment, for example, stated that municipalities should be able to redeem SLGS securities for the mitigation of negative arbitrage. The commenters also stated that the yield restriction provisions would have the unintended consequence of making the SLGS program less attractive for issuers. Several commenters expressed concerns that the proposed changes would prevent issuers from restructuring escrows.

One commenter asked for clarification of the prohibition on the sale of marketable securities to purchase higher-yielding SLGS securities and suggested that it is a common practice for issuers to liquidate sinking fund and debt service reserve fund investments for refunded bonds for use in a refunding escrow, a practice that is recognized in the current Income Tax Regulations. Another commenter noted that 26 CFR 1.148-5(d)(6)(iii) provides a safe harbor for the purchase of open market securities for a yield-restricted investment only if the lowest cost bona fide bid is not greater than the cost of the most efficient portfolio comprised exclusively of SLGS securities at the time bids are received. This commenter stated that the interplay between the SLGS regulations and the safe harbor bidding rules could, under certain market conditions, force an issuer to invest in SLGS securities with negative arbitrage with no prospect of being able

to recoup any of the negative arbitrage (as a result of the yield restrictions on redemption of the SLGS securities before maturity).

In addition to these general concerns, several commenters offered suggestions for specific modifications to the yield restriction proposals. Four commenters suggested that the yield restrictions on reinvestment should expire after the original maturity date of the investment that is sold or redeemed before maturity. Some commenters proposed excluding zero interest Time Deposit securities from the yield restriction provisions. Two commenters also suggested substituting the definition of "yield" in 26 CFR 1.148-5 for the definition proposed in the NPRM. Treasury also received comments that certain provisions, including the provisions on yield certifications, should have a delayed effective date to allow subscribers time to adjust their practices and systems.

After consideration of these comments, Treasury has decided to retain the NPRM provisions on yield restrictions and corresponding certifications, with some modifications. In Treasury's view, these restrictions are necessary to curb the use of the SLGS program as a cost-free option. Other alternatives do not achieve this goal or may be unworkable for other reasons.

The final rule does not provide that the yield restrictions expire after the original maturity date of the investment that is sold or redeemed. Such an approach could be difficult to administer in the case of multiple sales or redemptions and re-investments, and in some cases could be overly-restrictive. However, the final rule contains two new examples that clarify that if amounts received from the sale or redemption of an investment (the first investment) are invested in a second investment with a maturity date that precedes the maturity date of the first investment, and the investor holds the second investment to maturity, then the yield restrictions expire at the maturity of the second investment if the other requirements of the final rule are met (including the requirement that the SLGS program not be used to create a cost-free option). Thus, an issuer that invests tax-exempt bond proceeds in SLGS securities that produce negative arbitrage is not precluded from subsequently investing those proceeds in higher-yielding marketable securities (for example, marketable securities that have a lower credit rating than Treasury securities) if the requirements of the final rule are met.

In addition, the final rule does not preclude issuers from restructuring

escrows, provided that the yield restrictions are met. Under the final rule, marketable securities in a sinking fund or debt service reserve fund for refunded bonds are subject to the same yield restrictions that apply to other marketable securities.

The final rule also specifically excludes zero interest Time Deposit securities from the yield certification provisions in § 344.2(e)(2)(i)(B) and (e)(2)(ii) and the yield restrictions in the impermissible practice provision in § 344.2(f). Thus, under the final rule, the yield restriction provisions will not apply to amounts received from the redemption of zero interest Time Deposit securities.

In response to comments about the definition of yield, the final regulations incorporate the definition of "yield" in 26 CFR 1.148-5.

As noted above, given the number of changes that the final rule encompasses, Treasury has decided to make the final rule effective on August 15, 2005. This delayed effective date is intended to provide investors with sufficient time to review the final rule and make any necessary adjustments to their systems or processes.

2. SLGSafe Hours

Under the current rule, the SLGSafe service is available for most transactions from 8 a.m., Eastern time until 10 p.m., Eastern time. (Subscribers currently may submit subscriptions by facsimile at any time.) The NPRM proposed that SLGSafe subscriptions, requests for early redemption of Time Deposit securities, and requests for redemption of Demand Deposit securities would only be received from 10 a.m. to 6 p.m., Eastern time on business days. This proposal, combined with the proposal to make SLGSafe mandatory, shortened the window during which transactions could be effected.

Treasury received 12 comments expressing concern that the reduction in hours would not allow enough time for subscribers to complete their verification processes. Some commenters also indicated that West coast issuers would be at some disadvantage with narrower trading hours.

In response to these concerns, Treasury has revised § 344.3(g) of the final rule to extend the amount of time in which the SLGSafe window will be open. All SLGSafe subscriptions, requests for early redemption of Time Deposit securities, and requests for redemption of Demand Deposit securities must be received on business days no earlier than 10 a.m. and no later than 10 p.m., Eastern time.

3. SLGS Rates More Current

Under the current rule, the SLGS rate table is released to the public by 10 a.m., Eastern time, each business day. Treasury did not propose any change to this rule but indicated in the NPRM that it intended to make the rates specified in the daily SLGS rate table more current.

Although most commenters did not disagree with the administrative proposal to make the SLGS rates more current, several commenters suggested that such a change was sufficient to address Treasury's concerns in the rulemaking and that other proposed changes were therefore unnecessary. These commenters suggested that the establishment of more current SLGS rates would minimize opportunities to take advantage of differences between SLGS rates and market rates. However, the potential to take advantage of these differences will still exist even after the administrative change to make SLGS rates more current is effected, because SLGS rates will be held constant for twelve hours, from 10 a.m. to 10 p.m., Eastern time. Therefore, the administrative change will not address these issues entirely.

4. Maturity Longer Than Necessary

The NPRM proposed a new provision making it impermissible to purchase a SLGS security with a maturity longer than is reasonably necessary to accomplish a governmental purpose of the issuer. Treasury received 2 comments stating that the provision was vague or would be difficult to administer.

The NPRM was intended to address a practice where an issuer, apparently acting on the basis of its view on the direction of interest rates, would purchase a SLGS security with a maturity much longer than necessary for its governmental purpose, and then redeem the security before maturity. After further consideration, we have deleted this provision from the final rule, particularly in light of the risk to the issuer of purchasing a SLGS security with a maturity longer than reasonably necessary to accomplish a governmental purpose.

B. Proposals To Address Cancellations of SLGS Securities Subscriptions and Related Practices

Under the current rule, SLGS investors may subscribe for SLGS securities up to 60 days in advance of the issue date and lock in the SLGS rate on the subscription date. Subscriptions may be canceled, up to 5 or 7 days prior to issuance (depending on the amount involved), without penalty.

In the NPRM, Treasury noted that a large volume of cancellations of SLGS subscriptions had been submitted for the apparent purpose of re-subscribing at a higher yield. Treasury also noted that issuers had also submitted multiple initial subscriptions for a single issue date and had later canceled some of those subscriptions, apparently because of reductions in the size of advance refunding transactions due to changes in market conditions. Other investors had subscribed for SLGS securities, later canceling the subscription or amending the size when rates moved favorably or unfavorably. In other cases, subscriptions were canceled because agents had subscribed for SLGS securities even though the issuer had not authorized the issuance of tax-exempt bonds.

Currently, nearly half of all SLGS subscriptions are canceled. Between October 1, 2003, and September 30, 2004, 48 percent of the 14,317 subscriptions were canceled; the dollar volume of cancellations was \$309 billion. This compares to about \$160 billion in total SLGS securities outstanding. (By way of comparison as to volume, the federal deficit in fiscal year 2004 was \$413 billion.)

The NPRM proposed several changes to address cancellations. First, cancellations would be prohibited unless the subscriber established, to the satisfaction of Treasury, that the cancellation was required for reasons unrelated to the use of the SLGS program to create a cost-free option. Second, for all subscriptions submitted for SLGS securities on or after the date of publication of the final rule, a change in the aggregate principal amount originally specified in the subscription could not exceed ten percent. Third, the NPRM proposed that once an issuer selects an issue date for SLGS securities, it cannot be changed. Fourth, the NPRM proposed that a subscriber be required to certify, upon starting a SLGS subscription, that the issuer has authorized the issuance of the state or local bonds. The subscriber would also be required to enter a description of the tax-exempt bond issue in SLGSafe.

1. Prohibition on Cancellations

Treasury received 15 comments addressing the proposed prohibition on cancellations. All of these comments disagreed with this change and most expressed a desire to retain some form of the current cancellation option, even if more limited than under the current provisions.

Treasury received comments to the effect that an implicit option is an incentive for investment in SLGS

securities, and that issuers will be forced to purchase marketable securities. The commenters pointed out that this is a potentially undesirable outcome for Treasury because Treasury has an interest in preventing yield-burning and other unacceptable practices involving marketable securities. In other words, if investors are not encouraged to use the SLGS program, the IRS may be required to devote additional resources to compliance and enforcement.

Treasury also received comments suggesting that the SLGS program reduces Treasury's borrowing costs by virtue of the 5 basis point differential that exists between SLGS rates and Treasury borrowing rates. One commenter estimated that Treasury's cost savings from the SLGS program was about \$80 million per year, based on current rates and SLGS outstanding. The commenter stated that eliminating the cancellation option might reduce SLGS program participation and impact that cost savings.

The commenters also suggested a variety of alternatives to the prohibition on cancellations, including allowing cancellations up to a maximum dollar amount and prohibiting multiple subscriptions for the same bond issue; limiting the number of cancellations that can be submitted with respect to a given bond issue; allowing the use of the highest of the daily SLGS rates within a specified number of days; and providing for one or a certain number of allowable cancellations. In addition, one comment asked for clarification as to how issuers would satisfy the requirement that a cancellation is not related to the use of the program to create a cost-free option.

After consideration of these comments, Treasury remains concerned that the current option to cancel a subscription imposes substantial costs on Treasury and U.S. taxpayers. These costs include not only the costs of the option and administrative costs, but also the costs to Treasury as an issuer of marketable securities.

In Fiscal Year 2004, Treasury held 215 auctions of marketable Treasury securities and issued \$4.6 trillion in securities. Because of the size of its issuance, Treasury accomplishes its goal of financing government borrowing needs at the lowest cost over time by issuing debt in a regular and predictable pattern. Treasury seeks to minimize uncertainty about the supply of a security being issued. Uncertainty in supply causes bidders in Treasury auctions to demand a risk premium, which Treasury pays in the form of higher interest rates on the securities it

issues. Given the size of Treasury's issuance of marketable Treasury securities, even small risk premiums can create large additional interest costs. For this reason, volatility in cash balances is undesirable. Cancellations of SLGS subscriptions increase cash balance volatility, which has an adverse impact on the certainty of the supply of marketable securities, and which in turn results in increased borrowing costs for marketable securities.

We note that the submission of subscriptions on or shortly before the subscription deadline (5 or 7 days before the issue date) results in Treasury having the same notice of subscriptions as it currently does for cancellations. However, the impact of an unexpected increase in cash balances from SLGS subscriptions that settle within five to seven days is significantly less than the impact of unexpected cancellations, particularly since the cancellations are rate sensitive and tend to come in clusters when rates move dramatically over a short period of time. In the case of unexpected cancellations, additional unexpected marketable securities have to be issued to make up for the decline in expected SLGS securities. This additional issuance generally increases Treasury's borrowing costs.

With respect to the 5 basis point differential between SLGS rates and Treasury borrowing rates, that is only one portion of the entire cost structure that must be considered in evaluating the potential impact of the cancellation option on the SLGS program. Other costs include the option costs, the impact on marketable borrowing, and administrative costs.

The 5 basis point differential does not represent an option price. As Treasury stated in the 1997 revision to the regulations, the prices established by Treasury for the SLGS securities do not include the cost of an option (62 FR 46444, September 3, 1997). Prior to 1996, the differential was 12.5 basis points. As the costs of administering the program have decreased, Treasury has decreased the amount of the differential. In 1996, it was reduced to 5 basis points. As noted above, in the final rule, Treasury is reducing the basis point differential to 1 basis point below current Treasury borrowing rates. This change reflects increased efficiencies in the program, primarily through the use of SLGSafe, and will make SLGS investments more closely resemble marketable securities. Treasury is making a comparable change reducing the amount of Treasury's administrative costs for administering demand deposit SLGS securities in a **Federal Register**

notice that will be published before the effective date of this final rule.

Concerning the various suggestions in the comments for alternatives to the prohibition on cancellations, Treasury has considered these alternatives, but has concluded that even a limited use of the option can have significant adverse effects on cash balances and cash balance forecasts. This is because, as explained above, large numbers of SLGS investors often tend to use the option at the same time, in reaction to interest rate movements. Treasury has also examined the possibility of pricing the option and has determined that establishing a pricing structure would not be feasible.

For all of the above reasons, Treasury is adopting the proposed rule prohibiting cancellations. The final rule provides that a subscriber cannot cancel unless it is established, to the satisfaction of Treasury, that the cancellation is required for reasons unrelated to the use of the SLGS program to create a cost-free option.

2. Changing Principal Amounts

Under the current rule, a subscriber may change the aggregate principal amount specified in the initial subscription up to \$10 million or ten percent, whichever is greater. The NPRM proposed that subscribers could only change the principal amount by 10 percent above or below the amount originally specified.

Treasury received 10 comments disagreeing with the proposed change. Many commenters indicated they did not understand the reason Treasury was considering this change. Many commenters also expressed concern that on the subscription date, issuers can estimate, but may not be able to precisely identify, the exact dollar amount of the SLGS securities needed to fund a transaction. Some commenters also suggested that the proposed rule would disproportionately and adversely impact the activities of smaller issuers, who typically issue small amounts.

After careful consideration of these comments, Treasury has decided to adopt the size amendment provision set forth in the proposed rule. The proposal was intended to preclude a practice by some investors who used the dollar amount limits on amendment of subscriptions to structure option transactions designed to capitalize on interest rate movements during the subscription period. In addition, by limiting the amount of possible change of subscriptions to 10 percent of the principal, Treasury is able to ensure that its cash balance forecasting will not be adversely impacted by more than a

certain, predetermined percentage. Furthermore, a set dollar amount limit, as opposed to a percentage limit, would leave open the possibility for subscribers to break up their subscriptions into multiple smaller subscriptions in order to avoid the cap on changes to the aggregate principal amount.

3. Issue Date Changes

Under the current rule, investors are allowed to amend a Time Deposit subscription by extending the issue date up to seven days after the issue date originally specified. Investors are asked to notify Treasury by 3:00 p.m., Eastern time, one business day before the original issue date of any changes. The proposed rule would no longer permit a change to the issue date.

Treasury received 15 comments disagreeing with this change. Commenters were concerned about having a 6-month penalty imposed upon them for not taking delivery on the issue date and pointed out that the issue date must sometimes be delayed due to circumstances beyond their control.

The final rule permits a change to the issue date up to seven days after the original issue date if it is established to the satisfaction of Treasury that the change is required as a result of circumstances that were unforeseen at the time of the subscription and are beyond the issuer's control (for example, a natural disaster).

4. Mandatory Certification That Municipal Bonds Have Been Authorized

The NPRM proposed a new requirement that a subscriber certify, upon starting a SLGS subscription, that the issuer had authorized the issuance of the state or local bonds. Treasury received 2 comments in favor of this proposal and 2 comments disagreeing with this proposal. Some commenters suggested that the term "authorization" has different meanings in various jurisdictions and that applying the term uniformly across the jurisdictions was problematic.

Because Treasury has retained in the final rule the provision prohibiting cancellations of subscriptions, we have determined that this certification is unnecessary. We are therefore eliminating it from the final rule. Treasury is adopting the requirement proposed in the NPRM that issuers briefly describe the underlying bond transaction when beginning a subscription in SLGSafe.

C. Administrative Changes

In the NPRM, Treasury also noted that it had reviewed other aspects of the

SLGS program and proposed several changes to better administer the program.

1. Pricing Longer-Dated SLGS Securities

Under the current rule, SLGS rates are determined based upon the current Treasury borrowing rate. Because the current Treasury borrowing rate is based on the prevailing market rate for a Treasury security with the specified period to maturity and SLGS securities are offered for terms in excess of the currently issued Treasury securities, Treasury examined whether it needed to alter the manner in which it sets the SLGS rate for these longer-dated securities.

In the proposed rule, Treasury proposed broadening the definition of "current Treasury borrowing rate" to allow Treasury to use suitable proxies and/or a different rate-setting methodology where SLGS rates are needed for maturities which are not currently being issued by Treasury. Two comments were received on this change, both of which supported Treasury's proposal. In the final rule, Treasury is adopting the provision for pricing longer-dated SLGS securities as it was set forth in the NPRM. We contemplate no changes in methodology at this time.

2. Notices of Redemption

In the current rule, a notice of redemption must be received by Treasury no less than 10 days and no more than 60 days before the requested redemption date. In the proposed rule, Treasury proposed changing the 10-day advance notice requirement for early redemption of Time Deposit securities to a 14-day advance notice requirement. Treasury received one comment, which agreed that a 14-day notice period is beneficial for Treasury. In the final rule, Treasury adopts the provision as it was set forth in the NPRM.

The existing rule prohibits cancellation of redemption notices. The proposed rule made no change to that provision. Treasury received one comment suggesting that cancellation of redemption notices should be allowed, provided sufficient notice is given to Treasury. This suggestion, if adopted, would create a cost-free option. Accordingly, we have made no changes to the final rule in this regard.

Furthermore, Treasury is also clarifying § 344.6(c) to explicitly provide that Treasury will not accept a request for early redemption for a security that has not yet been issued.

3. Mandating SLGSafe Transactions

Under the current rule, subscribers are able to submit their subscriptions to

Treasury either via SLGSafe or through the use of paper forms that are either faxed or mailed in. The proposed rule stated that the use of the SLGSafe service would be mandatory as of the effective date of the final rule.

Treasury received 5 favorable comments agreeing that use of the SLGSafe service should be mandatory and that it will improve efficiency in the SLGS program. One comment characterized this change as constructive and workable; another said that it would streamline operations and would not impair local governments' access to the program. Another current SLGSafe user commented that it is convenient and easy to use. Treasury also received 5 comments inquiring about SLGSafe implementation, which are described below.

Two comments stated that owners of SLGS securities issued before the effective date of the final rule should be allowed to administer these securities via fax or mail. By introducing SLGSafe, Treasury fulfilled the requirement under the Government Paperwork Elimination Act, Sec. 1701–1710, Pub. L. 105–277, 112 Stat. 2681–749 to 2681–751 (44 U.S.C. 3504 note) that executive agencies provide for the option of electronic submissions instead of paper. We note that SLGS securities may be issued for periods of up to 40 years. To allow all current owners of outstanding SLGS securities to continue to use fax and mail instead of SLGSafe for those securities could prevent full implementation of the SLGSafe program for up to 40 years.

One comment expressed a concern that certain technical issues must be addressed before making SLGSafe mandatory. Although the exact nature of the access issues was not identified, we note that BPD has successfully enrolled 1,100 current users of SLGSafe. Any specific access issues should be addressed directly to BPD.

Another comment stated that there should be a "good cause" exception that allows users to perform transactions via fax or mail when a valid reason for the exception exists. One comment stated that individual users and one-time agents should not be required to use the SLGSafe service. The NPRM and the final rule contemplate in § 344.3(f)(3) that Treasury will permit SLGS program users to submit fax and mail transactions if you establish that good cause exists for not using SLGSafe. However, given the ease of becoming a SLGSafe user, we do not anticipate granting waivers based on a user's status as a small firm or infrequent subscriber.

One comment stated that SLGSafe should not become mandatory for at

least 180 days so that users can learn how the SLGSafe service operates. Because the SLGSafe service was introduced in 2000, we do not believe that a delayed implementation date of 180 days is necessary (65 FR 55399, September 13, 2000). Moreover, in the NPRM, we encouraged subscribers to seek SLGSafe access as soon as possible (69 FR 58756, September 30, 2004). Treasury therefore adopts the provision of the proposed rule that makes SLGSafe mandatory. However, in order to mitigate any access concerns, SLGSafe will not become mandatory until August 15, 2005. We encourage potential users to contact BPD about any access or training difficulties as soon as possible so that they can be addressed before the effective date.

4. Miscellaneous Changes

Eligible source of funds for purchasing SLGS securities. Under the current rule, SLGS securities are offered for sale to provide issuers of tax-exempt securities with investments from any amounts that (1) constitute gross proceeds of an issue (within the meaning of 26 CFR 1.148–1) or (2) assist in complying with applicable provisions of the Internal Revenue Code relating to the tax exemption. In the NPRM, Treasury proposed deleting the language relating to amounts that assist in complying with applicable provisions of the Internal Revenue Code relating to the tax exemption because this language proved to be difficult to administer. Treasury received 13 comments stating that the permissible sources of funds allowable to purchase SLGS securities should not be altered or should be amended to accommodate certain transactions. The comments noted, for example, that certain amounts that are not "gross proceeds" at the time of subscription may be characterized as gross proceeds at a later time, and that certain funds may not be gross proceeds at all times as a result of the "universal cap" on the maximum amount treated as gross proceeds under 26 CFR 1.148–6(b)(2). In response to these comments, the final regulations provide that issuers may purchase SLGS securities using any of the following "eligible sources of funds": (1) Any amounts that constitute gross proceeds of a tax-exempt bond issue or are reasonably expected to become gross proceeds of a tax-exempt bond issue; (2) any amounts that formerly were gross proceeds of a tax-exempt bond issue, but no longer are treated as gross proceeds of such issue as a result of the operation of the universal cap on the maximum amount treated as gross proceeds under 26 CFR 1.148–6(b)(2); (3) amounts held or to be

held together with gross proceeds of one or more tax-exempt bond issues in a refunding escrow, defeasance escrow, parity debt service reserve fund, or commingled fund (as defined in 26 CFR 1.148–1(b)); (4) proceeds of a taxable bond issue that refunds a tax-exempt bond issue or is refunded by a tax-exempt bond issue; or (5) any other amounts that are subject to yield limitations under the rules applicable to tax-exempt bonds under the Internal Revenue Code.

Definition of Issuer. Only issuers of tax-exempt securities are eligible to purchase SLGS securities. Under the current rule, an issuer is defined as the Governmental body that issues state or local government bonds described in section 103 of the Internal Revenue Code. The NPRM did not propose any alteration to this definition. However, one commenter raised a concern that a nonprofit entity that issues bonds on behalf of a state or local government in compliance with Revenue Ruling 63–20, 1963–1 C.B. 24, and Revenue Procedure 82–26, 1982–1 C.B. 476, might not qualify as an "issuer." In response to this comment, Treasury is amending the definition of "issuer" in the final rule to mean the Government body or other entity that issues state or local government bonds described in section 103 of the Internal Revenue Code. Thus, under the final rule, an "issuer" includes not only a state or local government that issues tax-exempt bonds, but also an entity that issues tax-exempt bonds on behalf of a state or local government.

Debt Limit. Although the NPRM did not address debt limit issues, several commenters suggested that Treasury should provide advance notice before suspending the issuance of SLGS securities during a period when Treasury determines that the issuance of obligations sufficient to conduct the orderly financing operations of the United States cannot be made without exceeding the statutory debt limit. While Treasury notes these concerns, and appreciates the difficulties issuers may face in these circumstances, Treasury must retain the flexibility that the current rules provide to deal with the various issues that arise during periods when sales are suspended because of debt limit constraints. Accordingly, we have made no change to the final rule in this regard. If feasible under the circumstances, however, we will attempt to provide SLGS purchasers with advance notice of a suspension in sales.

Subscriptions for Zero-Interest SLGS Securities. The current regulations provide that an issue date cannot be

more than 60 days after the date that the subscription is received. Two commenters suggested that subscribers be permitted to submit subscriptions for zero-interest SLGS securities more than 60 days before the issue date. These commenters indicated that such a change would assist in tax compliance because issuers' agents would be able to avoid an inadvertent failure to invest, at some future date, the proceeds of maturing securities in an escrow in zero-interest SLGS securities. This suggestion is beyond the scope of this rulemaking, but Treasury is studying this matter.

Sanctions for Erroneous

Certifications. The existing rule requires an agent of the issuer to certify that it is acting under the issuer's specific authorization when subscribing for SLGS securities. The proposed rule made no change to this provision, but required other certifications discussed above.

One commenter raised a concern that the proposed rule was not clear on whether an agent would be subject to sanctions for improper certifications. The concern is that subscribers for SLGS securities, who frequently are escrow agents operating under the authority of issuers, may be required to make the certifications.

The final rule clarifies that under § 344.2(m)(4), Treasury reserves the right to declare either a subscriber or issuer ineligible to subscribe for securities under the offering if deemed to be in the public interest and a security is issued on the basis of an improper certification or other misrepresentation (other than as the result of an inadvertent error).

The final rule also clarifies the language of the certification in § 344.2(e)(1) to cover an agent's performance related to other transactions in addition to the submission of subscriptions on the issuer's behalf.

Significance of Rule. In the preamble to the proposed rule, Treasury stated that the rulemaking is not a significant regulatory action under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804. Treasury received several comments disagreeing with these conclusions. The rulemaking is not a significant regulatory action or major rule because the SLGS program is a voluntary program to assist state and local government issuers in complying with yield restriction and rebate requirements applicable to tax-exempt securities under the Internal Revenue Code. The SLGS rule sets the terms and conditions for the SLGS program.

Treasury received no comments on the other proposed changes affecting §§ 344.0(b), 344.2(d), 344.2(h)(2), 344.2(i), 344.2(m), 344.3(d), 344.3(f), 344.3(g), 344.4(a), 344.5, 344.6(a), 344.6(c), 344.6(f), 344.7(a), 344.9(a), 344.9(c), and 344.11. Treasury is implementing all of these administrative revisions as they appeared in the NPRM.

IV. Procedural Requirements

A. Executive Order 12866

This final rule is not a significant regulatory action for purposes of Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule relates to matters of public contract and procedures for United States securities. Therefore, under 5 U.S.C. 553(a)(2), the notice and public procedure requirements of the Administrative Procedure Act are inapplicable. Because a notice of proposed rulemaking is not required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply.

C. Paperwork Reduction Act

Collections of Information on SLG Safe and Cancellations. The collections of information in the proposed regulation were submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). In the preamble to the proposed regulation, we explained that the collections of information, which are in §§ 344.3(f)(3), 355.5(c), and 344.8, are required (1) to determine whether there is good cause for an investor to submit subscriptions by fax or mail rather than electronically in SLG Safe and (2) to establish that a cancellation of a subscription is required for reasons unrelated to the use of the SLGS program to create a cost-free option. The estimated annual burden per respondent/recordkeeper is .25 hours, depending on individual circumstances, with an estimated total annual burden of 250 hours. No comments were received concerning the collections of information.

The final rule contains the same information collection requirements that Treasury proposed in the NPRM. They have been approved by OMB under OMB control numbers 1535-0091 (the collection of information to establish a valid reason for a waiver of the requirements of the SLGS regulations) and 1535-0092 (the collection of information taken from subscribers on the forms associated with the SLGS

program). Comments on the accuracy of our burden estimate, and suggestions on how this burden may be reduced, may be sent to BPD, attention Keith Rake, Deputy Assistant Commissioner, Office of the Assistant Commissioner, Bureau of the Public Debt, 200 3rd St., P.O. Box 396, Parkersburg, WV 26106-0396.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Collection of Information on a Change of Issue Date. The final rule also contains a new collection of information that was not in the proposed rule. This new collection has been reviewed and, pending the receipt of public comments, approved by OMB under control number 1535-0091.

The current rule permits issuers to select the issue date of SLGS securities. The issuer may change the issue date up to seven days after the original issue date initially requested, provided that BPD is notified one business day before the original issue date. The proposed rule stated that issue dates could not be changed. The final rule retains some flexibility for an issuer to change the issue date up to seven days after the original issue date if it is established to the satisfaction of Treasury that the change is required as a result of circumstances that were unforeseen at the time of the subscription and which are beyond the issuer's control (for example, a natural disaster).

The new collections of information in the final rule are in §§ 344.5(d) and 344.8(a). By collecting information about these circumstances, BPD will be able to evaluate if the regulatory standard of unforeseen circumstances has been met. The likely respondents are state or local governments.

Because of the limited number of instances when a change in issue date may be sought, Treasury estimates that 500 investors will each make one request annually for a total of 500 requests.

The information required by Treasury in connection with a change in issue date is similar to the type of information contemplated in the proposed rule in §§ 344.3(f)(3), 344.5(c), and 344.8(c). Because of the familiarity of SLGS investors with the current procedures and the infrequency of the instances in which a change in issue date will be sought, the burden associated with compiling and submitting such information to Treasury is relatively modest.

Estimated total annual reporting and/or recordkeeping burden: 125 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: .250 hours.

Estimated number of respondents and/or recordkeepers: 500.

Organizations and individuals desiring to submit comments concerning the collection of information in the final rule should direct them to the Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (preferably by FAX to 202-395-6974, or by e-mail to *Alexander.T.Hunt@omb.eop.gov*). A copy of the comments should also be sent to the Bureau of the Public Debt at the addresses previously specified. Comments on the collection of information should be received by August 1, 2005.

Treasury specifically invites comments on: (a) Whether the new collection of information is necessary for the proper performance of the mission of Treasury, and whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collection; (d) ways to minimize the burden of the information collection, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

List of Subjects in 31 CFR Part 344

Bonds, Government Securities, Securities.

■ For the reasons set forth in the preamble, we amend 31 CFR part 344 by revising subparts A through D to read as follows (Appendices A and B to part 344 remain unchanged):

PART 344—U.S. TREASURY SECURITIES—STATE AND LOCAL GOVERNMENT SERIES

Subpart A—General Information

Sec.

344.0 What does this part cover?

344.1 What special terms do I need to know to understand this part?

344.2 What general provisions apply to SLGS securities?

LGSafe® Service

344.3 What provisions apply to the SLGSafe Service?

Subpart B—Time Deposit Securities

344.4 What are Time Deposit securities?

344.5 What other provisions apply to subscriptions for Time Deposit securities?

344.6 How do I redeem a Time Deposit security before maturity?

Subpart C—Demand Deposit Securities

344.7 What are Demand Deposit securities?

344.8 What other provisions apply to subscriptions for Demand Deposit securities?

344.9 How do I redeem a Demand Deposit security?

Subpart D—Special Zero Interest Securities

344.10 What are Special Zero Interest securities?

344.11 How do I redeem a Special Zero Interest security before maturity?

Appendix A to Part 344—Early Redemption Market Charge Formulas and Examples for Subscriptions from December 28, 1976, through October 27, 1996

Appendix B to Part 344—Formula for Determining Redemption Value for Securities Subscribed for and Early-Redeemed on or after October 28, 1996

Authority: 26 U.S.C. 141 note; 31 U.S.C. 3102, 3103, 3104, and 3121.

Subpart A—General Information

§ 344.0 What does this part cover?

(a) *What is the purpose of the SLGS securities offering?* The Secretary of the Treasury (the Secretary) offers for sale non-marketable State and Local Government Series (SLGS) securities to provide issuers of tax-exempt securities with investments from any eligible source of funds (as defined in § 344.1).

(b) *What types of SLGS securities are governed by this part?* This part governs the following SLGS securities:

(1) *Time Deposit securities*—may be issued as:

- (i) Certificates of indebtedness;
- (ii) Notes; or
- (iii) Bonds.

(2) *Demand Deposit securities*—may be issued as certificates of indebtedness.

(3) *Special Zero Interest securities*. Special Zero Interest securities, which were discontinued on October 28, 1996, were issued as:

- (i) Certificates of indebtedness; or
- (ii) Notes.

(c) *In what denominations are SLGS securities issued?* SLGS securities are issued in the following denominations:

- (1) *Time Deposit securities*—a minimum amount of \$1,000, or in any larger whole dollar amount; and
- (2) *Demand Deposit securities*—a minimum amount of \$1,000, or in any larger amount, in any increment.

(d) *How long is the offering in effect?* The offering continues until terminated by the Secretary.

§ 344.1 What special terms do I need to know to understand this part?

As appropriate, the definitions of terms used in this part are those found in the relevant portions of the Internal Revenue Code and the Income Tax Regulations.

BPD's Web site refers to *http://www.slgs.gov*.

Business day(s) means Federal business day(s).

Current Treasury borrowing rate means the prevailing market rate, as determined by Treasury, for a Treasury security with the specified period to maturity. In the case where SLGS rates are needed for maturities currently not issued by Treasury, at our discretion, suitable proxies for Treasury securities and/or a rate setting methodology, as determined by the Secretary, may be used to derive a current Treasury borrowing rate. At any time that the Secretary establishes such proxies or a rate-setting method or determines that the methodology should be revised, we will make an announcement.

Day(s) means calendar day(s).

Eligible source of funds means:

(1) Any amounts that constitute gross proceeds of a tax-exempt bond issue or are reasonably expected to become gross proceeds of a tax-exempt bond issue;

(2) Any amounts that formerly were gross proceeds of a tax-exempt bond issue, but no longer are treated as gross proceeds of such issue as a result of the operation of the universal cap on the maximum amount treated as gross proceeds under 26 CFR 1.148-6(b)(2);

(3) Amounts held or to be held together with gross proceeds of one or more tax-exempt bond issues in a refunding escrow, defeasance escrow, parity debt service reserve fund, or commingled fund (as defined in 26 CFR 1.148-1(b));

(4) Proceeds of a taxable bond issue that refunds a tax-exempt bond issue or is refunded by a tax-exempt bond issue; or

(5) Any other amounts that are subject to yield limitations under the rules applicable to tax-exempt bonds under the Internal Revenue Code.

Issuer refers to the Government body or other entity that issues state or local government bonds described in section 103 of the Internal Revenue Code.

SLGS rate means the current Treasury borrowing rate, less one basis point, as released daily by Treasury in a SLGS rate table.

SLGS rate table means a compilation of SLGS rates available for a given day.

"We," "us," or "the Secretary" refers to the Secretary and the Secretary's delegates at the Department of the Treasury (Treasury), Bureau of the

Public Debt (BPD). The term also extends to any fiscal or financial agent acting on behalf of the United States when designated to act by the Secretary or the Secretary's delegates.

Yield on an investment means "yield" as computed under 26 CFR 1.148-5.

You or *your* refers to a SLGS program user or a potential SLGS program user.

§ 344.2 What general provisions apply to SLGS securities?

(a) *What other regulations apply to SLGS securities?* SLGS securities are subject to:

(1) The electronic transactions and funds transfers provisions for United States securities, part 370 of this subchapter, "Electronic Transactions and Funds Transfers Related to U.S. Securities"; and

(2) The appendix to subpart E to part 306 of this subchapter, for rules regarding computation of interest.

(b) *Where are SLGS securities held?* SLGS securities are issued in book-entry form on the books of BPD.

(c) *Besides BPD, do any other entities administer SLGS securities?* The Secretary may designate selected Federal Reserve Banks and Branches, as fiscal agents of the United States, to perform services relating to SLGS securities.

(d) *Can SLGS securities be transferred?* No. SLGS securities issued as any one type, i.e., Time Deposit, Demand Deposit, or Special Zero Interest, cannot be transferred for other securities of that type or any other type. Transfer of securities by sale, exchange, assignment, pledge, or otherwise is not permitted.

(e) *What certifications must the issuer or its agent provide?*

(1) *Agent Certification.* When a commercial bank or other agent submits a subscription, or performs any other transaction, on behalf of the issuer, it must certify that it is acting under the issuer's specific authorization. Ordinarily, evidence of such authority is not required.

(2) *Yield Certifications.* (i) *Purchase of SLGS Securities.* Upon submitting a subscription for a SLGS security, a subscriber must certify that:

(A) *Marketable Securities to SLGS Securities.* If the issuer is purchasing a SLGS security with any amount received from the sale or redemption (at the option of the holder) before maturity of any marketable security, the yield on such SLGS security does not exceed the yield at which such marketable security was sold or redeemed; and

(B) *Time Deposit Securities to SLGS Securities.* If the issuer is purchasing a SLGS security with any amount

received from the redemption before maturity of a Time Deposit security (other than a zero interest Time Deposit security), the yield on the SLGS security being purchased does not exceed the yield that was used to determine the amount of redemption proceeds for such redeemed Time Deposit security.

(ii) *Early Redemption of SLGS Securities.* Upon submission of a request for redemption before maturity of a Time Deposit security (other than a zero interest Time Deposit security) subscribed for on or after August 15, 2005, the subscriber must certify that no amount received from the redemption will be invested at a yield that exceeds the yield that is used to determine the amount of redemption proceeds for such redeemed Time Deposit security.

(f) *What are some practices involving SLGS securities that are not permitted?*

(1) *In General.* For SLGS securities subscribed for on or after August 15, 2005, it is impermissible:

(i) To use the SLGS program to create a cost-free option;

(ii) To purchase a SLGS security with any amount received from the sale or redemption (at the option of the holder) before maturity of any marketable security, if the yield on such SLGS security exceeds the yield at which such marketable security is sold or redeemed; or

(iii) To invest any amount received from the redemption before maturity of a Time Deposit security (other than a Zero Percent Time Deposit security) at a yield that exceeds the yield that is used to determine the amount of redemption proceeds for such Time Deposit security.

(2) *Examples.* (i) *Simultaneous Purchase of Marketable and SLGS Securities.* In order to fund an escrow for an advance refunding, the issuer simultaneously enters into a purchase contract for marketable securities and subscribes for SLGS securities, such that either purchase is sufficient to pay the cash flows on the outstanding bonds to be refunded, but together, the purchases are greatly in excess of the amount necessary to pay the cash flows. The issuer plans that, if interest rates decline during the period between the date of starting a SLGS subscription and the requested date of issuance of SLGS securities, the issuer will enter into an offsetting agreement to sell the marketable securities and use the bond proceeds to purchase SLGS securities to fund the escrow. If, however, interest rates do not decline in that period, the issuer plans to use the bond proceeds to purchase the marketable securities to fund the escrow and cancel the SLGS securities subscription. This practice

violates the prohibition on cancellation under § 344.5(c) or § 344.8(c), and no exception or waiver would be granted under this part because the ability to cancel in these circumstances would result in the SLGS program being used to create a cost-free option. In addition, this practice is prohibited under paragraph (f)(1)(i) of this section.

(ii) *Sale of Marketable Securities Conditioned on Interest Rates.* The existing escrow for an advance refunding contains marketable securities which produce a negative arbitrage. In order to reduce or eliminate this negative arbitrage, the issuer subscribes for SLGS securities at a yield higher than the yield on the existing escrow, but less than the permitted yield. At the same time, the issuer agrees to sell the marketable securities in the existing escrow to a third party and use the proceeds to purchase SLGS securities if interest rates decline between the date of subscribing for SLGS securities and the requested date of issuance of SLGS securities. The marketable securities would be sold at a yield which is less than the yield on the SLGS securities purchased. The issuer and the third party further agree that if interest rates increase during this period, the issuer will cancel the SLGS securities subscription. This practice violates the prohibition on cancellation under § 344.5(c) or § 344.8(c), and no exception or waiver would be granted under this part because the ability to cancel in these circumstances would result in the SLGS program being used to create a cost-free option. In addition, this practice is prohibited under paragraphs (f)(1)(i) and (ii) of this section.

(iii) *Sale of Marketable Securities Not Conditioned on Interest Rates.* The facts are the same as in paragraph (f)(2)(ii) of this section, except that in this case, the agreement entered into by the issuer with a third party to sell the marketable securities in order to obtain funds to purchase SLGS securities is not conditioned upon changes in interest rates on Treasury securities. This practice violates the yield gain prohibition in paragraph (f)(1)(ii) of this section and is prohibited.

(iv) *Simultaneous Subscription for SLGS Securities and Sale of Option to Purchase Marketable Securities.* The issuer holds a portfolio of marketable securities in an account that produces negative arbitrage. In order to reduce or eliminate this negative arbitrage, the issuer subscribes for SLGS securities for purchase in sixty days. At the same time, the issuer sells an option to purchase the portfolio of marketable securities. If interest rates increase, the

holder of the option will not exercise its option and the issuer will cancel the SLGS securities subscription. On the other hand, if interest rates decline, the option holder will exercise the option and the issuer will use the proceeds to purchase SLGS securities. This practice violates the prohibition on cancellation under § 344.5(c) or § 344.8(c), and no exception or waiver would be granted under this part because the ability to cancel in these circumstances would result in the SLGS program being used to create a cost-free option. In addition, this practice is prohibited under paragraph (f)(1)(i) of this section.

(v) *Early Redemption of Time Deposit Security and Subsequent Purchase of Marketable Security.* On February 6, 2006, an issuer purchases a Time Deposit security using tax-exempt bond proceeds in a debt service reserve fund. The Time Deposit security has a principal amount of \$7 million, an interest rate of 3.63 percent, and a maturity date of February 6, 2009. On March 1, 2007, the issuer submits a request to redeem the Time Deposit security on March 15, 2007. The yield used to determine the amount of redemption proceeds is 3.21 percent. On March 5, 2007, the issuer subscribes for the purchase, on March 15, 2007, of a second Time Deposit security. The issuer pays for the second Time Deposit security on March 15, 2007, with the redemption proceeds of the first Time Deposit security. The second Time Deposit security has an interest rate of 2.77 percent and a maturity date of April 16, 2007. On April 9, 2007, the issuer enters into a contract to purchase, on April 16, 2007, a ten-year, marketable Treasury security using the principal and interest to be received at the maturity of the second Time Deposit security. The marketable Treasury security has a yield of 4.02 percent. This transaction satisfies the yield limitation in paragraph (f)(1)(iii) of this section because:

(A) The yield on the second Time Deposit security does not exceed the yield that is used to determine the amount of redemption proceeds for the first Time Deposit security; and

(B) The second Time Deposit security is not redeemed before maturity and therefore the re-investment of the principal and interest received on the second Time Deposit security is not subject to the yield limitation in paragraph (f)(1)(iii) of this section. This transaction constitutes a permissible use of the SLGS program.

(vi) *Early Redemption of Time Deposit Security and Simultaneous Purchase of Marketable Security.* The facts are the same as in paragraph (f)(2)(v) of this

section, except that the issuer subscribes for the second Time Deposit security on March 1, 2007, and enters into the contract to purchase the marketable Treasury security on March 1, 2007. This transaction, if permitted, would enable the issuer to redeem the first Time Deposit security at a yield that is held constant for 12 hours based on the "current Treasury borrowing rate" for March 1, 2007, and to re-invest the redemption proceeds based on a market yield that may fluctuate during that 12-hour period. The use of the SLGS program in this manner would create a cost-free option. Accordingly, this transaction is impermissible under paragraph (f)(1)(i) of this section.

(g) *When and how do I pay for SLGS securities?* You must submit full payment for each subscription to BPD no later than 4 p.m., Eastern time, on the issue date. Submit payments by the Fedwire funds transfer system with credit directed to the Treasury's General Account. For these transactions, BPD's ABA Routing Number is 051036476.

(h) *What happens if I need to make an untimely change or do not settle on a subscription?* An untimely change to a subscription can only be made in accordance with § 344.2(n) of this part. The penalty imposed for failure to make settlement on a subscription that you submit will be to render you ineligible to subscribe for SLGS securities for six months beginning on the date the subscription is withdrawn, or the proposed issue date, whichever occurs first.

(1) *Upon whom is the penalty imposed?* If you are the issuer, the penalty is imposed on you unless you provide the Taxpayer Identification Number of the conduit borrower that is the actual party failing to make settlement of a subscription. If you provide the Taxpayer Identification Number for the conduit borrower, the six-month penalty will be imposed on the conduit borrower.

(2) *What occurs if Treasury exercises the option to waive the penalty?* If you settle after the proposed issue date and we determine that settlement is acceptable on an exception basis, we will waive, under § 344.2(n), the six-month penalty under paragraph (h) of this section. You shall be charged a late payment assessment. The late payment assessment equals the amount of interest that would have accrued on the SLGS securities from the proposed issue date to the date of settlement plus an administrative fee of \$100 per subscription, or such other amount as we may publish in the **Federal Register**. We will not issue SLGS securities until

we receive the late payment assessment, which is due on demand.

(i) *What happens at maturity?* Upon the maturity of a security, we will pay the owner the principal amount and interest due. A security scheduled for maturity on a non-business day will be redeemed on the next business day.

(j) *How will I receive payment?* We will make payment by the Automated Clearing House (ACH) method for the owner's account at a financial institution as designated by the owner. We may use substitute payment procedures, instead of ACH, if we consider it to be necessary. Any such action is final.

(k) *How do I contact BPD?* BPD's contact information is posted on BPD's Web site. (1) *Will the offering be changed during a debt limit or disaster contingency?* We reserve the right to change or suspend the terms and conditions of the offering (including provisions relating to subscriptions for, and issuance of, SLGS securities; interest payments; early redemptions; and rollovers) at any time the Secretary determines that the issuance of obligations sufficient to conduct the orderly financing operations of the United States cannot be made without exceeding the statutory debt limit, or that a disaster situation exists. We will announce such changes by any means that the Secretary deems appropriate.

(m) *What are some of the rights that Treasury reserves in administering the SLGS program?* We may decide, in our sole discretion, to take any of the following actions. Such actions are final. Specifically, Treasury reserves the right:

(1) To reject any SLGSafe Application for Internet Access;

(2) To reject any electronic message or other message or request, including requests for subscription and redemption, that is inappropriately completed or untimely submitted;

(3) To refuse to issue any SLGS securities in any case or class of cases;

(4) To revoke the issuance of any SLGS securities and to declare the subscriber or the issuer ineligible thereafter to subscribe for securities under the offering if the Secretary deems that such action is in the public interest and any security is issued on the basis of an improper certification or other misrepresentation (other than as the result of an inadvertent error) or there is an impermissible transaction under § 344.2(f); or

(5) To review any transaction for compliance with this part, including requiring a subscriber or the issuer to provide additional information, and to

determine an appropriate remedy under the circumstances.

(n) *Are there any situations in which Treasury may waive these regulations?* We reserve the right, at our discretion, to waive or modify any provision of these regulations in any case or class of cases. We may do so if such action is not inconsistent with law and will not subject the United States to substantial expense or liability.

(o) *Are SLGS securities callable by Treasury?* No. Treasury cannot call a SLGS security for redemption before maturity.

SLGSafe® Service

§ 344.3 What provisions apply to the SLGSafe Service?

(a) *What is the SLGSafe Service?* SLGSafe is a secure Internet site on the World Wide Web through which subscribers submit SLGS securities transactions. SLGSafe Internet transactions constitute electronic messages under 31 CFR part 370.

(b) *Is SLGSafe use mandatory?* Yes. Except as provided in paragraph(f)(3) or (f)(4) of this section, you must submit all transactions through SLGSafe.

(c) *What terms and conditions apply to SLGSafe?* The terms and conditions contained in the following documents, which may be downloaded from BPD's Web site and which may change from time to time, apply to SLGSafe transactions:

(1) SLGSafe Application for Internet Access and SLGSafe User Acknowledgment; and

(2) SLGSafe User's Manual.

(d) *Who can apply for SLGSafe access?* If you are an owner or a potential owner of SLGS securities, or act as a trustee or other agent of the owner, you can apply to BPD for SLGSafe access. Other potential users of SLGSafe include, but are not limited to, underwriters, financial advisors, and bond counsel.

(e) *How do I apply for SLGSafe access?* Submit to BPD a completed SLGSafe Application for Internet Access. The form is found on BPD's Web site.

(f) *What are the conditions of SLGSafe use?* If you are designated as an authorized user, on a SLGSafe application that we've approved, you must:

(1) Assume the sole responsibility and the entire risk of use and operation of your electronic connection;

(2) Agree that we may act on any electronic message to the same extent as if we had received a written instruction bearing the signature of your duly authorized officer;

(3) Submit electronic messages and other transaction requests exclusively through SLGSafe, except to the extent you establish to the satisfaction of BPD that good cause exists for you to submit such subscriptions and requests by other means; and

(4) Agree to submit transactions manually if we notify you that due to problems with hardware, software, data transmission, or any other reason, we are unable to send or receive electronic messages through SLGSafe.

(g) *When is the SLGSafe window open?* All SLGSafe subscriptions, requests for early redemption of Time Deposit securities, and requests for redemption of Demand Deposit securities must be received by BPD on business days no earlier than 10 a.m. and no later than 10 p.m., Eastern time. The official time is the date and time as shown on BPD's application server. Except as otherwise provided in § 344.5(d) and § 344.8(d), all other functions may be performed during the extended SLGSafe hours, from 8 a.m. until 10 p.m., Eastern time.

Subpart B—Time Deposit Securities

§ 344.4 What are Time Deposit securities?

Time Deposit securities are issued as certificates of indebtedness, notes, or bonds.

(a) *What are the maturity periods?* The issuer must fix the maturity periods for Time Deposit securities, which are issued as follows:

(1) *Certificates of indebtedness that do not bear interest.* For certificates of indebtedness that do not bear interest, the issuer can fix a maturity period of not less than fifteen days and not more than one year.

(2) *Certificates of indebtedness that bear interest.* For certificates of indebtedness that bear interest, the issuer can fix a maturity period of not less than thirty days and not more than one year.

(3) *Notes.* For notes, the issuer can fix a maturity period of not less than one year and one day, and not more than ten years.

(4) *Bonds.* For bonds, the issuer can fix a maturity period of not less than ten years and one day, and not more than forty years.

(b) *How do I select the SLGS rate?* For each security, the issuer shall designate an interest rate that does not exceed the maximum interest rate shown in the daily SLGS rate table as defined in § 344.1.

(1) *When is the SLGS rate table released?* We release the SLGS rate table to the public by 10 a.m., Eastern time, each business day. If the SLGS rate table

is not available at that time on any given business day, the SLGS rate table for the preceding business day applies.

(2) *How do I lock-in a SLGS rate?* The applicable daily SLGS rate table for a SLGSafe subscription is the one in effect on the business day that you start the subscription process. This table is shown on BPD's Application server.

(3) *Where can I find the SLGS rate table?* The SLGS rate table can be obtained at BPD's Web site.

(c) *How are interest computation and payment dates determined?* Interest on a certificate of indebtedness is computed on an annual basis and is paid at maturity with the principal. Interest on a note or bond is paid semi-annually. The issuer specifies the first interest payment date, which must be at least thirty days and less than or equal to one year from the date of issue. The final interest payment date must coincide with the maturity date of the security. Interest for other than a full interest period is computed on the basis of a 365-day or 366-day year (for certificates of indebtedness) and on the basis of the exact number of days in the half-year (for notes and bonds). See the appendix to subpart E to part 306 of this subchapter for rules regarding computation of interest.

§ 344.5 What other provisions apply to subscriptions for Time Deposit securities?

(a) *When is my subscription due?* The subscriber must fix the issue date of each security in the subscription. The issue date must be a business day. The issue date cannot be more than sixty days after the date BPD receives the subscription. If the subscription is for \$10 million or less, BPD must receive a subscription at least five days before the issue date. If the subscription is for over \$10 million, BPD must receive the subscription at least seven days before the issue date.

Example to paragraph (a): If SLGS securities totaling \$10 million or less will be issued on November 16th, BPD must receive the subscription no later than November 11th. If SLGS securities totaling more than \$10 million will be issued on November 16th, BPD must receive the subscription no later than November 9th. In all cases, if SLGS securities will be issued on November 16th, BPD will not accept the subscription before September 17th.

(b) *How do I start the subscription process?* A subscriber starts the subscription process by entering into SLGSafe the following information:

- (1) The issue date;
- (2) The total principal amount;
- (3) The issuer's name and Taxpayer Identification Number;
- (4) The title of an official authorized to purchase SLGS securities;]

(5) A description of the tax-exempt bond issue; and]

(6) The certification required by § 344.2(e)(1), if the subscription is submitted by an agent of the issuer.

(c) *Under what circumstances can I cancel a subscription?* You cannot cancel a subscription unless you establish, to the satisfaction of Treasury, that the cancellation is required for reasons unrelated to the use of the SLGS program to create a cost-free option.

(d) *How do I change a subscription?* You can change a subscription on or before 3 p.m., Eastern time, on the issue date. Changes to a subscription are acceptable with the following exceptions:

(1) You cannot change the issue date to require issuance earlier or later than the issue date originally specified; provided, however, you may change the issue date up to seven days after the original issue date if you establish to the satisfaction of Treasury that such change is required as a result of circumstances that were unforeseen at the time of the subscription and are beyond the issuer's control (for example, a natural disaster);

(2) You cannot change the aggregate principal amount originally specified in the subscription by more than ten percent; and

(3) You cannot change an interest rate to exceed the maximum interest rate in the SLGS rate table that was in effect for a security of comparable maturity on the business day that you began the subscription process.

(e) *How do I complete the subscription process?* The completed subscription must:

(1) Be dated and submitted electronically by an official authorized to make the purchase;

(2) Separately itemize securities by the various maturities, interest rates, and first interest payment dates (in the case of notes and bonds);

(3) Not be more than ten percent above or below the aggregate principal amount originally specified in the subscription;

(4) Not be paid with proceeds that are derived, directly or indirectly, from the redemption before maturity of SLGS securities subscribed for on or before December 27, 1976;

(5) Include the certifications required by § 344.2(e)(2)(i) (relating to yield); and

(6) Include the information required under paragraph (b), if not already provided.

(f) *When must I complete the subscription?* BPD must receive a completed subscription on or before 3:00 p.m., Eastern time, on the issue date.

§ 344.6 How do I redeem a Time Deposit security before maturity?

(a) *What is the minimum time a security must be held?* (1) Zero percent certificates of indebtedness of 16 to 29 days. A zero percent certificate of indebtedness of 16 to 29 days can be redeemed, at the owner's option, no earlier than 15 days after the issue date.

(2) *Certificates of indebtedness of 30 days or more.* A certificate of indebtedness of 30 days or more can be redeemed, at the owner's option, no earlier than 25 days after the issue date.

(3) *Notes or bonds.* A note or bond can be redeemed, at the owner's option, no earlier than 30 days after the issue date.

(b) *Can I request partial redemption of a security balance?* You may request partial redemptions in any whole dollar amount; however, a security balance of less than \$1,000 must be redeemed in total.

(c) *Do I have to submit a request for early redemption?* Yes. An official authorized to redeem the securities before maturity must submit an electronic request in SLGSafe. The request must show the Taxpayer Identification Number of the issuer, the security number, and the dollar amount of the securities to be redeemed. Upon submission of a request for redemption before maturity of a security subscribed for on or after August 15, 2005, the request must include a yield certification under § 344.2(e)(2)(ii). BPD must receive the request no less than 14 days and no more than 60 days before the requested redemption date. You cannot submit a request for early redemption for a security which has not yet been issued and you cannot cancel a request once it has been submitted.

(d) *How do I calculate the amount of redemption proceeds for subscriptions on or after October 28, 1996?* For securities subscribed for on or after October 28, 1996, the amount of the redemption proceeds is calculated as follows:

(1) *Interest.* If a security is redeemed before maturity on a date other than a scheduled interest payment date, Treasury pays interest for the fractional interest period since the last interest payment date.

(2) *Redemption value.* The remaining interest and principal payments are discounted by the current Treasury borrowing rate for the remaining term to maturity of the security redeemed. This may result in a premium or discount to the issuer depending on whether the current Treasury borrowing rate is unchanged, lower, or higher than the stated interest rate of the early-redeemed SLGS securities. There is no

market charge for the redemption of zero interest Time Deposit securities subscribed for on or after October 28, 1996. Redemption proceeds in the case of a zero-interest security are a return of the principal invested. The formulas for calculating the redemption value under this paragraph, including examples of the determination of premiums and discounts, are set forth in appendix B of this part.

(e) *How do I calculate the amount of redemption proceeds for subscriptions from September 1, 1989, through October 27, 1996?* For securities subscribed for from September 1, 1989, through October 27, 1996, the amount of the redemption proceeds is calculated as follows:

(1) *Interest.* If a security is redeemed before maturity on a date other than a scheduled interest payment date, Treasury pays interest for the fractional interest period since the last interest payment date.

(2) *Market charge.* An amount shall be deducted from the redemption proceeds if the current Treasury borrowing rate for the remaining period to original maturity exceeds the rate of interest originally fixed for such security. The amount shall be the present value of the future increased borrowing cost to the Treasury. The annual increased borrowing cost for each interest period is determined by multiplying the principal by the difference between the two rates. For notes and bonds, the increased borrowing cost for each remaining interest period to original maturity is determined by dividing the annual cost by two. Present value is determined by using the current Treasury borrowing rate as the discount factor. When you request a redemption date that is less than thirty days before the original maturity date, we will apply the rate of a one month security as listed on the SLGS rate table issued on the day you make a redemption request. The market charge under this paragraph can be computed by using the formulas in appendix A of this part.

(f) *How do I calculate the amount of redemption proceeds for subscriptions from December 28, 1976, through August 31, 1989?* For securities subscribed for from December 28, 1976, through August 31, 1989, the amount of the redemption proceeds is calculated as follows:

(1) *Interest.* Interest for the entire period the security was outstanding shall be recalculated if the original interest rate of the security is higher than the interest rate that would have been set at the time of the initial subscription had the term of the security been for the shorter period. If this

results in an overpayment of interest, we will deduct from the redemption proceeds the aggregate amount of such overpayments, plus interest, compounded semi-annually thereon, from the date of each overpayment to the date of redemption. The rate used in calculating the interest on the overpayment will be one-eighth of one percent above the maximum rate that would have applied to the initial subscription had the term of the security been for the shorter period. If a bond is redeemed before maturity on a date other than a scheduled interest payment date, no interest is paid for the fractional interest period since the last interest payment date.

(2) *Market charge.* An amount shall be deducted from the redemption proceeds in all cases where the current Treasury borrowing rate for the remaining period to original maturity of the security prematurely redeemed exceeds the rate of interest originally fixed for such security. You can compute the market charge under this paragraph by using the formulas in appendix A of this part.

(g) *How do I calculate the amount of redemption proceeds for subscriptions on or before December 27, 1976?* For bonds subscribed for on or before December 27, 1976, the amount of the redemption proceeds is calculated as follows:

(1) *Interest.* The interest for the entire period the bond was outstanding shall be recalculated if the original interest rate at which the bond was issued is higher than an adjusted interest rate reflecting both the shorter period during which the bond was actually outstanding and a penalty. The adjusted interest rate is the Treasury rate which would have been in effect on the date of issue for a marketable Treasury bond maturing on the semi-annual maturity period before redemption reduced by a penalty which must be the lesser of:

(i) One-eighth of one percent times the number of months from the date of issuance to original maturity, divided by the number of full months elapsed from the date of issue to redemption; or

(ii) One-fourth of one percent.

(2) *Deduction.* We will deduct from the redemption proceeds, if necessary, any overpayment of interest resulting from previous payments made at a higher rate based on the original longer period to maturity.

Subpart C—Demand Deposit Securities

§ 344.7 What are Demand Deposit securities?

Demand Deposit securities are one-day certificates of indebtedness that are

automatically rolled over each day until you request redemption.

(a) *How are the SLGS rates for Demand Deposit securities determined?* Each security shall bear a variable rate of interest based on an adjustment of the average yield for three-month Treasury bills at the most recent auction. A new rate is effective on the first business day following the regular auction of three-month Treasury bills and is shown in the SLGS rate table. Interest is accrued and added to the principal daily. Interest is computed on the balance of the principal, plus interest accrued through the preceding day.

(1) *How is the interest rate calculated?* (i) First, you calculate the annualized effective Demand Deposit rate in decimals, designated "I" in Equation 1, as follows:

$$I = \left[\left(\frac{100}{P} \right)^{Y/DTM} - 1 \right] \times (1 - MTR) - TAC$$

(Equation 1)

Where:

I = Annualized effective Demand Deposit rate in decimals.

P = Average auction price for the most recently auctioned 13-week Treasury bill, per hundred, to six decimals.

Y = 365 (if the year following issue date does not contain a leap year day) or 366 (if the year following issue date does contain a leap year day).

DTM = The number of days from date of issue to maturity for the most recently auctioned 13-week Treasury bill.

MTR = Estimated marginal tax rate, in decimals, of purchasers of tax-exempt bonds.

TAC = Treasury administrative costs, in decimals.

(ii) Then, you calculate the daily factor for the Demand Deposit rate as follows:

$$DDR = (1 + I)^{1/Y} - 1$$

(Equation 2)

(2) *Where can I find additional information?* Information on the estimated average marginal tax rate and Treasury administrative costs for administering Demand Deposit securities, both to be determined by Treasury from time to time, will be published in the **Federal Register**.

(b) *What happens to Demand Deposit securities during a Debt Limit Contingency?* At any time the Secretary determines that issuance of obligations sufficient to conduct the orderly financing operations of the United States cannot be made without

exceeding the statutory debt limit, we will invest any unredeemed Demand Deposit securities in special ninety-day certificates of indebtedness. Funds invested in the ninety-day certificates of indebtedness earn simple interest equal to the daily factor in effect at the time Demand Deposit security issuance is suspended, multiplied by the number of days outstanding. When regular Treasury borrowing operations resume, the ninety-day certificates of indebtedness, at the owner's option, are:

- (1) Payable at maturity;
- (2) Redeemable before maturity, provided funds are available for redemption; or
- (3) Reinvested in Demand Deposit securities.

§ 344.8 What other provisions apply to subscriptions for Demand Deposit securities?

(a) *When is my subscription due?* The subscriber must fix the issue date of each security in the subscription. You cannot change the issue date to require issuance earlier or later than the issue date originally specified; provided, however, you may change the issue date up to seven days after the original issue date if you establish to the satisfaction of Treasury that such change is required as a result of circumstances that were unforeseen at the time of the subscription and are beyond the issuer's control (for example, a natural disaster). The issue date must be a business day. The issue date cannot be more than sixty days after the date BPD receives the subscription. If the subscription is for \$10 million or less, BPD must receive the subscription at least five days before the issue date. If the subscription is for more than \$10 million, BPD must receive the subscription at least seven days before the issue date.

(b) *How do I start the subscription process?* A subscriber starts the subscription process by entering into SLGSafe the following information:

- (1) The issue date;
- (2) The total principal amount;
- (3) The issuer's name and Taxpayer Identification Number;
- (4) The title of an official authorized to purchase SLGS securities;
- (5) A description of the tax-exempt bond issue; and
- (6) The certification required by § 344.2(e)(1), if the subscription is submitted by an agent of the issuer.

(c) *Under what circumstances can I cancel a subscription?* You cannot cancel a subscription unless you establish, to the satisfaction of Treasury, that the cancellation is required for reasons unrelated to the use of the SLGS program to create a cost-free option.

(d) How do I change a subscription?

You can change a subscription on or before 3 p.m., Eastern time, on the issue date. You may change the aggregate principal amount specified in the subscription by no more than ten percent, above or below the amount originally specified in the subscription.

(e) How do I complete the subscription process? The subscription must:

(1) Be dated and submitted electronically by an official authorized to make the purchase;

(2) Include the certifications required by § 344.2(e)(2)(i) (relating to yield); and

(3) Include the information required under paragraph (b) of this section, if not already provided.

§ 344.9 How do I redeem a Demand Deposit security?

(a) *When must I notify BPD to redeem a security?* A Demand Deposit security can be redeemed at the owner's option, if BPD receives a request for redemption not less than:

(1) One business day before the requested redemption date for redemptions of \$10 million or less; and

(2) Three business days before the requested redemption date for redemptions of more than \$10 million.

(b) Can I request partial redemption of a security balance? You may request partial redemptions in any amount. If your account balance is less than \$1,000, it must be redeemed in total.

(c) Do I have to submit a request for redemption? Yes. An official authorized to redeem the securities must submit an electronic request through SLG Safe. The request must show the Taxpayer Identification Number of the issuer, the security number, and the dollar amount of the securities to be redeemed. BPD must receive the request by 3 p.m., Eastern time on the required day. You cannot cancel the request.

Subpart D—Special Zero Interest Securities**§ 344.10 What are Special Zero Interest securities?**

Special zero interest securities were issued as certificates of indebtedness

and notes. The provisions of subpart B of this part (Time Deposit securities) apply except as specified in Subpart D of this part. Special Zero Interest securities were discontinued on October 28, 1996. The only zero interest securities available after October 28, 1996, are zero interest Time Deposit securities that are subject to subpart B of this part.

§ 344.11 How do I redeem a Special Zero Interest Security before maturity?

Follow the provisions of § 344.6(a) through (g), except that no market charge or penalty will apply when you redeem a special zero interest security before maturity.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 05-12868 Filed 6-29-05; 8:45 am]

BILLING CODE 4810-39-P

DEPARTMENT OF THE TREASURY**Fiscal Service****Demand Deposit Securities of the State and Local Government Series (SLGS); Average Marginal Tax Rate and Treasury Administrative Cost**

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice of estimated average marginal tax rate and Treasury administrative cost for Demand Deposit certificates of indebtedness—State and Local Government Series.

SUMMARY: This notice is being published to provide the information necessary to apply the interest rate formula for Demand Deposit certificates of indebtedness—State and Local Government Series (SLGS) (31 CFR Part 344, Subpart C). The factor necessary to convert the interest rate to a tax-exempt equivalent (1—the estimated average marginal tax rate of purchasers of tax-exempt bonds) is 1-.21 or .79.

The current Treasury administrative cost is five basis points. Treasury is amending this rate and designating the new Treasury administrative cost, as of the effective date of this notice, as one basis point.

The final rule, amending the regulations governing SLGS securities, which appears elsewhere in this issue of the **Federal Register**, makes provision for the simultaneous publication of this notice (31 CFR 344.7).

EFFECTIVE DATE: This notice is effective August 15, 2005.

FOR FURTHER INFORMATION CONTACT:

Keith Rake, Deputy Assistant Commissioner, Office of the Assistant Commissioner for Public Debt Accounting, Bureau of the Public Debt, 200 3rd St., P.O. Box 396, Parkersburg, WV 26106-0396, (304) 480-5101 (not a toll-free number), or by e-mail at *opdasib@bpd.treas.gov* or Edward Gronseth, Deputy Chief Counsel, Elizabeth Spears, Senior Attorney, or Brian Metz, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, Department of the Treasury, P.O. Box 1328, Parkersburg, WV 26106-1328, (304) 480-8692 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of the Treasury, under the authority of 26 U.S.C. 141 note; 31 U.S.C. 3102-3104 and 3121, offers SLGS Demand Deposit certificates of indebtedness. These securities are one-day certificates of indebtedness, issued in a minimum amount of \$1,000, or in

any larger amount, with interest accrued and added to the principal daily. In the final rule published simultaneously with this notice, provision is made to provide by notice the information necessary to apply the interest rate formula to the Demand Deposit certificates of indebtedness, i.e., the average yield for three-month Treasury bills at the most recent auction, multiplied by one minus the estimated average marginal tax rate (1-MTR) of purchasers of tax-exempt bonds, less the Treasury administrative cost. The factor “1-MTR” is .79.

The current Treasury administrative cost is five basis points. Treasury is amending this rate and designating the new Treasury administrative cost, as of the effective date of this notice, as one basis point.

Both the “1-MTR” and the Treasury administrative cost are subject to redetermination by the Department of the Treasury. Any future changes will be published by notice in the **Federal Register**.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 05-12867 Filed 6-29-05; 8:45 am]

BILLING CODE 4810-39-P



Federal Register

**Thursday,
June 30, 2005**

Part III

Department of Transportation

Federal Railroad Administration

49 CFR Part 229

Locomotive Event Recorders; Final Rule

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****49 CFR Part 229**

[Docket No. FRA-2003-16357, Notice No. 3]

RIN 2130-AB34

Locomotive Event Recorders

AGENCY: Federal Railroad Administration (FRA), (DOT).

ACTION: Final rule.

SUMMARY: FRA is issuing revisions to the regulations governing locomotive event recorders to improve the crashworthiness of railroad locomotive event recorders and to enhance the quality of information available for post-accident investigations. FRA is amending its existing regulations in four major ways: By requiring that a new locomotive have an event recorder with a "hardened" memory module, proven by a requirement that the memory module preserve stored data throughout a sequence of prescribed tests; by requiring that this event recorder on a new locomotive collect certain additional types of information; by simplifying standards for inspecting, testing, and maintaining all event recorders; and by requiring the phasing out, over a four-year period, of event recorders on existing locomotives that use magnetic tape as a data storage medium and their replacement with event recorders with a certified survivable version of its previous event recorder. FRA is also revising the definitions contained in the existing regulation to remove the letter designations so that the defined terms are simply presented in alphabetical order.

EFFECTIVE DATE: This final rule is effective October 1, 2005.

ADDRESSES: *Petitions:* Any petitions for reconsideration related to Docket No. FRA-2003-16357, may be submitted by any of the following methods:

- Web site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- 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 online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to 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: Edward W. Pritchard, Director, Office of Safety Assurance and Compliance, RRS-10, Mail Stop 25, Federal Railroad Administration, Department of Transportation, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202-493-6247), or Thomas J. Herrmann, Trial Attorney, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202-493-6036).

SUPPLEMENTARY INFORMATION:**I. Statutory Background**

Sections 10 and 21 of the Rail Safety Improvement Act of 1988 (RSIA), Public Law 100-342, 102 Stat. 624 (June 22, 1988), provide as follows:

Sec. 10. Event Recorders.

Section 202 of the Federal Railroad Safety Act of 1970 is amended by adding at the end the following new subsection:

"(m)(1)(A) The Secretary shall, within 18 months after the date of the enactment of the Rail Safety Improvement Act of 1988, issue such rules, regulations, standards, and orders as may be necessary to enhance safety by requiring that trains be equipped with event recorders within 1 year after such rules, regulations, orders, and standards are issued.

"(B) If the Secretary finds that it is impracticable to equip trains as required under subparagraph (A) within the time limit under such subparagraph, the Secretary may extend the deadline for compliance with such requirement, but in no event shall such deadline be extended past 18 months after such rules, regulations, orders, and standards are issued.

"(2) For the purpose of this subsection, the term 'event recorders' means devices that—

"(A) record train speed, hot box detection, throttle position, brake application, brake operations, and any other function the Secretary considers necessary to record to assist in monitoring the safety of train operation, such as time and signal indication; and

"(B) are designed to resist tampering."

* * *

Sec. 21. Tampering With Safety Devices.
Section 202 of the Federal Railroad Safety Act of 1970 is amended by adding at the end the following new subsection:

"(o)(1) The Secretary shall * * * issue such rules, regulations, orders, and standards as may be necessary to prohibit the willful tampering with, or disabling of, specified railroad safety or operational monitoring devices.

* * *

Codified at 49 U.S.C. 20137-20138, superseding 45 U.S.C. 431(m) and (o).

II. Proceedings to Date

On November 23, 1988, FRA published an ANPRM (Advance Notice of Proposed Rulemaking) in FRA Docket No. LI-7, soliciting comments on how to implement these statutory mandates concerning event recorders. See 53 FR 47557. On June 18, 1991, FRA published an NPRM in that docket, setting forth proposed regulations on event recorders, the elements they were to record, and the preservation of data from the event recorder in the event of an accident. See 56 FR 27931. Two public hearings were held in order to facilitate public participation; the written comments submitted in response to the NPRM were extensive, detailed, and helpful.

FRA prescribed final event recorder rules, effective May 5, 1995 (58 FR 36605, July 8, 1993) and issued a response to petitions for reconsideration (60 FR 27900, May 26, 1995); they were codified principally at 49 CFR 229.135. In issuing the final rules, FRA noted the need to provide more refined technical standards. The National Transportation Safety Board (NTSB) had previously remarked on the loss of data from event recorders in several accidents due to fire, water, and mechanical damage. NTSB proposed performance standards and agreed to serve as co-chair for a joint industry/government working group that would refine technical standards for next-generation event recorders. FRA conducted a meeting of an informal working group comprised of railroad labor and management representatives and co-chaired by NTSB on December 7, 1995, to consider development of technical standards. At the July 24-25, 1996 meeting of FRA's Railroad Safety Advisory Committee (RSAC), the Association of American Railroads (AAR) agreed to continue the

inquiry and on November 1, 1996, reported the status of work on proposed industry standards to the RSAC.

On March 5, 1997, the NTSB issued several recommendations regarding testing and maintenance of event recorders as a result of its findings in the investigation of an accident on February 1, 1996, at Cajon Pass, CA. As the Board noted in its recommendation to FRA, the train that derailed in Cajon Pass "had an event recorder that was not fully operational. The self-diagnostic light on the unit was insufficient to fully examine the unit and ensure that it was recording the data." The Board recommended that inspection and testing of event recorders "include, at a minimum, a review of the data recorded during actual operations of the locomotive to verify parameter functionality. * * * See NTSB Recommendation R-96-70.

III. RSAC Overview

In March 1996, FRA established the RSAC, which provides a forum for developing consensus recommendations on rulemakings and other safety program issues. The Committee includes representation from all of the agency's major customer groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of member groups follows:

American Association of Private Railroad Car Owners (AARPCO)
 American Association of State Highway & Transportation Officials (AASHTO)
 American Public Transportation Association (APTA)
 American Short Line and Regional Railroad Association (ASLRRA)
 American Train Dispatchers Department/Brotherhood of Locomotive Engineers (ATDD/BLE)
 National Passenger Railroad Corporation (Amtrak)
 Association of American Railroads (AAR)
 Association of Railway Museums (ARM)
 Association of State Rail Safety Managers (ASRSM)
 Brotherhood of Locomotive Engineers and Trainmen (BLET)
 Brotherhood of Maintenance of Way Employees (BMWE)
 Brotherhood of Railroad Signalmen (BRS)
 Federal Transit Administration (FTA)*
 High Speed Ground Transportation Association
 Hotel Employees & Restaurant Employees International Union
 International Association of Machinists and Aerospace Workers
 International Brotherhood of Boilermakers and Blacksmiths

International Brotherhood of Electrical Workers (IBEW)
 Labor Council for Latin American Advancement (LCLAA)*
 League of Railway Industry Women*
 National Association of Railroad Passengers (NARP)
 National Association of Railway Business Women*
 National Conference of Firemen & Oilers
 National Railroad Construction and Maintenance Association
 National Transportation Safety Board (NTSB)*
 Railway Progress Institute (RPI)
 Safe Travel America
 Secretaria de Comunicaciones y Transporte*
 Sheet Metal Workers International Association
 Tourist Railway Association Inc.
 Transport Canada*
 Transport Workers Union of America (TWUA)
 Transportation Communications International Union/BRC (TCIU/BRC)
 United Transportation Union (UTU)
 *Indicates associate membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts options on a particular aspect of a given task. The task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff has played an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation and the agency exercises its independent judgement on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal. If the

working group or RSAC is unable to reach consensus on recommendations for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

On March 24, 1997, the RSAC indicated its desire to receive a task to consider the NTSB recommendations with regard to crash survivability, testing, and maintenance. A task was presented to, and accepted by, the RSAC on June 24, 1997. The Working Group on Event Recorders was formed, and a Task Force established. Members of the Working Group, in addition to FRA, included the following:

AAR, including members from
 The Burlington Northern and Santa Fe Railway Company (BNSF),
 Canadian National Railway Company (CN),
 Canadian Pacific Railway Company (CP),
 Consolidated Rail Corporation (CR)
 CSX Transportation, Incorporated (CSX),
 Florida East Coast Railway Company (FEC),
 Illinois Central Railroad Company (IC),
 Norfolk Southern Corporation (NS),
 Union Pacific Railroad Company (UP),
 APTA, including members from
 Southeastern Pennsylvania Transportation Authority (SEPTA)
 Amtrak,
 Bach-Simpson,
 BLET,
 EDI,
 General Motors Corporation/Electro-Motive Division (EMD)
 IBEW,
 Pulse/Wabco,
 Q-Tron,
 TCIU/BRC, and
 UTU.

The NTSB met with the Working Group and provided staff advisors. In addition, GE-Harris, STV Incorporated, and Peerless Institute attended many of the meetings and contributed to the technical discussions.

The Working Group and related Task Force conducted a number of meetings and discussed each of the matters proposed in the NPRM issued in this matter. Minutes of these meetings have been made part of the docket in this proceeding. The Working Group reached full consensus on a recommended proposal on October 20, 2003, and transmitted the document as its recommendation to the full RSAC for its concurrence via mail ballot on October 23, 2003. By November 12, 2003, the deadline set for casting a ballot in this matter, thirty-five of the

forty-eight voting members of the full RSAC had returned their ballots on the regulatory recommendation submitted by the Working Group. All thirty-five of the voting members concurred with and accepted the Working Group's recommendation. Thus, the Working Group's recommendation became the full RSAC's recommendation to FRA. After reviewing the full RSAC's recommendation, FRA adopted the recommendation with minor changes for purposes of clarity, and responsiveness to certain comments made by Working Group and RSAC members when submitting their concurrences.

On June 30, 2004, FRA published an NPRM containing the recommendations of the Working Group and the full RSAC. See 69 FR 39774. The NPRM provided for a 60-day comment period and provided interested parties the opportunity to request a public hearing. Based on the comments received, FRA issued a notice on September 2, 2004, scheduling a public hearing for September 30, 2004 and extending the comment period an additional 41 days to October 11, 2004. See 69 FR 54255 (September 8, 2004). FRA received comments from 22 interested parties, most of these were private citizens or private law firms.

Subsequent to the close of the comment period, the Working Group conducted a meeting to review and discuss the comments received in response to the NPRM. The Working Group discussed all of the issues raised in the comments and considered various methods by which to address the comments. Minutes of these meetings have been made part of the docket in this proceeding. Based on information and discussions held at these meetings, the Working Group developed a potential recommendation for a final rule. The Working Group reached full consensus on a recommended proposal for a final rule on May 3, 2005, and transmitted the document as its recommendation to the full RSAC for its concurrence via mail ballot on May 13, 2005. On June 6, 2005, twenty-eight of the forty-five voting members of the full RSAC had returned their ballots on the regulatory recommendation submitted by the Working Group. All twenty-eight of the voting members concurred with and accepted the Working Group's recommendation. Thus, the Working Group's recommendation related to this final rule became the full RSAC's recommendation to FRA. FRA further reviewed the recommendation and adopted it with minor changes for purposes of clarity.

Throughout the preamble discussion of this final rule, FRA refers to comments, views, suggestions, or recommendations made by members of the Working Group. When using this terminology, FRA is referring to views, statements, discussions, or positions identified or contained in either the minutes of the Working Group and Task Force meetings or the specific written submissions discussed above. These documents have been made part of the docket in this proceeding and are available for public inspection as discussed in the preceding ADDRESSES portion of this document. These points are discussed to show the origin of certain issues and the course of discussions on those issues at the working group level. We believe this helps illuminate factors FRA has weighed in making its regulatory decisions, and the logic behind those decisions. The reader should keep in mind, of course, that only the full RSAC makes recommendations to FRA, and it is the consensus recommendation of the full RSAC on which FRA is acting.

IV. Section-by-Section Analysis

The AAR Universal Machine Language Equipment Register (UMLER) file had approximately 28,000 locomotives registered as of January 1, 2000, including locomotives operated by shortline and regional railroads, Canadian and Mexican railroads, and Amtrak. Portions of the Canadian and Mexican fleet operate in the United States. Every major railroad uses event recorders, and no railroads report a difficulty in complying with the 1995 regulations requiring event recorders on the lead locomotive of any train operated faster than 30 miles per hour. As noted above, this proceeding builds on the current regulations in Part 229 and adds requirements for crash survivability and enhanced data collection by event recorders. In addition, this final rule requires the installation of these current "state-of-the-art" event recorders in new locomotives and would require that, if a locomotive with an event recorder is remanufactured, it be equipped with a certified survivable version of its previous event recorder.

As noted previously, FRA received comments from 22 interested parties in response to the NPRM. The specific comments are addressed and discussed in the section-by-section analysis related to the provision that was the subject of the submitted comment.

Section 229.5. This section contains an extensive set of definitions. FRA intends these definitions to clarify the meaning of terms as they are used in the

text of the final rule. The final rule retains all of the definitions proposed in the NPRM with the only changes being a slight modification of the definition of the term "distributed power system" for clarity and the addition of a definition for the term "DMU Locomotive," which will be explained in detail below. One commenter suggested the addition of a definition for the term "positive train control (PTC)" because event recorders are an integral part of any PTC system. FRA agrees with the RSAC's recommendation not to include a definition for PTC in this final rule because the term is not used in the rule text contained in this part and the term is adequately defined in the new regulations related to train control systems recently added to 49 CFR part 236. See 70 FR 11051 (March 7, 2005).

The final rule entirely rewrites the "definitions" section as it currently exists in part 229 in order to remove the letter designations from the subparagraphs so that the terms are simply presented in alphabetical order. Several of the definitions introduce new concepts or new terminologies that require further discussion. The following discussion is arranged in the order in which the added or revised definitions appear in the rule text.

Controlling remote distributed power locomotive is a new definition added to this final rule in response to concerns discussed in comments received in response to the NPRM. The definition is being added in order to clearly identify what constitutes a controlling remote distributed power locomotive addressed by the requirements of this final rule. A controlling remote distributed power locomotive means the locomotive in a distributed power consist that receives the coded signal from the lead locomotive consist of the train whether commanded automatically by the distributed power system or independently by the locomotive engineer. A distributed power system means a system that provides control of a number of locomotives dispersed throughout a train from a controlling locomotive located in the lead position. The system provides control of the rearward locomotives by command signals originating at the lead locomotive and transmitted to the remote (rearward) locomotives.

Cruise control, an added definition, describes the device that controls locomotive power output to maintain a targeted speed. Primarily used on through-route passenger equipment, this device allows the engineer a choice between automated controls or the traditional throttle handle. Devices that only function at or below 30 miles per

hour, such as those used in the loading/unloading of unit trains of bulk commodities, or those used to move equipment through car or locomotive washers, are not considered cruise controls for purposes of this part.

Data element, an added definition, clarifies that the data recorded may be directly passed through or they may be derived from other data. As an example, speed may be calculated from time and distance; the event recorder may capture "speed" by calculating that value using the common formula of dividing distance by time. An alternative term "data parameter" is not used in this final rule because a "parameter" connotes one value standing for all others of a class and an "element" is a discrete value. Data may be derived from both recorded and unrecorded "facts" in the memory module. For instance, the distance element in the calculation of speed may be derived from a count of the wheel revolutions (data from the memory module) and the wheel diameter or wheel circumference (data measured directly from a physical component and, thus, not stored in the memory module).

Distributed power system, an added definition, describes a system to allow the engineer in the lead unit to control locomotive power units placed within the train consist. Typically, a radio link is established between the lead unit and the remote power consist so that a single engineer can control several locomotives not directly coupled to the lead unit. FRA notes that this definition has been modified slightly from that proposed in the NPRM. FRA agrees with the RSAC's recommendation that the word "automatic" used in the proposed definition did not accurately reflect the way distributed power systems operate. Distributed power systems allow for either synchronous or non-synchronous operation, only the former of which results in the distributed units responding "automatically" to the controls of the lead locomotive. Thus, the definition has been modified from that contained in the NPRM by removing the word "automatic" to avoid any misunderstanding regarding how these systems function.

DMU locomotive, a new definition, is being added to this final rule in order to specifically identify diesel-powered multiple unit locomotives. Diesel-powered MUs are just starting to be used by a small number of passenger railroads. However, FRA and the industry believes that the use of DMU locomotives will expand significantly in the future. For purposes of event recorders, DMU locomotives will be treated the same as MU locomotives. For

other portions of part 229 the two types of locomotives may be treated differently.

Event recorder is a revised definition. The definition that is currently in the regulations is modified so that the list of data elements to be recorded will now appear in rewritten § 229.135(b). This change is necessary because the final rule requires the event recorders on new locomotives to record more data elements than the recorders required by the regulation as it existed prior to this final rule.

FRA received a comment from one party questioning whether the 48-hour monitoring and recording requirement for event recorders is sufficient, without further elaborating on the need for such an extension. FRA has not found the need to require the monitoring and recording of train information beyond the 48 hours required under the existing regulation. The RSAC, through the Working Group, discussed this issue and determined that the 48-hour provision adequately captures the necessary data and recommended no increase to the time frame. As FRA has not found the need to require the monitoring and recording of train information beyond the 48 hours required under the existing regulation, FRA has adopted the RSAC's recommendation. Furthermore, any increase to the amount of data that must be stored could significantly increase the cost of producing and acquiring the event recorder, and FRA is not willing to impose additional costs without an established need.

In the NPRM, FRA noted that the issues of accuracy, resolution, and sampling rate remained unresolved, provided a brief discussion related to sampling rates, and requested comment from interested parties on this subject. See 69 FR 39779–80. FRA received comments from the BLET supporting the adoption of the IEEE sampling rate standard detailed in the preamble to the NPRM. FRA also received comments from the AAR objecting to the use of the IEEE sampling rate standard based on its belief that the standard is too high and not applicable to railroad operations. AAR asserts that a sampling rate of 50 samples per second is unnecessary as events do not happen that fast on railroads and the most modern locomotive event recorders only record data once per second. Furthermore, increasing the sampling rate above what is currently being manufactured would significantly increase the costs of the recorders. AAR also noted that Transport Canada's regulations do not mandate a specific sampling rate.

The issue was discussed by the Working Group, and one manufacturer explained that current microprocessor based event recorders sample at least 20 times per second and record one time per second. Thus, event recorders do not record at anywhere near the rate at which they sample. The Working Group recommended that no sampling rate be mandated in the regulation for the above-noted reasons. FRA believes that the currently manufactured event recorders have an acceptable sampling rate, and FRA is not aware of any instance where a higher sampling rate was necessary. Moreover, FRA and the Working Group concentrated on the crashworthiness aspects of the event recorder memory module, together with enhancing the kind of data to be collected for post-accident analysis. FRA believes that this focus is both an ordering of priorities and a recognition that the industry has an economic and operational incentive to make the data as accurate as possible. What the event recorder stores are data that are, first and foremost, indispensable to the operation of the locomotive. Because the railroads have operational needs for the same data elements that are also vital to accident analysis, the "numbers" tend to be accurate and, with microprocessor-based event recorders, the data thus generated during the ordinary course of business are not diminished in accuracy just because they are stored. In addition, microprocessor-based event recorders run so fast that the sampling intervals are naturally short, and they may be adjusted differently for different elements. Thus, FRA agrees with the recommendation of the Working Group and RSAC and will not mandate a specific sampling rate in this final rule but will continue to monitor the operation of event recorders to determine if further regulatory action is necessary on this issue.

Event recorder memory module, a new definition, describes the portion of the event recorder that will be required to meet the crashworthiness standard contained in Appendix D to Part 229.

Lead locomotive is a definition moved from current § 229.135(a) and revised to reflect current industry practice and to make it clear that "lead locomotive" describes a set position in the train rather than the locomotive from which the crew is operating the train. This change was necessary, among other reasons, to accurately record the signal indications displayed to the crew of the train.

Mandatory directive is a definition also contained in § 220.5 of this chapter and is being included in this part to aid in understanding the type of data that is

to be captured by the event recorder when a railroad utilizes a train control system pursuant to Part 236 of this chapter.

Remanufactured locomotive, a new definition, is added to clarify when an existing event recorder-equipped locomotive must be equipped with a crashworthy event recorder.

Self-monitoring event recorder, a new definition, is added to state clearly the conditions under which an event recorder does not require periodic maintenance. One member of the Working Group, in a written submission to FRA, suggested that this definition be slightly altered to state that a self-monitoring event recorder is one that has the ability to monitor its own operation and to display an indication to the locomotive operator either when any data required to be stored are not stored or *when the input signal or stored signal is detected as out-of-range*. This commenter stated that there is no way to verify whether the stored data matches the data received from the sensor or data collection point as described in the definition. Examples of this are when a sensor fails open and the locomotive computer does not pass that information to the event recorder, or when a speed sensor is not producing any output due to certain failure modes. However, certain data elements can be programmed with a minimum or maximum range and if the sensor input is outside that range then an appropriate indication can be provided to the operator. Although FRA sought comments from interested parties on this suggested change to the definition no comments or suggestions were received and no support for such a change was indicated. Consequently, FRA is retaining the definition proposed in the NPRM in this final rule.

Throttle position, a new definition, is added to capture the industry understanding about this parameter of locomotive operation. The NPRM contains a detailed discussion regarding the use of the term "throttle position," which provides additional information and background regarding the nature and meaning of the term as used in this final rule. See 69 FR 39777. While typical diesel-electric freight locomotives have positions, or "notches" for eight power positions and "Idle," many other locomotives, especially those in passenger and heavy electric passenger service, do not. The final rule definition calls for measuring the power requested by the engineer/operator at any and all of the discrete output positions of the throttle. If the throttle quadrant on a locomotive has continuously variable segments, the

recorder would be required to capture the exact level of speed/tractive effort requested, on a scale of zero (0) to 100 percent (100%) of the output variable or a value converted from a percentage to a comparable 0- to 8-bit digital system. In the NPRM, FRA sought comment on the need to specify specific parameters by which throttle position is recorded. See 69 FR 39777 and 39781. NTSB was the only party responding, expressing its support and need for the definition. Therefore, the final rule retains the definition as proposed in the NPRM.

Section 229.25. The final rule retains the proposed amendment to paragraph (e) of this section by moving the language dealing with microprocessor-based event recorders from subparagraph (e)(2) to the lead paragraph and providing that microprocessor-based event recorders with a self-monitoring feature are exempt from the 92-day periodic inspection and are to be inspected annually as required under proposed § 229.27(d). Other types of event recorders would require inspection and maintenance at 92-day intervals, as before.

Older styled event recorders used magnetic tape cartridges as their recording medium; while this final rule will "sunset" such equipment, the equipment still needs to be maintained in order to perform satisfactorily during the period it remains in service. The final rule provides for this, at 49 CFR 229.25(e). Microprocessor-based event recorders, typified by virtually all of the recorders now being installed in locomotives, are similar to many consumer solid state electronic devices; either they work or they do not. Maintenance consists of checking for satisfactory operation and, if there is a failure, replacing either the failed component or the entire unit.

What further complicates the newest installations is that there is no "black box," as such. Rather, the entire locomotive is wired with sensors and, as an illustration, those elements necessary for routine maintenance of the locomotive are routed to one collection point, and those required for accident analysis are routed to another. There are also ways to retrieve any particular subset of data out of a single data port by using what is popularly called a "smart card" to query the computer for a predetermined set of data. Accident investigators would get the data elements specified in § 229.135(b), locomotive electrical maintainers would get the set of data applicable to their work, and a person evaluating the engineer's performance over the last run would download a data set

preprogrammed for that purpose. Data necessary for accident analysis, as required in this final rule, would be routed to a crash-hardened memory module.

In comments, the NTSB recommended provisions for testing the full range of all parameters periodically and for testing the sensors, transducers, or wiring for data elements not cycled during the normal operation more often than annually. However, NTSB provided no data or significant number of instances relating to the failure of sensors, transducers, or wiring that are not detected during the course of the currently required periodic maintenance of either the locomotive itself or the locomotive event recorder. A requirement to independently test the sensors, transducers, and wiring involved with capturing the data elements required by this final rule would add a significant cost to the conduct of periodic inspections. Without some proven established need for these additional inspections, FRA is not willing to impose that additional cost at this time. FRA continues to recognize that railroads cannot test event recorders over the *full* range of all recorded parameters. Such testing might require operating locomotives at speeds far higher than safe over a particular railroad's track, and some events, such as EOT valve failure, are extremely rare. The final rule requires "cycling, as practicable, all required recording elements * * *" in recognition of this fact.

The NTSB also sought clarification as to whether the proposed rule would require event recorder maintenance to be recorded on the locomotive "blue card" (form FRA F6180-49A) maintained in the cab of the locomotive. While the "blue card" does not contain a specific line-item related to event recorders, the regulation does require that the date, place, and signature of the person performing the required periodic inspections under §§ 229.25 and 229.27 be entered on the form. Thus, in order to properly sign and date the "blue card," the required inspection, testing, and maintenance must have been performed on the event recorder and any dates on the form would be equally applicable to the event recorder as to any other component required to be addressed during a periodic inspection.

The final rule also retains the proposed provisions for maintaining records related to periodic inspections and maintenance instructions. Although the final rule does not specify how records of successful tests are to be maintained, FRA has no objection to keeping the records electronically,

provided the electronic “record” is the full and complete “data verification result” required by this section, the record is secure, the record is accessible to FRA for review and monitoring, and the record is made available upon request to FRA or any other governmental agent with the authority to request them. FRA’s expectation is that electronic records will be made available immediately upon request.

Although the Electronic Signatures in Global and National Commerce Act (Pub. L. 106–229, 114 Stat. 464, June 30, 2000) requires that regulated entities be allowed to keep records electronically, in appropriate circumstances, FRA believes that the tenor and language of this final rule make it unnecessary to discuss the specifics of whether or not the Electronic Signatures Act applies to the subject matter of this regulation because nothing in this rule is intended to circumvent the requirements of that act. With the exception of the “maintenance instructions of the manufacturer, supplier, or owner” of the event recorder (see proposed § 229.25(e)), and any notations this final rule requires on the “blue card” (Form FRA F6180–49A), all other records required by this final rule may be kept electronically. Paragraph (e)(1) of this section requires that the maintenance instructions for the event recorder may be kept electronically, but must be available at the maintenance/repair point so they can be used by workers on the shop floor, at the point of testing and repair. Maintenance instructions printed from an electronically maintained master copy would satisfy this requirement. In addition, the applicable “blue card” provisions are existing regulatory requirements that are not being amended by this rulemaking and are intended to establish whether the locomotive is “equipped” or not, in the field, without requiring reference or access to a data base at some other location.

Section 229.27. The final rule retains the proposed amendment to the introductory text of this section and retains paragraph (d) of this section as proposed in the NPRM without change. Paragraph (d) addresses the annual maintenance requirements for microprocessor-based event recorders with a self-monitoring features. (Non-self-monitoring recorders require maintenance at quarterly intervals, under the requirements of § 229.25). Paragraph (d) contains two potential triggers for requiring maintenance on such event recorders. A self-monitoring microprocessor-based event recorder will require “maintenance” in the sense of opening the box and making

adjustments only if either or both of the following occur: (1) The event recorder displays an indication of a failure, or (2) the railroad downloads and reviews the data for the past 48 hours of the locomotive’s use and finds that any required channels are not recording data representative of the actual operations of the locomotive during this time period.

Essentially all modern event recorder systems are equipped with self-test circuitry that constantly compares data flowing in with the data being stored and that signals (typically with a red light) when there is a fault. In a sense, maintenance is simple: If the red light is off (and the unit is still receiving power), the unit is in good working order. The users and vendors of self-monitoring event recorders have discovered that, in common with many electronic devices, either the unit works or it does not. If it is working—if it is recording all the data it is required to record and if it is accurately storing the data sent by the sensors or other data collection points—no tweaking, lubricating, adjusting, or other traditional maintenance practice will make it work better or more accurately. If a self-monitoring event recorder is not working, that fact will be displayed, and the experience of the users and builders is that a circuit board, or other electronic component, will have to be exchanged.

By the same token, the NTSB has recommended in its comments that the maintenance of locomotive event recorders should verify that the entire event recorder system—including the recorder, the memory module, the cabling, the transducers, and the sensors—is accurately recording what the locomotive has actually done. As noted above, the NTSB provided no data relating to the failure of sensors, transducers, or wiring that are not detected during the course of the currently required periodic maintenance of either the locomotive itself or the locomotive event recorder or during the self-test of more modern event recorders. Rather than impose a significant periodic inspection cost by specifically requiring the inspection of such components, FRA believes that the provisions related to the annual inspection will ensure the accuracy of the devices. To ensure that the recorder is indeed capturing data representative of the locomotive’s actual operations, the final rule retains the proposed requirement that, sometime within 30 days of each annual periodic inspection, the railroad download and review the data required by § 229.135(b), as captured by the event recorder’s

crashworthy memory module. This download might be part of any other download a railroad might choose to perform, whether as a part of locomotive maintenance, employee monitoring, service planning, or whatever. The downloaded data must then be compared to the known operations of the locomotive over the past 48 hours and, if all required channels are recording and the required elements are representative of actual operations, the recorder—assuming always that the fault light is not on—will require no further maintenance or checking.

FRA recognizes that certain data elements do not regularly recur and may not, in fact, have been seen for a long time. Such elements might include EOT emergency applications, EOT communications loss, EOT valve failure, and specific channels devoted to distributed power operations when such operations have not occurred to the locomotive within the past 48 hours. FRA has also eased the burden of specific “annual test dates” by acknowledging that any time an event recorder is downloaded, reviewed for the relevant elements as required in § 229.135(b), and successfully passes that review, a new 368-day interval begins. The added flexibility provided by this section could mean that locomotives equipped with microprocessor-based event recorders need never visit a shop just to check the event recorder.

The final rule also retains the proposed provisions for maintaining records related to annual inspections. Although the final rule does not specify how records of successful tests are to be maintained, FRA has no objection to keeping the records electronically, provided the electronic “record” is full and complete and contains all the information required by this section, the record is secure, the record is accessible to FRA for review and monitoring, and the record is made available upon request to FRA or any other governmental agent with the authority to request them. In addition, whatever medium is used to maintain the record, the record is to be kept at the location where the locomotive is maintained until a record of a subsequent successful test is filed.

One commenter on the NPRM expressed concern as to whether railroads maintain maintenance and repair instructions at each shop for each type of event recorder on which they perform periodic maintenance. A commenter also questioned whether there was a need to include qualification standards for individuals downloading and analyzing event

recorder data. FRA is not aware of any instances where railroads do not have appropriate maintenance and repair manuals available for the event recorders they service. Members of the RSAC Working Group indicated that they have adequate access to maintenance and repair manuals for all types of event recorders. Furthermore, a person should not be signing the blue card indicating performance of event recorder maintenance if that individual is not able and qualified to perform the required tasks. Neither FRA nor the NTSB has found unqualified or improperly trained individuals performing event recorder downloads or analysis. Moreover, on December 12, 2004, AAR implemented a mandatory locomotive event recorder download standard applicable to all member railroads to minimize operational and maintenance incompatibilities. See AAR Manual of Standards and Recommended Practices, Section M, AAR Standard S-5512, "Locomotive Event Recorder Download Standard" (November 2004). The standard defines the physical and logical download interfaces, various download methods, and the required protocol to support serial download of event recorders. Consequently, FRA does not see a need, at this time, to impose strict Federal qualification standards on those individuals responsible for the maintenance and downloading of event recorders. FRA will continue to monitor this issue should the need for additional regulation become necessary.

Section 229.135. Paragraph (a) retains the changes to this paragraph proposed in the NPRM. This paragraph modifies the existing provision by requiring the make and model of the event recorder to be entered on Form FRA F6180-49A (blue card). Some members of the Working Group, in written responses to the NPRM, continue to question the need to record this information on the blue card as there is no known instance where a problem was encountered downloading data or locating appropriate analysis software. These commenters assert that railroads and event recorder manufacturers are well aware of the type of event recorder installed on a locomotive and which software to employ for downloads. However, these commenters agree that the cost of this requirement is de minimus. This item was requested by the NTSB, and based on the NTSB's stated need for the information, FRA has decided to retain the provision in this final rule. FRA continues to believe that there is very little burden placed on the railroads by requiring the information to

be recorded because the presence of any such recorder is already required under the existing regulation and the benefit to an accident investigator may be considerable.

Several commenters suggested the need to expand the applicability of the event recorder requirements. These commenters recommended that any locomotive operating over a public or private grade crossing be equipped with an event recorder regardless of its operating speed. One commenter believed the requirements for event recorders should be applied to any remote controlled locomotive. The primary purpose of this rulemaking proceeding is to increase the survivability of locomotive event recorders and to ensure that necessary information is being captured by the devices for use in accident investigations. FRA did not intend to expand, nor has it seen a need to expand, the scope of what locomotives were covered by the regulations. To expand the applicability of these regulations as suggested would add a significant and unjustified cost to the industry. FRA previously determined that lower speed operations (*i.e.*, those under 30 mph) do not result in complex accidents requiring the analysis of event recorder data. FRA is not aware of any data or information that contradicts this view. In addition, there are currently no remote controlled locomotives being operated at speeds exceeding 30 mph nor is such operation being considered in the immediate future by the industry. FRA will continue to monitor these types of operations and will take appropriate action should they change to include higher speed operation. Moreover, the on-board equipment on most remote controlled locomotives capture and retain inputs from the remote unit. Consequently, FRA does not see a need at this time to expand the scope of the event recorder requirements to either locomotives operating under 30 mph or to remote controlled locomotives.

In its comments to the NPRM, NTSB sought clarification regarding the regulation's applicability to manned helper locomotives operating faster than 30 mph. The rule's application to these types of locomotives was not specifically considered when the NPRM was originally issued. After discussing the matter with the Working Group, the members of the Working Group agreed that to include these types of locomotives would not be a significant, if any, cost to the industry because most helper locomotives are operated by Class I railroads and are already equipped with event recorders. The

Working Group indicated its acceptance of requiring event recorders on such locomotives provided that it was limited to the lead manned helper locomotive because in most instances the leading manned locomotive in a helper locomotive consist is the locomotive that is equipped with an event recorder. FRA agrees with the recommendation of the Working Group and the RSAC on this issue and believes that the information retained on these units could prove valuable in accident investigations where helper locomotives are present. Consequently, the final rule slightly amends the proposed applicability provisions contained in paragraphs (b)(1) and (b)(3) to include a specific reference to lead manned helper locomotives.

In its comments on the NPRM, BLET asserted that any controlling locomotive operated in positive train control (PTC) territory should be required to be equipped with a crashworthy event recorder capable of capturing all of the data elements proposed in this regulation. Although FRA understands BLET's position, FRA does not believe that such a requirement is necessary at this time. FRA believes that such a requirements might inhibit the current and future testing or implementation of PTC type systems. In addition, such a provision would likely have a disparate impact on smaller railroads that share trackage with larger operations. Furthermore, virtually all of the PTC systems being developed already include data capturing devices and hardware. Consequently, FRA believes, and the RSAC recommendation concurs, that the issues related to the type of data to be recorded and the method by which the data is captured on PTC systems is an issue better addressed in the product safety plans required in subpart H of the recently issued final rule related to Standards for Development and Use of Processor-Based Signal and Train Control Systems (PTC final rule). See 70 FR 11051 (March 7, 2005).

Paragraph (b) essentially retains the proposed requirements for when a new or remanufactured locomotive must be equipped with a certified crashworthy memory modules and retains the proposed information that must be captured and stored by both new and existing event recorders. The provisions contained in this paragraph have been slightly modified to include certain clarifications related to identifying covered locomotives and to include specific outside dates when certain requirements become applicable. These modifications are discussed in detail below.

In order to avoid confusion when locomotives are re-sold after the original purchase from the manufacturer (*i.e.*, sold from one user to another), the final rule specifies that the equipment required on a specific locomotive is determined by the date it was originally manufactured. The introductory language in this paragraph makes clear that the recorded data be at least as accurate as the data required to be displayed to the engineer. Further, the final rule retains the proposed language requiring the crashworthy event recorder memory module to be mounted for its maximum protection, stating that a module mounted behind the collision posts and above the platform is deemed to be appropriately mounted.

Several members of the Working Group continued to emphasize that the language contained in the proposed provision and retained in this final rule regarding the placement of the crashworthy event recorder memory module may be interpreted to limit the placement of the module. These parties assert that the placement of the module in an electrical cabinet may not necessarily be below the top of the collision posts and yet such placement would provide adequate protection and would actually provide superior crush resistance, be more fire resistant, and be a longer distance from the point of impact. Similarly, a module located in the nose of the locomotive may not be above the platform level and yet it would be sufficiently protected. The illustration retained in this final rule is intended to provide one example of a module properly mounted for its maximum protection. FRA continues to agree that there may be other mounting options that provide at least equal protection, and has retained the proposed language in the final rule text making this point very clear.

One commenter to the NPRM recommended that FRA should require railroads to utilize global positioning satellite (GPS) receivers to calculate and provide the time, location, speed, and direction elements to the event recorders. This commenter states that such technology would provide an absolute time standard. This commenter provided no indication as to how this would be accomplished and did not provide any cost estimates regarding the implementation of the suggestion. Neither the Working Group or the full RSAC believed there was a need to specify a method by which the required data is derived or obtained. FRA agrees with the recommendation of these parties. FRA believes that any such requirement would add a significant

cost to the final rule while adding an unknown benefit, if any.

Certain provisions in paragraph (b) have been slightly modified to include a placed-in-service date after which the equipment must be properly equipped. In the NPRM, the requirements relating to when a new locomotive is required to be equipped with a crashworthy event recorder memory module were based solely on the date that the locomotive was originally ordered. *See* 69 FR 39792. In the preamble to the NPRM, FRA voiced its concern that no outside parameter has been included in the proposal for newly manufactured locomotives. *See* 69 FR 39782. Thus, as proposed the regulation would have allowed any locomotive ordered prior to the one-year period not to be required to be equipped with a crashworthy event recorder even if not delivered and placed in-service until years later. FRA stated that it believed there should be a placed in-service date included in the final rule after which any new locomotive must be properly equipped. FRA sought comments and suggestions from interested parties as to an appropriate date to include in the final rule for ensuring that any applicable locomotive placed in service after that date is properly equipped with a crashworthy memory module.

Members of the Working Group, including AAR, APTA, and its member railroads, discussed this issue at length. These parties noted the need to ensure that any date inserted into the final rule must allow for existing contracts and contracts that are put into place within one year after the effective date of the final rule to be completed in order to prevent additional cost burdens on these contracts. These parties suggested that a period of four years after the effective date of the final rule would provide the necessary assurances. Therefore, the Working Group recommended a four-year period to the full RSAC in response to FRA's request. In turn, the RSAC included the four year period in its recommendation to FRA. FRA believes that the recommended four-year placed in-service date is reasonable and consistent with other federal regulations. Consequently, FRA has accepted the recommendation and has modified subparagraphs (b)(3) and (b)(4) to require that any identified locomotive ordered one year after the effective date of the final rule or placed in-service four years after the effective date of the rule must be equipped with a crashworthy event recorder memory module.

Subparagraph (b)(1) contains the equipment requirements for current event recorders that use a recording

medium other than magnetic tape. This section retains the intent of the proposal but the language has been slightly modified in this final rule in order to make it consistent with the provisions related to when new locomotives are required to be equipped with crashworthy event recorder memory modules. The revised language makes clear that any locomotive ordered within one year of the effective date of the final rule and placed in service within four years of the effective date of the rule may continue to utilize currently manufactured event recorders that use a recording medium other than magnetic tape. At the initial meetings with the RSAC Working Group, FRA made clear that this rule was not intended to involve the retrofitting of existing locomotives with event recorders containing crashworthy memory modules. FRA continues to believe that, except for the need to replace event recorders using magnetic tape to record information, any significant retrofit requirement of existing locomotive event recorders cannot be justified from a cost/benefit perspective. In addition to the cost of the crashworthy event recorder, it would be cost prohibitive to retrofit many existing locomotives with the ability to monitor many of the data elements described in this paragraph.

Notwithstanding the above discussion, FRA believes that the industry and the marketplace will dictate that as older style event recorders fail they will be replaced with event recorders containing crashworthy memory modules. In addition, the operational benefits derived from the newer crashworthy event recorders will likely drive the railroads' decisions when acquiring replacement event recorders for existing locomotives. Moreover, as the newer crashworthy event recorders become more prevalent and are manufactured in greater numbers, the costs of the recorders will likely be more comparable to currently produced event recorders and thus, many railroads may find it economically advantageous to purchase the new crashworthy event recorders as replacements for the older model event recorders on existing locomotives. With these thoughts in mind, FRA sought comments or information from interested parties as to whether there is some future date, that would impose little or no cost burden to the industry, after which any event recorder that is replaced on an existing locomotive should be replaced with an event recorder containing a crashworthy

memory module described in Appendix D of this rule. See 69 FR 39783.

FRA received a limited number of comments in response to this request. AAR asserted that there is no need to establish an outside date on replacement event recorders as the marketplace and economics will drive the railroad's decisions. BLE suggested that any replacement event recorder eighteen months after the effective date of the final rule should be outfitted with a crashworthy memory module. Several members of the Working Group noted that any date considered must allow railroads to use up their existing stock of event recorders that are not equipped with crashworthy memory modules. AAR, APTA and their member railroads suggested a date of January 1, 2010 as the date after which any replacement event recorder acquired must be equipped with a crashworthy memory module pursuant to Appendix D of this final rule. These parties claim that a provision drafted in such a manner would allow railroads to continue to acquire solid state event recorders for the immediate future and would allow railroads to deplete their in-stock event recorders without imposing any significant financial burden on the industry. The full RSAC included this date in its recommendation to FRA. After reviewing the recommendation, FRA agrees that a cut-off date of January 1, 2010 for the purchase of newly manufactured event recorders without crashworthy memory modules is reasonable. FRA notes that this time frame is consistent with the elimination and replacement of event recorders utilizing magnetic tape as their recording medium discussed in subparagraph (b)(2) below. Consequently, FRA has incorporated the recommendation in a new paragraph (b)(6) by requiring that any event recorder originally manufactured after January 1, 2010, that is installed on a locomotive identified in this paragraph shall be an event recorder with a crashworthy memory module meeting the requirements of Appendix D of this final rule.

FRA wishes to make clear that the event recorder currently installed on or any replacement event recorder subsequently installed on a locomotive identified in this paragraph (b)(1) need only be capable of recording the data elements specifically enumerated in this subparagraph. FRA continues to believe that it would be cost prohibitive, and in some cases impossible, to reconfigure existing locomotives with the ability to monitor and record many of the data elements required for newly manufactured locomotives.

Consequently, FRA is retaining the proposed provision in this final rule that requires any covered locomotive ordered prior to one year after and placed in service prior to four years after the effective date of the final rule to be equipped with an event recorder capable of recording at least the nine data elements specifically identified in this subparagraph.

Subparagraph (b)(2) contains a "sunset" date for current event recorders using magnetic tape as their recording medium. In the NPRM, FRA proposed elimination of these types of event recorders within six years from the effective date of the final rule. See 69 FR 39783 and 39792. Due to significant industry efforts, AAR, APTA and their member railroads informed FRA that the proposed timetable for eliminating magnetic tape-based event recorders could be shortened to four years. These parties note that their replacement efforts are progressing faster than they originally estimated. Therefore, FRA is pleased to note that the date by which event recorders utilizing magnetic tape as its recording medium must be replaced has been reduced to just four years from the effective date of the final rule. Consequently, subparagraph (b)(2) has been slightly modified to reflect this modification to the timetable for replacement of event recorders with magnetic tape as their recording medium.

FRA believes eliminating the use of magnetic tape-based event recorders is necessary because it is essentially impossible to make a crashworthy event recorder memory module that uses magnetic tape. The final rule requires that, four years after the effective date of a final rule, all such recorders must be replaced with event recorders using "hardened" memory modules, but recording the same elements as they do now. The replacement recorders would not have to meet the crashworthy performance criteria contained in Appendix D to this final rule but would need to be solid state technology. As discussed in the preamble to the NPRM, the principal supplier of magnetic tape event recorders has ceased manufacturing them and has recently discontinued supplying replacement recording media. In addition, representatives of the railroads have indicated that the industry will voluntarily complete its replacement of such event recorders within the four years provided in this final rule. Accordingly, FRA continues to believe that this provision will not constitute a significant burden to the industry.

Subparagraph (b)(3) retains the proposed standards for new event recorders and make new event recorders that meet these standards mandatory equipment for freight (diesel) locomotives (other than DMU and MU locomotives) manufactured one year after the effective date of a final rule in this proceeding. The new recorder is required to have a certified crashworthy event recorder memory module meeting the performance criteria contained in Appendix D of the final rule. This final rule retains all of the proposed data elements without change. Thus, in addition to the data elements recorded by current event recorders detailed in subparagraph (b)(1), new event recorders will be required to record the following data elements:

- Emergency brake applications initiated by the engineer or by an on-board computer;
- A loss of communications from the EOT (End of train) device;
- Messages related to the ECP (electronic controlled pneumatic) braking system;
- EOT messages relating to "ready status," an emergency brake command, and an emergency brake application, valve failure indication, end-of-train brake pipe pressure, the "in motion" signal, the marker light status, and low battery status;
- The position of the switches for headlights and for the auxiliary lights on the lead locomotive;
- Activation of the horn control;
- The locomotive number;
- The automatic brake valve cut in;
- The locomotive position (lead or trail);
- Tractive effort;
- The activation of the cruise control; and
- Safety-critical train control display elements with which the engineer is required to comply.

FRA is well aware of the pace at which technology is changing. Locomotives, once controlled by mechanical levers and wheels, now read the "input" of a moved lever and adjust multiple aspects of their operating systems to produce the desired result; they can accept a cruise control setting and adjust power to maintain a constant speed as the grade increases. New methods for monitoring and controlling train operations, some of them using global-positioning satellites as the basis for position determination, are now being deployed. Where these technologies affect the operation and safety of trains, the event recorder needs to be able to capture data elements that will enable analysis of the locomotive's operations. As just one example, if a

positive train control system (PTC) “took away” control of a locomotive to enforce train separation protocols, the recorder needs to capture the information that an input from outside the cab caused the train to speed up or slow down.

With PTC, the recorder needs to identify both the fact of an incoming signal and the response to it, whether automated or an engineer override. Just as the recording of cab signals is relatively easy because the signal system’s aspect is already on board, so too it should be easy to capture a PTC signal and record any display elements on which the engineer is expected to rely and any commands sent to initiate braking and knock down power. The existing regulation requires that the cab signal display be recorded, but this technology may be superseded in the future. In the Working Group meetings, the Brotherhood of Locomotive Engineers (BLET) has consistently raised a concern with respect to determining the source of penalty brake applications initiated by innovative train control systems (*i.e.*, not only what was the source of the brake application, but what indication was displayed to the engineer and on what basis this was determined). BLET provided the Working Group with a “white paper” further detailing its concerns in this area. This document has been made part of the docket in this proceeding. After reviewing BLET’s concerns, RSAC’s recommendation as well as the discussions of them within the Working Group, FRA has determined that it will accept the full RSAC’s recommendation not to amend the data elements proposed in the NPRM in this final rule. Although it may not be possible to specify clearly all of the information that would be required to determine the basis for every penalty application, given the wide variety of possible system architectures, the final rule will retain the proposed data elements that require that the following be recorded:

- Applications and operations of the train automatic air brake, including emergency applications. The system shall record, or provide a means of determining, that a brake application or release resulted from manipulation of brake controls at the position normally occupied by the locomotive engineer. In the case of a brake application or release that is responsive to a command originating from or executed by an on-board computer (*e.g.*, electronic braking system controller, locomotive electronic control system, or train control computer), the system shall record, or provide a means of determining, the involvement of any such computer; and

- Safety-critical train control data routed to the locomotive engineer’s display with which the engineer is required to comply, specifically including text messages conveying mandatory directives, and maximum authorized speed. The format, content, and proposed duration for retention of such data shall be specified in the product safety plan submitted for the train control system under subpart H of part 236 of this chapter, subject to FRA approval under this paragraph. If it can be calibrated against other data required by this part, such train control data may, at the election of the railroad, be retained in a separate certified crashworthy memory module.

FRA believes that these two data elements, contained in both subparagraph (b)(3) and (b)(4), deserve additional explanation. The data element contained in subparagraphs (b)(3)(vi) and (b)(4)(vi) of the final rule requires that the system record, or provide a means of determining, that a brake application or release resulted from manipulation of brake controls at the position normally occupied by the locomotive engineer. In the case of a brake application or release that is responsive to a command originating from or executed by an on-board computer (*e.g.*, electronic braking system controller, locomotive electronic control system, or train control computer), the system must record, or provide a means of determining, the involvement of any such computer.

These additional requirements concerning the operation of the automatic braking system are necessary in order to take into account the proliferation of processor-based technology that is now extensively used to control the functions of locomotives, including on-board computers constituting subsystems of train control systems. When the original event recorder rule was being prepared, the automatic brake on most locomotives functioned by mechanical and pneumatic means, responding directly to manipulations of the controls by the locomotive engineer; and train control (where provided) addressed braking and power “knock down” functions very directly as well. Since that time, braking functions are becoming increasingly controlled electronically based on requests from the control stand, and the electronic commands themselves may pass through a second locomotive computer before being executed. Major manufacturers of locomotives have plans to run braking software on their own host processors. Further, some developing train control projects

contemplate routing commands through other on-board computers.

In general, new electronic systems have functioned well, but there have been notable failures. It is obviously a dangerous situation when service braking is not available (requiring the engineer to employ the emergency braking feature). The unintended application of train brakes can also constitute a safety hazard, particularly in freight operations where management of in-train forces is a significant challenge. In the event of an accident, it is critical that data be logged in the event recorder memory module that is sufficient to determine the source of brake applications and releases. It should be known whether or not they were requested, and whether or not they occurred as requested, from the control stand. In the event no action was taken at the control stand that can explain the brake application, it is important to know (insofar as is feasible) the source of the application. While not every source of an unintended brake application can be determined in real time and monitored electronically, on-board computers capable of issuing a command for application or release of the brakes or executing such commands should be monitored to determine their role.

The data element contained in subparagraphs (b)(3)(xxv) and (b)(4)(xxii) requires that safety-critical train control data routed to the locomotive engineer’s display, with which the engineer is required to comply, be recorded. The data to be recorded would in every case include text messages conveying mandatory directives and maximum authorized speed. It may be necessary to record other data elements depending on the design of the train control system and the type of information displayed to the engineer (*e.g.*, distance to a “target” at which a particular action must be taken). The format, content, and proposed duration for retention of such data would be specified by the railroad in the product safety plan (PSP) required to be submitted for the train control system under the new PTC final rule detailed in subpart H of 49 CFR Part 236, subject to FRA approval under this paragraph. *See* 70 FR 11051 (March 7, 2005). FRA would expect to approve this element of the PSP if it was clear that data sufficient to determine the proper functioning of the train control system is routed to the memory module and retained for a sufficient period to support accident investigation. FRA anticipates that railroads will elect to record additional train control data elements in a crashworthy memory

module (e.g., train consist data entered by the crew that is critical to the correctness of the braking curve), and FRA will welcome inclusion of this additional data.

Train control systems are still evolving, and it is therefore difficult to anticipate what should be selected for recording; consequently, it may be difficult to plan for such eventualities. FRA believes that this final rule provides flexibility to address these future needs by determining data recording needs appropriate to various systems, including a shorter duration for data retention if appropriate to the subject matter. Contemporary solid state recorders are programmable and should be capable of receiving and retaining the necessary data. If, for some reason not presently foreseen, data retention requirements for a train control system exceed the capacity of the primary memory modules, secondary modules associated with the on-board train control computer could be used to meet the need.

The final rule retains the proposal's use of the term "safety-critical" which is intended to have a meaning consistent with the meaning assigned in 49 CFR § 236.903. That section provides that "safety-critical," as applied to a function, a system, or any portion thereof, means the correct performance of that function, system, or any portion of either, is essential to safety of personnel or equipment, or both, or the incorrect performance of that function, system, or any portion of either, which is essential to safety of personnel and/or equipment, or the incorrect performance of which could cause a hazardous condition, or allow a hazardous condition which was intended to be prevented by the function or system to exist. In the present context, then, safety-critical data would be data displayed to the locomotive engineer that is integral to a safety-critical train control function (such as avoiding over-speed operation, preventing a collision, or preventing an incursion into a work zone). The safety-critical functions of a new train control system are defined by the railroad in the requirements section of the PSP (consistent with the assumptions specified in the accompanying risk assessment). In addition, the term "mandatory directive," as used in this provision, has the meaning assigned to the term in 49 CFR § 220.5 ("any movement authority or speed restriction that affects a railroad operation") and that definition has been duplicated in § 229.5

BLET again raised various concerns related to the data elements that should

be captured by the event recorder on PTC systems and by distributed power locomotives. These included such things as braking algorithms, train consist data, track profile data, and software being used for track profile data used in PTC systems. Based on the discussion provided above, FRA continues to believe that data elements related to PTC systems are better addressed by the PSP required to be submitted and approved by FRA under subpart H of part 236. Consequently, FRA believes that speculation as to what needs to be recorded on these systems or how the information is to be captured should not be attempted in this regulation but would be better addressed when the specific systems are being developed and implemented.

With regard to distributed power locomotives, BLET seeks to have some method by which the event recorder would capture miscompare messages between the lead locomotive and the distributed power locomotives. A distributed power system places locomotives within the train consist to add their tractive and braking effort to the movement of, typically, long and heavy trains. The locomotives "distributed" back in the train are controlled by signals from the lead locomotive. At the NPRM stage of this proceeding, the Working Group agreed not to include a proposed requirement that new event recorders capture "miscompare" messages between the lead locomotive and the remotely distributed locomotive due to the extremely high costs associated with monitoring and capturing such data. BLET continues to disagree with the absence of this data element. This member again voiced concern that locomotive engineers should be given an opportunity to show that they were not responsible for the failure of a remote control locomotive to respond properly to a control input because of a problem with the communication link or other failure originating from software or hardware faults on a locomotive. A detailed discussion of the basis for this concern was included in the preamble to the NPRM. See 69 FR 39780.

Based on information and discussions of the Working Group as well as comments submitted to the docket, FRA is not convinced of the need to specifically capture the information requested by BLET. FRA continues to believe that it would be very costly to record the large amount of data regarding communications between a lead locomotive and a distributed power locomotive. Furthermore, the event recorders on the lead locomotive and

the lead distributed power locomotive can be compared to determine if a miscommunication between the units occurred in the limited number instances where such communication failure is suspected. Moreover, the safety benefits of recording this information are unclear because if a miscompare does occur, the systems are designed so that the remotely-controlled distributed power unit will shut down or be placed in idle. Consequently, FRA is not willing at this time to impose a significant cost to the industry by requiring the recording of information that could potentially be derived from other sources and the benefits of which are not clearly defined.

One data element proposed in the NPRM for new locomotives with new event recorders generated a significant amount of attention—the recording of the horn control handle activation. This data element was not the result of a recommendation from either the Working Group or the full RSAC. FRA received comments from several parties recommending that the actual sounding of the train horn be recorded as well as the horn's activation. Some commenters further suggested that any locomotive with an event recorder capable of capturing train horn activation or actual sounding should be required to do so. These parties assert that such requirements would reduce the disputes involving when and if the horn actually sounded during an accident investigation.

Although FRA is cognizant of the potential benefits of such a requirement, FRA believes the benefits are somewhat overstated. The reasons for carefully using data relating to horn activation are equally applicable to data related to the actual sounding of the train horn. Users of event recorder data for purposes other than accident investigation (such as supporting claims in accident-related litigation) should bear in mind that the event recorder samples what is going on in the locomotive and there are gaps between the time the recorder first "looks" for the data from the horn switch activation sensor or the horn sound sensor and the time it next takes that "look." Even a gap of a second, at main line track speeds, can yield an inaccurate, false record of when, exactly, or where, exactly, the horn was blown. The Working Group was provided an excellent presentation of these recording limitations at its meeting in Atlanta, Georgia, in May of 1998 by Rail Sciences, Incorporated. Further, emergency responders complain that automobile drivers with their windows up, radios on, and air conditioning on often do not react to the

sirens or air horns on fire trucks. The same situation exists when a railroad engineer blows his horn at an automobile starting across a crossing with too little time to clear. In addition, the locomotive horn is external to the cab of the locomotive, the effective operation of which may be diminished by snow, sleet, and other weather conditions.

With these limited benefits in mind, it is important to note that no commenter, other than AAR, provided any information or insight relating to the costs that any such requirement might entail. AAR indicated that the cost to monitor and record the actual sounding of the locomotive horn on either new or existing locomotives would be significant. AAR asserts, and FRA agrees, that the most significant cost would result from developing and maintaining the sensors required to monitor the actual sounding of the horn. As noted above, the locomotive horn is external to the cab of the locomotive thus, any sensor would also have to be mounted externally and would be subject to various external conditions. FRA believes that the costs related to the monitoring and recording of the actual sounding of the locomotive horn are not justified based on the limited benefits provided by such a requirement as discussed above. Thus, this final rule will retain the proposed requirement that the event recorder capture activation of the locomotive horn control handle but will not include an additional data element related to the actual sounding of the horn. FRA continues to believe that horn activation data will provide one tool, among many, in the investigation of railroad accidents and in the monitoring of equipment and the people who operate it. FRA again cautions that the use of the data for other purposes should be made only after fully considering the limited usefulness of such data as briefly discussed above. This provision reflects FRA's responsibility to implement 49 U.S.C. 20153. FRA notes that if railroads monitor and record the sounding of the locomotive horn voluntarily, then the data would need to be preserved pursuant to the provisions contained paragraph (e) of this final rule.

In its comments to the NPRM, the NTSB sought clarification of FRA's rationale for not including a requirement to record the wheel slip/slide alarm on freight locomotives similar to that contained in subparagraph (b)(4) for MU and DMU locomotives. FRA is requiring the recording of tractive effort. Moreover, there is no uniformity as to when wheel a slip/slide alarm is activated in the

freight industry. This is due to the fact that there is no consistency in how wheel slip/slide is measured and recorded. Thus, the data would not provide any useable, readily applicable information. In addition, the monitoring and recording of this data would impose an additional cost to the industry based on the uncontested information provided by AAR. Both the Working Group and the full RSAC recommended that a provision to record the wheel slip/slide alarm on freight locomotives was not necessary for the reasons noted above. FRA agrees with this recommendation and is not willing to impose an additional cost in order to capture data of limited value. FRA notes that if railroads monitor and record this information of their own volition, then the data would need to be preserved pursuant to the provisions contained paragraph (e) of this final rule.

Several commenters to the NPRM also suggested the need to require that video cameras of some type be mounted on the front of all locomotives and that the event recorder capture such recordings. While FRA acknowledges that there may be some benefit to requiring video cameras, FRA believes that consideration of such a requirement is outside the scope of this rulemaking proceeding. There is a variety of issues that would need to be explored, discussed, and researched related to the placement, content, use, retention, and cost of requiring such devices and retaining the recorded materials. FRA believes that the final rule stage of this proceeding is not the appropriate time or place to begin such considerations. FRA believes that a separate rulemaking proceeding would be required if the need and/or desire for such regulations were established. At the Working Group meeting and in their written comments, AAR and several of its member railroads stated their support of a separate rulemaking proceeding to consider the issues related to requiring video and locomotive cab recordings. AAR noted that it has established a video standards working group to address the development of industry environmental and technical standards. BLET stated that it would consider discussing these types of issues if the purpose of video standards is safety and not discipline of employees. NTSB also expressed its belief that video and cab recording issues need to be addressed by FRA and the industry. However, all of these parties agreed with FRA's position that the issues related to video and cab recordings should not and cannot be addressed in this rulemaking

proceeding without the issuance of a new NPRM.

Subparagraph (b)(4) contains the requirements for equipping new MU and DMU locomotives with event recorders having crashworthy memory modules and capable of recording various data elements similar to those required in subparagraph (b)(3). Thus, the discussions relating to the data elements contained in that subparagraph are equally applicable in this context. This subparagraph applies to any MU or DMU locomotive ordered one year from the effective date of this final rule or placed in service four years after the effective date of this final rule. Differences between subparagraphs (b)(3) and (b)(4) reflect the differences between freight locomotives and heavy electric commuter equipment, primarily in the particular brake application data required to be monitored and recorded.

Subparagraph (b)(5) retains the requirements proposed in the NPRM without change. FRA received no comments on this provision. This subparagraph requires that when a locomotive equipped with an event recorder is remanufactured, it must be equipped with a certified crashworthy event recorder memory module capable of capturing the same data as the recorder on the pre-remanufactured locomotive.

Subparagraph (b)(6) contains a new requirement not specifically proposed in the NPRM. A detailed discussion of the provision is included in the section-by-section analysis related to subparagraph (b)(1). In the NPRM, FRA sought comments or information from interested parties as to whether there was some future date, that would impose little or no cost burden to the industry, after which any event recorder that is replaced on an existing locomotive should be replaced with an event recorder containing a crashworthy memory module described in Appendix D of this rule. *See* 69 FR 39783.

At the Working Group meeting to discuss the comments to the NPRM, AAR, APTA and their member railroads suggested a date of January 1, 2010 as the date after which any replacement event recorder acquired must be equipped with a crashworthy memory module pursuant to Appendix D of this final rule. These parties claim that a provision drafted in such a manner would allow railroads to continue to acquire solid state event recorders for the immediate future and would allow railroads to deplete their in-stock event recorders without imposing any significant financial burden on the industry. The full RSAC included this date in its recommendation to FRA.

After reviewing the recommendation, FRA agrees that a cut-off date of January 1, 2010 for the purchase of newly manufactured event recorders without crashworthy memory modules is reasonable. FRA notes that this time frame is consistent with the elimination and replacement of event recorders utilizing magnetic tape as their recording medium discussed in subparagraph (b)(2) above.

Consequently, the final rule requires that any event recorder originally manufactured after January 1, 2010 and installed on a locomotive identified in this paragraph shall be an event recorder with a crashworthy memory module meeting the requirements of Appendix D of this final rule.

Paragraph (c) is retained as proposed in the NPRM. FRA received no comments on this provision in response to the NPRM. This paragraph contains the requirements relating to removing an event recorder from service. This paragraph is essentially the same as paragraph (c) of the existing regulation, modified for clarity and to reflect the specific equipment requirements in paragraph (b).

Paragraph (d) is retained as proposed in the NPRM. Essentially, this paragraph is the same as paragraph (b) of the existing regulation with slight modification for clarity. This paragraph makes clear that a locomotive on which the event recorder is removed from service may only remain as the lead locomotive until the next calendar day inspection is performed on the locomotive. FRA received comments from three parties related to this provision. These commenters suggested that no locomotive should be permitted to operate as a lead locomotive with a disabled or non-functioning event recorder. One commenter also recommended that if any required data element is not being recorded at the time of an incident, the railroad should be required to file a report with FRA addressing the condition and how it was corrected.

These comments were considered and discussed by the Working Group and the Working Group and the full RSAC recommended that no change in the proposed provision was necessary. FRA agrees with this recommendation. FRA believes that the provisions relating to the continued use of a locomotive with a defective event recorder for a short period of time recognize the realities of railroad operations. In many cases, changing locomotive power cannot be done instantaneously upon finding a defective condition. In addition, locomotive power is in limited supply and conservative utilization of that

resource is necessary to ensure effective railroad operations. Moreover, the handling of defective equipment provision retained in this paragraph has served FRA, NTSB, and the industry well for over a decade. FRA is not aware of any instance where use of this provision has resulted in the loss of any necessary data. Consequently, the final rule is retaining this paragraph as proposed in the NPRM.

One commenter suggested that FRA adopt a procedure into the regulation that would allow parties to file complaints with FRA regarding a railroad's non-compliance with the event recorder requirements and that each complaint should be required to be addressed within 30-days with written findings to the complainant. FRA believes such a provision is unnecessary. Any person or party with information regarding non-compliance with any of the federal regulations handled by FRA is free to contact any of FRA's regional offices or headquarters by letter, e-mail, telephone, or verbally to report such information. FRA investigates all credible complaints and provides specific feedback to the complainant when such feedback is requested. FRA sees no reason to place specific procedures into the event recorder regulations nor did the commenter provide any rationale for doing so.

Paragraph (e) contains the requirements relating to a railroad's duty to preserve locomotive event recorder data, or any other locomotive mounted recording devices that records information concerning the functioning of a locomotive or train when involved in an accident or incident required to be reported to FRA under 49 CFR part 225. Except for the period of time that such data must be preserved, discussed in detail below, the final rule retains the language proposed in the NPRM. This section combines and simplifies paragraphs (d) and (d)(1) of the existing event recorder regulation.

The current regulation allows a railroad after an accident, to "extract and analyze" data from the event recorder, if the railroad preserves "the original or a first-order accurate copy" of the data. Experience since the present event recorder rule became effective shows that the phrase "first-order accurate copy" is not easily understood by those first on scene at a derailment. First responders must primarily deal with wrecked equipment, the potential need for life-saving actions, and the ever-present danger—especially if hazardous materials are present—of fire, smoke, and explosion. FRA believes it has clarified the requirement. The final

rule retains the proposed language to permit a railroad to extract and analyze such data, provided the original downloaded data file, or an unanalyzed exact copy of it, is retained subject to the direction and control of FRA or the NTSB. In the case of microprocessor-based machines, the "original" copy of the data will not show any immediately prior downloads, while the "copies" may show that previous downloads have occurred. Certainly this is not a requirement to put a "marker," or some indication in the downloaded data to show the "order" in which multiple downloads were made; the final rule mandates that the original download be preserved for analysis by FRA or the NTSB.

The final rule also retains the current rule and proposed language that require efforts, "to the extent possible," and "to the extent consistent with safety," to preserve all the data stored in any locomotive-mounted recording device designed to record information concerning the functioning of the locomotive or train. FRA is well aware of the difficulty of performing field downloads of data retention devices not so designed; FRA is also aware that such downloads may be more dangerous, especially in an accident situation, than extracting the data from a crash-hardened event recorder memory module designed for easy field downloads. FRA's experience is that those who serve as the railroad's incident commanders are well schooled in safety and the preservation of life and property, and this agency is comfortable with the decisions they will make about the safety of entering a hostile atmosphere to gather knowledge about the dynamics immediately preceding an accident.

FRA received a number of comments relating to the provisions contained in this paragraph. These comments included recommendations for the following: Preserving such data for periods up to three years; providing exact copies of any downloaded data to local police to be made part of the accident report; permitting data to be downloaded only in the presence of a law enforcement officer; making software for analyzing data available to any individual or public entity; requiring local law enforcement personnel to record various information on the locomotive and person downloading the data; and notification of involved motorists and families by the railroad that event recorder data exists. The Working Group considered and discussed the concerns identified above. The Working Group recommended that because most event

recorder data downloads are stored on compact discs or hard drives there was not a significant burden in requiring retention of the data for a period of longer than 30 days. The Working Group believed that a period of one year was reasonable as this would ensure data was available for subsequent review if an accident or incident was not immediately investigated by FRA or NTSB. Therefore, the Working Group and the full RSAC recommended extending the time period for retaining the required data from the 30-days contained in the existing regulation to one year. FRA has accepted this recommendation and does not see a need to extend the preservation period beyond that time frame. Neither NTSB or FRA could articulate an instance where recorded data was determined to be needed or not needed more than one year of an accident reportable to FRA under part 225.

With regard to the other issues raised related to the preservation of recorded data, FRA agrees with the Working Group and RSAC recommendation to not alter the language proposed in the NPRM. The primary purpose of this provision is to ensure that data from event recorders and other locomotive mounted recording devices are retained for a sufficient amount of time to ensure that FRA and NTSB can accurately and effectively conduct accident investigations. The provision was never intended to serve as a platform for private litigants to obtain access to evidentiary materials. Although FRA recognizes the relevance and need for private parties to obtain this information, FRA believes there are sufficient legal processes by which private litigants can obtain access and ensure the veracity of the data required to be preserved in this provision. In Working Group discussions, NTSB noted that it does not permit observers in its facilities when data is being downloaded and that it does not have law enforcement personnel witness such downloading. NTSB does brief interested law enforcement personnel after the data is downloaded and analyzed. In addition, neither FRA nor NTSB could identify a circumstance where they experienced a problem in getting appropriate software from the involved railroad to conduct their analyses of event recorder data. Based on the intent of this provision and based upon FRA's and NTSB's experience in investigating accidents, FRA believes that it would be inappropriate to include the recommendations submitted by various commenters noted above.

Paragraph (f) retains the language proposed in the NPRM without change.

This paragraph explains the regulations relationship to other laws including state laws, NTSB authority, and the authority of the Secretary of Transportation. FRA received no comments on this provision in response to the NPRM. Identical language is contained in paragraph (d)(2) of the existing regulation and was merely separated in the NPRM and this final rule for purposes of clarity and ease of citation.

Paragraph (g) retains the language proposed in the NPRM without change. This paragraph explains the potential ramifications related to willfully disabling an event recorder or tampering with or altering the data recorded by such devices. BLET sought clarification as to whether the altering of brake algorithms, train consist data, or track profile data is covered by the tampering and disabling provisions contained in 49 CFR part 218. While part 218 only addresses the disabling of the actual device, if such an action alters or tampers with the data produced by the event recorder such action could be addressed by civil penalties under this paragraph directly or by an independent disqualification action under the procedures contained in 49 CFR part 209. Similar language is contained in paragraph (e) of the existing regulation.

Appendix B contains the schedule of civil penalties to be used in connection with part 229. Conforming changes are being made to the entries related to § 229.135 to reflect the changes made to that section by this final rule as discussed above.

Appendix D retains the proposed criteria for certification of an event recorder memory module (ERMM) as crashworthy. The elements contained in this appendix are the result of the collaborative efforts of a task group of the RSAC Event Recorder Working Group and were adopted by the full RSAC in its recommendation to FRA. FRA continues to agree with the recommendation of the full RSAC. This appendix establishes the general requirements, the testing sequence, and the required marking for memory modules certified by their manufacturers as crashworthy. This appendix also contains the performance criteria for survivability from fire, impact shock, crush, fluid immersion, and hydrostatic pressure.

The performance criteria contained in Section C of Appendix D are presented in two tables which represent alternative performance criteria under which an ERMM could be tested for crashworthiness. During the development of the NPRM the Working Group discussed and reviewed various performance criteria which some

manufacturers of event recorders began using in an effort to pre-qualify their ERMMs. Rather than penalizing these manufacturers by including only the performance criteria contained in Table 1, FRA also provides the performance criteria contained in Table 2 as an acceptable alternative. FRA expects that ERMMs built to Table 2 criteria would survive more extreme conditions than those built under Table 1. FRA is also advised by manufacturers that have already designed and tested Table 2 ERMMs that the incremental cost of event recorders built to those more rigorous criteria will be *less than* the incremental cost of Table 1 ERMMs (for which the differential associated with increased fire protection over the IEEE criteria is said to be the cost driver).

The performance criteria contained in Table 1 of this appendix are adapted from the Institute of Electrical and Electronics Engineers, Inc., IEEE Std 1482.1-1999, *IEEE Standard for Rail Transit Vehicle Event Recorders*. Virtually all of the criteria contained in this table are included in Section 4.5 of the above noted IEEE standard. FRA has slightly modified the fire criteria to make it consistent with the conditions an event recorder would encounter in actual operation. FRA increased the IEEE high temperature fire standard from 650 degrees Celsius to 750 degrees Celsius because the higher temperature is consistent with the temperature at which locomotive diesel fuel burns. FRA also did not include IEEE's penetration standard as FRA finds it unnecessary for purposes of an event recorder mounted inside a locomotive. Although FRA and the Working Group explored other performance criteria, FRA believes that the criteria contained in Table 1 are acceptable to the vast majority of the parties participating in and affected by this regulation, are a significant improvement over any existing crashworthiness standard, and will ensure the protection and retention of the necessary event recorder data when investigating virtually all railroad accidents involving locomotives equipped with event recorders. Several manufacturer's of event recorders noted that they currently manufacture or are capable of manufacturing a crashworthy ERMM consist with IEEE's standard. Furthermore, the NTSB indicated its potential acceptance of the criteria contained in Table 1 at the NPRM stage of this proceeding.

It should be noted that in its comments to the NPRM, the NTSB urged FRA to adopt the criteria contained in Table 2 of the proposal and phase-out the criteria contained in Table 1 over a period of time. Table 2 of this

appendix contains alternative performance criteria to those adapted from IEEE's standard. As discussed above, the performance criteria contained in Table 2 was included in the NPRM, and is being retained in this final rule, based on information received from a small number of manufacturers indicating that they were currently producing some crashworthy ERMMs based on the criteria contained in Table 2. Rather than penalize those manufacturer's that took the lead in developing crashworthy ERMMs, FRA believed and continues to believe that it is appropriate to include the criteria used by those manufacturer's in developing their ERMMs instead of requiring recertification of the modules under the criteria contained in Table 1. Although NTSB espoused its desire for the Table 2 criteria, it did not provide any cost estimates related to adopting those standards. Moreover, NTSB did not provide any examples or known incidents, other than fires fueled by a source other than diesel fuel, where the performance criteria contained in Table 1 would not be effective in preventing the destruction of necessary event recorder data. Furthermore, it was generally not the Working Group's, RSAC's, or FRA's intent to have the performance criteria contained in Table 2 serve as the regulatory standard. They were included primarily for the purpose of accommodating a small number of manufacturers currently producing ERMMs. Both Tables have benefits and FRA continues to believe that the performance criteria contained in Table 1 are the most cost effective standards available to the industry at this time.

Table 2 contains two options for meeting the Impact Shock performance criteria. When using Table 2 criteria, crashworthy ERMMs may utilize either the IEEE impact shock performance criteria or the impact shock criteria discussed by the Working Group. FRA continues to believe that either set of impact shock criteria is acceptable. FRA recognizes that the duration of the impact pulse contained Table 2 may be far more expensive to produce than that contained in the IEEE standard and that there are only a few testing laboratories capable of performing a test for that duration. FRA realizes that there is a trade-off between a higher impact value for a short duration as opposed to a lower impact pulse for a longer duration. FRA sees merit in both criteria and is not willing to espouse the benefits of either criterion over the other, and will permit the use of either criterion when testing the ERMM.

One commenter suggested that FRA consider whether standards related to

electromagnetic interference (EMI) should be included in the performance criteria. This commenter did not provide any information related to instances of such interference and did not suggest any criteria to address the issue. FRA and the Working Group did consider EMI effects on event recorders when developing the NPRM. Several parties made presentations to the Working Group on EMI at the January 27, 1999, meeting held in Washington, DC. The Working Group eventually decided against including any specific EMI related criteria in the regulation based on its determination that the issue was not a major concern in the area of locomotive event recorders if adequate shielding, cabling, gasketing, and grounding of the devices. The Working Group did not find any problems related to data corruption due to EMI issues. The Working Group reiterated this position when considering the comment to the NPRM. FRA is not aware and has not been provided any indication that EMI is a significant problem in the area of locomotive event recorders. FRA will continue to monitor this issue and take appropriate regulatory action should it become necessary. Consequently, FRA accepts the recommendation of the RSAC Working Group and is not including EMI-specific performance criteria in this final rule.

It should be noted that each set of criteria is a performance standard and FRA has not included any specific test procedures to achieve the required level of performance. Although FRA and the Working Group considered specific testing criteria, FRA continues to believe that it is not necessary to include specific testing criteria in this regulation. FRA did not receive any comments in response to the NPRM suggesting a need to include specific testing criteria. FRA also believes that the industry and the involved manufacturers are in the best position to determine the exact methods by which they will test for the specified performance parameters. It should be noted that the Working Group did consider the testing criteria contained in the following international standards: (1) The European Organization for Civil Aviation Equipment (EUROCAE), ED-55, *Minimum Operational Performance Specification for Flight Data Recorder System* (May 1990); (2) EUROCAE ED-56A, *Minimum Operational Requirement for Cockpit Voice Recorder System* (December 1993); and (3) The *Fluid Immersion Test Procedures* contained in the National Fire Protection Association's *Fire Protection Handbook*, 18th Edition. Although FRA

endorses the use of any of the above standards, FRA is not mandating their use at this time. Appendix D makes clear that any testing procedures employed by a manufacturer must be documented, recognized, and acceptable.

FRA wishes to inform all interested parties that they may obtain a copy of the standards noted in the above discussion through the following: (1) The EUROCAE standards may be obtained from The European Organization for Civil Aviation Equipment, 17, rue Hamelin, 75783 PARIS CEDEX 16, France; (2) the *Fire Protection Handbook*, 18th Edition, may be obtained from the National Fire Protection Association, 1 Batterymarch Park, PO Box 9101, Quincy, MA 02269-9101; and (3) the *IEEE Standard for Rail Transit Event Recorders*, IEEE Std 1482.1-1999, may be obtained from The Institute of Electrical and Electronics Engineers, Inc., 345 East 47th Street, New York, NY 10017-2394. Interested parties may also inspect a copy of any of these materials during normal business hours at the Federal Railroad Administration, Docket Clerk, Suite 7000, 1120 Vermont Avenue, NW., Washington DC 20590.

Section E of appendix D retains the proposed testing exception for new model crashworthy ERMMs that represent an evolution or upgrade of an older model ERMM meeting the performance criteria contained in this appendix. FRA has included this exception based on its determination that there is no reason to subject a new model ERMM to the proposed testing where no material change has been made to the unit that would impact any of the performance criteria. For example, if a memory chip is modified but the remainder of the box is left unchanged, there would likely be no reason to subject the unit to all or any of the required tests. In this example, the only performance criteria, if any, potentially affected might be the fire standard. This section makes clear that the new model ERMM need only be tested for compliance with those performance criteria contained in Section C of appendix D that are potentially affected by the upgrade or modification. FRA will consider a performance criterion to not be potentially affected if a preliminary engineering analysis or other pertinent data establishes that the modification or upgrade will not affect the crashworthy performance criteria established by the older model ERMM. The provision requires the manufacturer to retain and make available to FRA upon request any analysis or data relied upon to make a

determination relating to the crashworthiness impacts of any upgrade or modification to an older model ERMM.

V. Regulatory Impact and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of this rule. Document inspection and copying facilities are available at the Department of Transportation Central Docket Management Facility located in Room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Access to the docket may also be obtained electronically through the Web site for the DOT Docket Management System at <http://dms.dot.gov>. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590; please refer to Docket No. FRA-2003-16357.

Event recorders have successfully improved the safety of rail operations by monitoring railroad operations and by capturing the pre-accident inputs to the train control. This impartial collection of data has improved the ability of the railroads and the railroad operating employees, the ability of the railroads and governmental agencies to investigate accidents, and the ability of FRA and the States to regulate railroad operations. These contributions have, in turn, tended to reduce the number and severity of incidents, accidents, and resulting damage and casualties. The higher standards contained in this final rule can be expected to produce even greater safety progress. Therefore, dilution of the existing standards or rejection of the higher standards contained in this final rule would create the potential for an increase in property

damage, injuries, and fatalities resulting from rail accidents.

The Regulatory Impact Analysis (RIA) developed in connection with this final rule uses a break-even analysis approach to assessing the monetary impacts and safety benefits of this proposal. This approach is appropriate for this particular rule because event recorders do not directly prevent accidents. Event recorders may indirectly prevent future accidents by allowing for in-depth accident causation analysis to take place using complete information, thereby allowing accurate causation determinations, and the development of appropriate and effective countermeasures. Because event recorders also allow the railroad to monitor train handling performance and rules compliance in a widespread and economical way, FRA believes that event recorders might have the potential of increasing skillful train handling and encouraging rules compliance. The extent of the event recorders' contribution to accident analyses, train handling, and rules compliance is somewhat open to interpretation and argument. FRA is not in a position to claim a particular degree of improvement in these areas from event recorders. Therefore, the RIA simply states the level of effectiveness (avoided accidents, etc.) that event recorders would have to reach such that the cost of the final rule would be "paid for" by the benefits expected to be achieved. It should be noted that the accident figures used in FRA's analysis do not include the costs of environmental cleanup or evacuations related to human factor caused accidents.

FRA expects that overall the rule will not impose a significant additional cost on the rail industry over the next twenty years. FRA believes it is reasonable to expect that several accidents, injuries, and fatalities will be avoided as a result of implementing this proposed rule. FRA believes that this safety benefit alone justifies the measures contained in this final rule. FRA also believes that the safety of rail operations will be compromised if this rule is not implemented. The RIA indicates that an accident reduction of approximately 2 percent (2%) annually during the first

twenty years "breaks-even" with the expected costs of the final rule. In FRA's judgement this level of Human Factor Accident reduction is clearly achievable, and is likely to be exceeded. This is all the more likely if one or more of the accidents prevented is a passenger train accident. Passenger train accidents usually have more casualties than other types of train accidents, just based on the fact that more people are exposed to the dangers and damages of the accident. Also, those types of accidents tend to be much more disastrous than a typical freight train accident, such as a derailment or an accident that does not involve hazardous materials, thus costing much more than the assigned average value of a human factor accident.

Although FRA believes this final rule is justified by safety benefits alone, the addition of clear and substantial business benefits makes the final rule obviously justified. For example, the estimated savings resulting from just the proposed requirement of the floating year approach to the inspection period is a total 20-year benefit of approximately \$1.2 million. In addition to this quantified business benefit there are other benefits which may result from this final rule that are not quantified in the RIA. For example, the quality and quantity of information gained by recorded data resulting in increased knowledge of train handling and pre-accident inputs (events occurring just prior to impact which may have contributed to the cause) and the public perception that the railroads offer higher levels of safety and efficiency are not easily quantified benefits.

The following table presents estimated twenty-year *monetary* impacts associated with the new requirement for crashworthy event recorders. The table contains the estimated costs and benefits associated with this final rule and provides the total 20-year value as well as the 20-year net present value (NPV) for each indicated item. The dollar amounts presented in this table have been rounded to the nearest thousand. For exact estimates, interested parties should consult the RIA that has been made part of the docket in this proceeding.

| Description | 20-year total | 20-year NPV |
|----------------------------------------------|-------------------|-------------------|
| Costs: | | |
| Replacement of Magnetic Tape Recorders | \$6,310,000 | \$5,272,000 |
| Crashworthy ERMM no new parameters | 558,000 | 296,000 |
| Crashworthy ERMM new parameters | 16,494,000 | 8,706,000 |
| Maintenance/Inspections | 16,107,000 | 8,281,000 |
| Preservation of Data | 124,000 | 66,000 |
| Total Costs | 39,593,000 | 22,621,000 |

| Description | 20-year total | 20-year NPV |
|-----------------------------------------------------------------------------------|---------------|-------------|
| Benefits: | | |
| Safety: Reduction of Human Factor accidents and injuries (2% effectiveness) | 42,808,000 | 22,675,000 |
| Business: Magnetic tape inspection savings | 1,751,000 | 1,201,000 |
| Total Benefits | 44,559,000 | 23,876,000 |

Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 13272 require a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket an Analysis of Impact on Small Entities (AISE) that assesses the small entity impact of this final rule. Document inspection and copying facilities are available at the Department of Transportation Central Docket Management Facility located in Room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Docket material is also available for inspection on the Internet at <http://dms.dot.gov>. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590; please refer to Docket No. FRA-2003-16357.

“Small entity” is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a “small entity” in the railroad industry is a railroad business “line-haul operation” that has fewer than 1,500

employees and a “switching and terminal” establishment with fewer than 500 employees. SBA’s “size standards” may be altered by Federal agencies, in consultation with SBA and in conjunction with public comment.

Pursuant to that authority FRA has published a final statement of agency policy that formally establishes “small entities” as being railroads that meet the line-haulage revenue requirements of a Class III railroad. See 68 FR 24891 (May 9, 2003). Currently, the revenue requirements are \$20 million or less in annual operating revenue. The \$20 million limit is based on the Surface Transportation Board’s (STB’s) threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment (49 CFR part 1201). The same dollar limit on revenues is established to determine whether a railroad, shipper, or contractor is a small entity. FRA uses this alternative definition of “small entity” for this rulemaking.

The AISE developed in connection with this final rule concludes that this rule would not have a significant economic impact on a substantial number of small entities. Thus, FRA certifies that this final rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act or Executive Order 13272.

While about 645 of the approximately 700 railroads operating in the United

States are considered small businesses by FRA, this final rule would only apply to railroads that operate passenger or freight trains at speeds greater than 30 mph. Most Class III railroads do not conduct operations at top speeds of greater than 30 mph thus, FRA believes that the vast majority of small railroads would not be impacted by the final rule. Further, most small railroads own older locomotives and, thus, would not be affected by the new equipment requirements of this rule. FRA estimates that approximately only 350 locomotives operated by these smaller railroads would be affected by the provisions contained in this final rule. The AISE associated with this rule estimates that the economic impact on these operations will have a NPV of less than \$ 400,000 over a 20-year period. Representatives of small railroads participated in the RSAC discussion that provided the basis for this final rule.

Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

| CFR section | Respondent universe (railroads) | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|----------------------------------------------------------------------------------------|---------------------------------|------------------------|---------------------------|---------------------------|--------------------------|
| 229.9—Movement of Non-complying Locomotives. | 744 | 21,000 tags | 1 minute | 350 | \$12,950 |
| 229.17—Accident Reports | 744 | 1 report | 15 minutes | .25 | 11 |
| 229.21—Daily Inspection—MU Locomotives; Written Reports. | 744 | 5,655,000 rcds. | 1 or 3 minutes | 189,583 | 8,341,652 |
| Form FRA F 6180.49A Locomotive Insp/Repair Rcd. | 744 | 250 reports | 3 minutes | 13 | 572 |
| 210.31—Locomotive Noise Emission Test. | 744 | 7,250 forms | 2 minutes | 242 | 8,954 |
| 229.23/229.27/229.29/229.31—Periodic Inspection/Annual Biennial Tests/Main Res. Tests. | 744 | 100 tests/remarks | 15 minutes | 25 | 925 |
| 229.23/229.27/229.29/229.31—Periodic Inspection/Annual Biennial Tests/Main Res. Tests. | 744 | 87,000 tests | 8 hours | 696,000 | 25,752,000 |
| 229.33—Out-of Use Credit | 744 | 500 notations | 5 minutes | 42 | 1,554 |
| 229.25(1)—Test: Every Periodic Insp.—Written Copies of Instruction. | 744 | 200 amendments | 15 minutes | 50 | 1,700 |
| 229.25(2)—Duty Verification Read-out Record. | 744 | 4,025 records | 90 minutes | 6,038 | 181,140 |

| CFR section | Respondent universe (railroads) | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|--------------------------------------------------------------|---------------------------------|--------------------------|---------------------------|---------------------------|----------------------------|
| 229.25(3)—Pre-Maintenance Test—Failures. | 744 | 700 notations | 30 minutes | 350 | 10,500 |
| 229.135(A.)—Removal From Service. | 744 | 1,000 tags | 1 minute | 17 | 629 |
| 229.135(B.)—Preserving Accident Data. | 744 | 2,800 reports | 15 minutes | 700 | 23,800 |
| NEW REQUIREMENTS: | | | | | |
| 229.27—Annual Tests | 744 | 700 test records ... | 90 minutes | 1,050 | 31,500 |
| 229.135(b)(1) & (2)—Equipment Rqmnts.—Mag Tape Replacements. | 744 | 850 Cert. Mem Modules. | 2 hours + 200 hours. | 1,900 | Included in Rule Reg Eval. |
| 229.135(b)(3)—Equipment Rqmnts.—Lead Locomotives. | 744 | 600 Cert. Mem Modules. | 2 hours | 1,200 | Included in Rule Reg Eval. |
| 229.135(b)(4)—Equipment Rqmnts.—MU Locomotives. | 744 | 255 Cert. Mem Modules. | 2 hours | 510 | Included in Rule Reg Eval. |
| 229.135(b)(5)—Equipment Rqmnts.—Other Locomotives. | 744 | 1,000 Cert. Mem Modules. | 2 hours | 2,000 | Included in Rule Reg Eval. |

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB contact Robert Brogan at 202-493-6292.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of this final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Federalism Implications

FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132, issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. See 64 FR 43255. This final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. This final rule will not have federalism implications that impose any direct compliance costs on State and local governments.

FRA notes that the RSAC, which endorsed and recommended this final rule to FRA, has as permanent members two organizations representing State and local interests: the American Association of State Highway and Transportation Officials (AASHTO) and the Association of State Rail Safety Managers (ASRSM). Both of these State organizations concurred with the RSAC recommendation endorsing this final rule. The RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members. To date, FRA has received no indication of concerns about the Federalism implications of this rulemaking from these representatives or of any other representatives of State government. Consequently, FRA concludes that this final rule has no federalism implications, other than the preemption of state laws covering the subject matter of this final rule, which occurs by operation of law under 49 U.S.C. 20106 whenever FRA issues a rule or order.

Environmental Impact

FRA has evaluated this regulation in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures.

64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows:

(c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded:
* * *

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this final rule is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted

annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. The final rule will not result in the expenditure, in the aggregate, of \$100,000,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

Privacy Act

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket 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>.

List of Subjects in 49 CFR Part 229

Accident investigation, Data preservation, Event recorders, Locomotives, National Transportation Safety Board, Penalties, Railroad safety, Railroads, Reporting and recordkeeping requirements.

The Rule

■ For the reasons discussed in the preamble, the Federal Railroad Administration amends part 229 of chapter II, subtitle B of Title 49, Code of Federal Regulations, as follows:

PART 229—[AMENDED]

■ 1. The authority citation for part 229 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20137-38, 20143, 20701-03, 21301-02, 21304; 28 U.S.C. 2401, note; and 49 CFR 1.49(c), (m).

■ 2. Section 229.5 is revised to read as follows:

§ 229.5 Definitions.

As used in this part—

Break means a fracture resulting in complete separation into parts.

Cab means that portion of the superstructure designed to be occupied by the crew operating the locomotive.

Carrier means *railroad*, as that term is in this section.

Commuter service means the type of railroad service described under the heading "Commuter Operations" in 49 CFR part 209, Appendix A.

Commuter work train is a non-revenue service train used in the administration and upkeep service of a commuter railroad.

Control cab locomotive means a locomotive without propelling motors but with one or more control stands.

Controlling remote distributed power locomotive means the locomotive in a distributed power consist that receives the coded signal from the lead locomotive consist of the train whether commanded automatically by the distributed power system or manually by the locomotive engineer.

Crack means a fracture without complete separation into parts, except that castings with shrinkage cracks or hot tears that do not significantly diminish the strength of the member are not considered to be cracked.

Cruise control means a device that controls locomotive power output to obtain a targeted speed. A device that functions only at or below 30 miles per hour is NOT considered a "cruise control" for purposes of this part.

Data element means one or more data point or value reflecting on-board train operations at a particular time. Data may be actual or "passed through" values or may be derived from a combination of values from other sources.

Dead locomotive means—

(1) A locomotive, other than a control cab locomotive, that does not have any traction device supplying tractive power; or

(2) A control cab locomotive that has a locked and unoccupied cab.

Distributed power system means a system that provides control of a number of locomotives dispersed throughout a train from a controlling locomotive located in the lead position. The system provides control of the rearward locomotives by command signals originating at the lead locomotive and transmitted to the remote (rearward) locomotives.

DMU locomotive means a diesel-powered multiple unit operated locomotive with one or more propelling motors designed to carry passenger traffic.

Electronic air brake means a brake system controlled by a computer which provides the means for control of the locomotive brakes or train brakes or both.

Event recorder means a device, designed to resist tampering, that monitors and records data, as detailed in § 229.135(b), over the most recent 48 hours of operation of the electrical system of the locomotive on which the device is installed. However, a device, designed to resist tampering, that monitors and records the specified data only when the locomotive is in motion meets this definition if the device was installed prior to November 5, 1993 and if it records the specified data for the last eight hours the locomotive was in motion.

Event recorder memory module means that portion of the event recorder used to retain the recorded data as detailed in § 229.135(b).

High voltage means an electrical potential of more than 150 volts.

In-service event recorder means an event recorder that was successfully tested as prescribed in § 229.27(d) and whose subsequent failure to operate as intended, if any, is not actually known by the railroad operating the locomotive on which it is installed.

Lead locomotive means the first locomotive proceeding in the direction of movement.

Lite locomotive means a locomotive or a consist of locomotives not attached to any piece of equipment or attached only to a caboose.

Locomotive means a piece of on-track equipment other than hi-rail, specialized maintenance, or other similar equipment—

(1) With one or more propelling motors designed for moving other equipment;

(2) With one or more propelling motors designed to carry freight or passenger traffic or both; or

(3) Without propelling motors but with one or more control stands.

Mandatory directive means any movement authority or speed restriction that affects a railroad operation.

Modesty lock means a latch that can be operated in the normal manner only from within the sanitary compartment, that is designed to prevent entry of another person when the sanitary compartment is in use. A modesty lock may be designed to allow deliberate forced entry in the event of an emergency.

MU locomotive means a multiple unit operated electric locomotive—

(1) With one or more propelling motors designed to carry freight or passenger traffic or both; or

(2) Without propelling motors but with one or more control stands.

Other short-haul passenger service means the type of railroad service described under the heading “Other short-haul passenger service” in 49 CFR part 209, Appendix A.

Potable water means water that meets the requirements of 40 CFR part 141, the Environmental Protection Agency’s Primary Drinking Water Regulations, or water that has been approved for drinking and washing purposes by the pertinent state or local authority having jurisdiction. For purposes of this part, commercially available, bottled drinking water is deemed potable water.

Powered axle is an axle equipped with a traction device.

Railroad means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including:

(1) Commuter or other short-haul rail passenger service in a metropolitan or suburban area, and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Remanufactured locomotive means a locomotive rebuilt or refurbished from a previously used or refurbished underframe (“deck”), containing fewer than 25 percent previously used components (weighted by dollar value of the components).

Sanitary means lacking any condition in which any significant amount of filth, trash, or human waste is present in such a manner that a reasonable person would believe that the condition might constitute a health hazard; or of strong, persistent, chemical or human waste odors sufficient to deter use of the facility, or give rise to a reasonable concern with respect to exposure to

hazardous fumes. Such conditions include, but are not limited to, a toilet bowl filled with human waste, soiled toilet paper, or other products used in the toilet compartment, that are present due to a defective toilet facility that will not flush or otherwise remove waste; visible human waste residue on the floor or toilet seat that is present due to a toilet that overflowed; an accumulation of soiled paper towels or soiled toilet paper on the floor, toilet facility, or sink; an accumulation of visible dirt or human waste on the floor, toilet facility, or sink; and strong, persistent chemical or human waste odors in the compartment.

Sanitation compartment means an enclosed compartment on a railroad locomotive that contains a toilet facility for employee use.

Self-monitoring event recorder means an event recorder that has the ability to monitor its own operation and to display an indication to the locomotive operator when any data required to be stored are not stored or when the stored data do not match the data received from sensors or data collection points.

Serious injury means an injury that results in the amputation of any appendage, the loss of sight in an eye, the fracture of a bone, or confinement in a hospital for a period of more than 24 consecutive hours.

Switching service means the classification of railroad freight and passenger cars according to commodity or destination; assembling cars for train movements; changing the position of cars for purposes of loading, unloading, or weighing; placing locomotives and cars for repair or storage; or moving rail equipment in connection with work service that does not constitute a train movement.

Throttle position means any and all of the discrete output positions indicating the speed/tractive effort characteristic requested by the operator of the locomotive on which the throttle is installed. Together, the discrete output positions shall cover the entire range of possible speed/tractive effort characteristics. If the throttle has continuously variable segments, the event recorder shall capture either:

(1) The exact level of speed/tractive effort characteristic requested, on a scale of zero (0) to one hundred percent (100%) of the output variable or

(2) A value converted from a percentage to a comparable 0 to 8 digital signal.

Time means either “time-of-day” or “elapsed time” (from an arbitrarily determined event) as determined by the manufacturer. In either case, the recorder must be able to convert to an

accurate time-of-day with the time zone stated unless it is Greenwich mean time (UTC).

Toilet facility means a system that automatically or on command of the user removes human waste to a place where it is treated, eliminated, or retained such that no solid or non-treated liquid waste is thereafter permitted to be released into the bowl, urinal, or room and that prevents harmful discharges of gases or persistent offensive odors.

Transfer service means a freight train that travels between a point of origin and a point of final destination not exceeding 20 miles and that is not performing switching service.

Unsanitary means having any condition in which any significant amount of filth, trash, or human waste is present in such a manner that a reasonable person would believe that the condition might constitute a health hazard; or strong, persistent, chemical or human waste odors sufficient to deter use of the facility, or give rise to a reasonable concern with respect to exposure to hazardous fumes. Such conditions include, but are not limited to, a toilet bowl filled with human waste, soiled toilet paper, or other products used in the toilet compartment, that are present due to a defective toilet facility that will not flush or otherwise remove waste; visible human waste residue on the floor or toilet seat that is present due to a toilet that overflowed; an accumulation of soiled paper towels or soiled toilet paper on the floor, toilet facility, or sink; an accumulation of visible dirt or human waste on the floor, toilet facility, or sink; and strong, persistent chemical or human waste odors in the compartment.

Washing system means a system for use by railroad employees to maintain personal cleanliness that includes a secured sink or basin, water, antibacterial soap, and paper towels; or antibacterial waterless soap and paper towels; or antibacterial moist towelettes and paper towels; or any other combination of suitable antibacterial cleansing agents.

■ 3. Section 229.25 is amended by revising paragraph (e) to read as follows:

§ 229.25 Tests: Every periodic inspection.

* * * * *

(e) *Event recorder*. A microprocessor-based self-monitoring event recorder, if installed, is exempt from periodic inspection under paragraphs (e)(1) through (e)(5) of this section and shall be inspected annually as required by § 229.27(d). Other types of event recorders, if installed, shall be

inspected, maintained, and tested in accordance with instructions of the manufacturer, supplier, or owner thereof and in accordance with the following criteria:

(1) A written or electronic copy of the instructions in use shall be kept at the point where the work is performed and a hard-copy version, written in the English language, shall be made available upon request of a governmental agent empowered to request it.

(2) The event recorder shall be tested before any maintenance work is performed on it. At a minimum, the event recorder test shall include cycling, as practicable, all required recording elements and determining the full range of each element by reading out recorded data.

(3) If the pre-maintenance test does not reveal that the device is recording all the specified data and that all recordings are within the designed recording elements, this fact shall be noted, and maintenance and testing shall be performed as necessary until a subsequent test is successful.

(4) When a successful test is accomplished, a copy of the data-verification results shall be maintained in any medium with the maintenance records for the locomotive until the next one is filed.

(5) A railroad's event recorder periodic maintenance shall be considered effective if 90 percent of the recorders on locomotives inbound for periodic inspection in any given calendar month are still fully functional; maintenance practices and test intervals shall be adjusted as necessary to yield effective periodic maintenance.

■ 4. Section 229.27 is amended by revising the introductory text and by adding a new paragraph (d) to read as follows:

§ 229.27 Annual tests.

A locomotive, except for a DMU or MU locomotive, shall be subjected to the tests and inspections prescribed in paragraphs (a), (b), and (c) of this section. A DMU locomotive or an MU locomotive shall be subjected to the tests and inspections prescribed in paragraphs (b) and (c) of this section. A locomotive, including a DMU locomotive or an MU locomotive, equipped with a microprocessor-based event recorder that includes a self-monitoring feature, shall be subjected to the tests and inspections prescribed in paragraph (d) of this section. All testing under this section shall be performed at intervals that do not exceed 368 calendar days.

* * * * *

(d) A microprocessor-based event recorder with a self-monitoring feature equipped to verify that all data elements required by this part are recorded, requires further maintenance only if either or both of the following conditions exist:

(1) The self-monitoring feature displays an indication of a failure. If a failure is displayed, further maintenance and testing must be performed until a subsequent test is successful. When a successful test is accomplished, a record, in any medium, shall be made of that fact and of any maintenance work necessary to achieve the successful result. This record shall be available at the location where the locomotive is maintained until a record of a subsequent successful test is filed.

(2) A download of the event recorder, taken within the preceding 30 days and reviewed for the previous 48 hours of locomotive operation, reveals a failure to record a regularly recurring data element or reveals that any required data element is not representative of the actual operations of the locomotive during this time period. If the review is not successful, further maintenance and testing shall be performed until a subsequent test is successful. When a successful test is accomplished, a record, in any medium, shall be made of that fact and of any maintenance work necessary to achieve the successful result. This record shall be kept at the location where the locomotive is maintained until a record of a subsequent successful test is filed. The download shall be taken from information stored in the certified crashworthy crash hardened event recorder memory module if the locomotive is so equipped.

■ 5. Section 229.135 is revised to read as follows:

§ 229.135 Event recorders.

(a) *Duty to equip and record.* Except as provided in paragraphs (c) and (d) of this section, a train operated faster than 30 miles per hour shall have an in-service event recorder, of the type described in paragraph (b) of this section, in the lead locomotive. The presence of the event recorder shall be noted on Form FRA F6180-49A (by writing the make and model of event recorder with which the locomotive is equipped) under the REMARKS section, except that an event recorder designed to allow the locomotive to assume the lead position only if the recorder is properly functioning is not required to have its presence noted on Form FRA F6180-49A. For the purpose of this section, "train" includes a locomotive or group of locomotives with or without

cars. The duty to equip the lead locomotive may be met with an event recorder located elsewhere than the lead locomotive provided that such event recorder monitors and records the required data as though it were located in the lead locomotive. The event recorder shall record the most recent 48 hours of operation of the electrical system of the locomotive on which it is installed.

(b) *Equipment requirements.* Event recorders shall monitor and record data elements required by this paragraph with at least the accuracy required of the indicators displaying any of the required elements to the engineer.

(1) A lead locomotive originally ordered before October 1, 2006, and placed in service before October 1, 2009, including a controlling remote distributed power locomotive, a lead manned helper locomotive, a DMU locomotive, and an MU locomotive, except as provided in paragraphs (c) and (d) of this section, shall have an in-service event recorder that records the following data elements:

- (i) Train speed;
- (ii) Selected direction of motion;
- (iii) Time;
- (iv) Distance;
- (v) Throttle position;
- (vi) Applications and operations of the train automatic air brake;
- (vii) Applications and operations of the independent brake;
- (viii) Applications and operations of the dynamic brake, if so equipped; and
- (ix) Cab signal aspect(s), if so equipped and in use.

(2) A locomotive originally manufactured before October 1, 2006, and equipped with an event recorder that uses magnetic tape as its recording medium shall have the recorder removed from service on or before October 1, 2009 and replaced with an event recorder with a certified crashworthy event recorder memory module that meets the requirements of Appendix D of this part and that records at least the same number of data elements as the recorder it replaces.

(3) A lead locomotive, a lead manned helper locomotive, and a controlling remotely distributed power locomotive, other than a DMU or MU locomotive, originally ordered on or after October 1, 2006 or placed in service on or after October 1, 2009, shall be equipped with an event recorder with a certified crashworthy event recorder memory module that meets the requirements of Appendix D of this part. The certified event recorder memory module shall be mounted for its maximum protection. (Although other mounting standards may meet this standard, an event

recorder memory module mounted behind and below the top of the collision posts and above the platform level is deemed to be mounted "for its maximum protection.") The event recorder shall record, and the certified crashworthy event recorder memory module shall retain, the following data elements:

- (i) Train speed;
- (ii) Selected direction of motion;
- (iii) Time;
- (iv) Distance;
- (v) Throttle position;
- (vi) Applications and operations of the train automatic air brake, including emergency applications. The system shall record, or provide a means of determining, that a brake application or release resulted from manipulation of brake controls at the position normally occupied by the locomotive engineer. In the case of a brake application or release that is responsive to a command originating from or executed by an on-board computer (e.g., electronic braking system controller, locomotive electronic control system, or train control computer), the system shall record, or provide a means of determining, the involvement of any such computer;
- (vii) Applications and operations of the independent brake;
- (viii) Applications and operations of the dynamic brake, if so equipped;
- (ix) Cab signal aspect(s), if so equipped and in use;
- (x) End-of-train (EOT) device loss of communication front to rear and rear to front;
- (xi) Electronic controlled pneumatic braking (ECP) message (and loss of such message), if so equipped;
- (xii) EOT armed, emergency brake command, emergency brake application;
- (xiii) Indication of EOT valve failure;
- (xiv) EOT brake pipe pressure (EOT and ECP devices);
- (xv) EOT marker light on/off;
- (xvi) EOT "low battery" status;
- (xvii) Position of on/off switch for headlights on lead locomotive;
- (xviii) Position of on/off switch for auxiliary lights on lead locomotive;
- (xix) Horn control handle activation;
- (xx) Locomotive number;
- (xxi) Locomotive automatic brake valve cut in;
- (xxii) Locomotive position in consist (lead or trail);
- (xxiii) Tractive effort;
- (xxiv) Cruise control on/off, if so equipped and in use; and
- (xxv) Safety-critical train control data routed to the locomotive engineer's display with which the engineer is required to comply, specifically including text messages conveying mandatory directives, and maximum

authorized speed. The format, content, and proposed duration for retention of such data shall be specified in the product safety plan submitted for the train control system under subpart H of part 236 of this chapter, subject to FRA approval under this paragraph. If it can be calibrated against other data required by this part, such train control data may, at the election of the railroad, be retained in a separate certified crashworthy memory module.

(4) A DMU locomotive and an MU locomotive originally ordered on or after October 1, 2006 or placed in service on or after October 1, 2009, shall be equipped with an event recorder with a certified crashworthy event recorder memory module that meets the requirements of Appendix D of this part. The certified event recorder memory module shall be mounted for its maximum protection. (Although other mounting standards may meet this standard, an event recorder memory module mounted behind the collision posts and above the platform level is deemed to be mounted "for its maximum protection.") The event recorder shall record, and the certified crashworthy event recorder memory module shall retain, the following data elements:

- (i) Train speed;
- (ii) Selected direction of motion;
- (iii) Time;
- (iv) Distance;
- (v) Throttle position;
- (vi) Applications and operations of the train automatic air brake, including emergency applications. The system shall record, or provide a means of determining, that a brake application or release resulted from manipulation of brake controls at the position normally occupied by the locomotive engineer. In the case of a brake application or release that is responsive to a command originating from or executed by an on-board computer (e.g., electronic braking system controller, locomotive electronic control system, or train control computer), the system shall record, or provide a means of determining, the involvement of any such computer;
- (vii) Applications and operations of the independent brake, if so equipped;
- (viii) Applications and operations of the dynamic brake, if so equipped;
- (ix) Cab signal aspect(s), if so equipped and in use;
- (x) Emergency brake application(s);
- (xi) Wheel slip/slide alarm activation (with a property-specific minimum duration);
- (xii) Lead locomotive headlight activation switch on/off;
- (xiii) Lead locomotive auxiliary lights activation switch on/off;

- (xiv) Horn control handle activation;
- (xv) Locomotive number;
- (xvi) Locomotive position in consist (lead or trail);
- (xvii) Tractive effort;
- (xviii) Brakes apply summary train line;
- (xix) Brakes released summary train line;
- (xx) Cruise control on/off, if so equipped and used; and
- (xxi) Safety-critical train control data routed to the locomotive engineer's display with which the engineer is required to comply, specifically including text messages conveying mandatory directives, and maximum authorized speed. The format, content, and proposed duration for retention of such data shall be specified in the product safety plan submitted for the train control system under subpart H of part 236 of this chapter, subject to FRA approval under this paragraph. If it can be calibrated against other data required by this part, such train control data may, at the election of the railroad, be retained in a separate certified crashworthy memory module.

(5) A locomotive equipped with an event recorder that is remanufactured, as defined in this part, on or after October 1, 2007, shall be equipped with an event recorder with a certified crashworthy event recorder memory module that meets the requirements of Appendix D to this part and is capable of recording, at a minimum, the same data as the recorder that was on the locomotive before it was remanufactured.

(6) An event recorder originally manufactured after January 1, 2010, that is installed on any locomotive identified in paragraph (b)(1) of this section shall be an event recorder with a certified crashworthy event recorder memory module that meets the requirements of Appendix D to this part and that is capable of recording, at a minimum, the same data as the event recorder that was previously on the locomotive.

(c) *Removal from service.* Notwithstanding the duty established in paragraph (a) of this section to equip certain locomotives with an in-service event recorder, a railroad may remove an event recorder from service and, if a railroad knows that an event recorder is not monitoring or recording required data, shall remove the event recorder from service. When a railroad removes an event recorder from service, a qualified person shall record the date that the device was removed from service on Form FRA F6180-49A, under the REMARKS section, unless the event recorder is designed to allow the locomotive to assume the lead position

only if the recorder is properly functioning.

(d) *Response to defective equipment.* Notwithstanding the duty established in paragraph (a) of this section to equip certain locomotives with an in-service event recorder, a locomotive on which the event recorder has been taken out of service as provided in paragraph (c) of this section may remain as the lead locomotive only until the next calendar-day inspection. A locomotive with an inoperative event recorder is not deemed to be in improper condition, unsafe to operate, or a non-complying locomotive under §§ 229.7 and 229.9, and, other than the requirements of Appendix D of this part, the inspection, maintenance, and testing of event recorders are limited to the requirements set forth in §§ 229.25(e) and 229.27(d).

(e) *Preserving accident data.* If any locomotive equipped with an event recorder, or any other locomotive-mounted recording device or devices designed to record information concerning the functioning of a locomotive or train, is involved in an accident/incident that is required to be

reported to FRA under part 225 of this chapter, the railroad that was using the locomotive at the time of the accident shall, to the extent possible, and to the extent consistent with the safety of life and property, preserve the data recorded by each such device for analysis by FRA. This preservation requirement permits the railroad to extract and analyze such data, provided the original downloaded data file, or an unanalyzed exact copy of it, shall be retained in secure custody and shall not be utilized for analysis or any other purpose except by direction of FRA or the National Transportation Safety Board. This preservation requirement shall expire one (1) year after the date of the accident unless FRA or the Board notifies the railroad in writing that the data are desired for analysis.

(f) *Relationship to other laws.* Nothing in this section is intended to alter the legal authority of law enforcement officials investigating potential violation(s) of State criminal law(s), and nothing in this chapter is intended to alter in any way the priority of National Transportation Safety Board investigations under 49 U.S.C. 1131 and

1134, nor the authority of the Secretary of Transportation to investigate railroad accidents under 49 U.S.C. 5121, 5122, 20107, 20111, 20112, 20505, 20702, 20703, and 20902.

(g) *Disabling event recorders.* Except as provided in paragraph (c) of this section, any individual who willfully disables an event recorder is subject to civil penalty and to disqualification from performing safety-sensitive functions on a railroad as provided in § 218.55 of this chapter, and any individual who tampers with or alters the data recorded by such a device is subject to a civil penalty as provided in appendix B of part 218 of this chapter and to disqualification from performing safety-sensitive functions on a railroad if found unfit for such duties under the procedures in part 209 of this chapter.

■ 6. Appendix B to part 229 is amended by revising the entry for § 229.135 to read as follows and the text of footnote 1 remains unchanged:

Appendix B to Part 229—Schedule of Civil Penalties¹

* * * * *

| Section | Violation | Willful violation |
|-----------------------------------------------------------------------|-----------|-------------------|
| * | * | * |
| 229.135 Event Recorders: | | |
| (a) Lead locomotive without in-service event recorder | 2,500 | 5,000 |
| (b) Failure to meet equipment requirements | 2,500 | 5,000 |
| (c) Unauthorized removal or failure to remove from service | 2,500 | 5,000 |
| (d) Improper response to out of service event recorder | 2,500 | 5,000 |
| (e) Failure to preserve data or unauthorized extraction of data | 2,500 | 5,000 |
| (g) Tampering with device or data | 2,500 | 5,000 |
| * | * | * |

* * * * *

■ 7. A new Appendix D is added to Part 229 to read as follows:

Appendix D to Part 229—Criteria for Certification of Crashworthy Event Recorder Memory Module

Section 229.135(b) requires that certain locomotives be equipped with an event recorder that includes a certified crashworthy event recorder memory module. This appendix prescribes the requirements for certifying an event recorder memory module (ERMM) as crashworthy, including the performance criteria and test sequence for establishing the crashworthiness of the ERMM as well as the marking of the event recorder containing the crashworthy ERMM.

A. General Requirements

1. Each manufacturer that represents its ERMM as crashworthy shall, by marking it as specified in Section B of this appendix,

certify that the ERMM meets the performance criteria contained in this appendix and that test verification data are available to a railroad or to FRA upon request.

2. The test verification data shall contain, at a minimum, all pertinent original data logs and documentation that the test sample preparation, test set up, test measuring devices and test procedures were performed by designated, qualified personnel using recognized and acceptable practices. Test verification data shall be retained by the manufacturer or its successor as long as the specific model of ERMM remains in service on any locomotive.

3. A crashworthy ERMM shall be marked by its manufacturer as specified in Section B of this appendix.

B. Marking Requirements

1. The outer surface of the event recorder containing a certified crashworthy ERMM shall be colored international orange. In addition, the outer surface shall be inscribed,

on the surface allowing the most visible area, in black letters on an international orange background, using the largest type size that can be accommodated, with the words CERTIFIED DOT CRASHWORTHY, followed by the ERMM model number (or other such designation), and the name of the manufacturer of the event recorder. This information may be displayed as follows:

CERTIFIED DOT CRASHWORTHY
 Event Recorder Memory Module Model
 Number

 Manufacturer's Name

Marking "CERTIFIED DOT CRASHWORTHY" on an event recorder designed for installation in a railroad locomotive is the certification that all performance criteria contained in this appendix have been met and all functions performed by, or on behalf of, the manufacturer whose name appears as part of

the marking, conform to the requirements specified in this appendix.

2. Retro-reflective material shall be applied to the edges of each visible external surface of an event recorder containing a certified crashworthy ERMM.

C. Performance Criteria for the ERMM

An ERMM is crashworthy if it has been successfully tested for survival under

conditions of fire, impact shock, static crush, fluid immersion, and hydro-static pressure contained in one of the two tables shown in this section of Appendix D. (See Tables 1 and 2.) Each ERMM must meet the individual performance criteria in the sequence established in Section D of this appendix. A performance criterion is deemed to be met if, after undergoing a test established in this Appendix D for that criterion, the ERMM has

preserved all of the data stored in it. The data set stored in the ERMM to be tested shall include all the recording elements required by § 229.135(b). The following tables describe alternative performance criteria that may be used when testing an ERMM's crashworthiness. A manufacturer may utilize either table during its testing but may not combine the criteria contained in the two tables.

TABLE 1.—ACCEPTABLE PERFORMANCE CRITERIA—OPTION A

| Parameter | Value | Duration | Remarks |
|------------------------------|------------------------------------------------------------------------------|---------------------------------------------------------------------------|-------------------------------------------------------------------------------|
| Fire, High Temperature | 750 °C (1400 °F) | 60 minutes | Heat source: Oven. |
| Fire, Low Temperature | 260 °C (500 °F) | 10 hours | |
| Impact Shock | 55g | 100 ms | ½ sine crash pulse. |
| Static Crush | 110kN (25,000 lbf) | 5 minutes | |
| Fluid Immersion | #1 Diesel, #2 Diesel, Water, Salt Water, Lube Oil. Fire Fighting Fluid | Any <i>single</i> fluid, 48 hours. 10 minutes, following immersion above. | Immersion followed by 48 hours in a dry location without further disturbance. |
| Hydrostatic Pressure | Depth equivalent = 15 m. (50 ft.) | 48 hours at nominal temperature of 25 °C (77 °F). | |

TABLE 2.—ACCEPTABLE PERFORMANCE CRITERIA—OPTION B

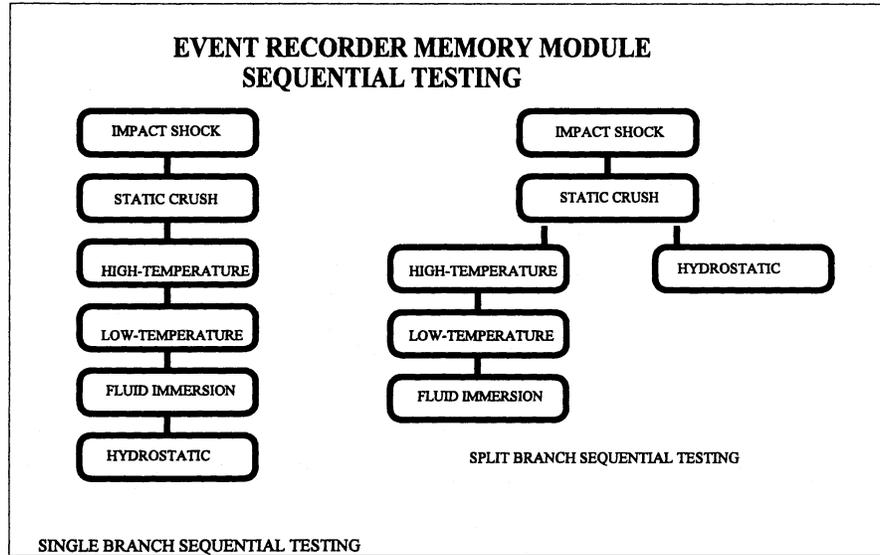
| Parameter | Value | Duration | Remarks |
|------------------------------|-------------------------------------------------------------------------|---------------------------------------------------|--------------------------------------------|
| Fire, High Temperature | 1000 °C (1832 °F) | 60 minutes | Heat source: Open flame. |
| Fire, Low Temperature | 260 °C (500 °F) | 10 hours | Heat source: Oven. |
| Impact Shock—Option 1 | 23gs | 250 ms | |
| Impact Shock—Option 2 | 55gs | 100 ms | ½ sine crash pulse. |
| Static Crush | 111.2kN (25,000 lbf) | 5 minutes. (single “squeeze”) | Applied to 25% of surface of largest face. |
| Fluid Immersion | #1 Diesel, #2 Diesel, Water, Salt Water, Lube Oil, Fire Fighting Fluid. | 48 hours <i>each</i> . | |
| Hydrostatic Pressure | 46.62 psig (= 30.5 m. or 100 ft.) .. | 48 hours at nominal temperature of 25 °C (77 °F). | |

D. Testing Sequence

In order to reasonably duplicate the conditions an event recorder may encounter, the ERMM shall meet the various performance criteria, described in Section C

of this appendix, in a set sequence. (See Figure 1). If all tests are done in the set sequence (single branch testing), the same ERMM must be utilized throughout. If a manufacturer opts for split branch testing, each branch of the test must be conducted

using an ERMM of the same design type as used for the other branch. Both alternatives are deemed equivalent, and the choice of single branch testing or split branch testing may be determined by the party representing that the ERMM meets the standard.

Figure 1**E. Testing Exception**

If a new model ERMM represents an evolution or upgrade from an older model ERMM that was previously tested and certified as meeting the performance criteria contained in Section C of this appendix, the new model ERMM need only be tested for compliance with those performance criteria contained in Section C of this appendix that are potentially affected by the upgrade or

modification. FRA will consider a performance criterion not to be potentially affected if a preliminary engineering analysis or other pertinent data establishes that the modification or upgrade will not change the performance of the older model ERMM against the performance criterion in question. The manufacturer shall retain and make available to FRA upon request any analysis or data relied upon to satisfy the

requirements of this paragraph to sustain an exception from testing.

Issued in Washington, DC on June 23, 2005.

Joseph H. Boardman,

Federal Railroad Administrator.

[FR Doc. 05-12878 Filed 6-29-05; 8:45 am]

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Federal Register

**Thursday,
June 30, 2005**

Part IV

**Department of
Transportation**

Federal Aviation Administration

**14 CFR Parts 61, 63, and 65
Relief for U.S. Military and Civilian
Personnel Who Are Assigned Outside the
United States in Support of U.S. Armed
Forces Operations; Final Rule**

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 61, 63, and 65**

[Docket No. FAA-2005-15431; Special Federal Aviation Regulation No. 100-1]

RIN 2120-A162

Relief for U.S. Military and Civilian Personnel Who Are Assigned Outside the United States in Support of U.S. Armed Forces Operations**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: This final rule replaces Special Federal Aviation Regulation 100 (SFAR 100). SFAR 100 allowed Flight Standards District Offices (FSDO) to accept expired flight instructor certificates, expired inspection authorizations for renewals, and expired airman written test reports for certain practical tests from U.S. military and civilian personnel (U.S. personnel) who are assigned outside the United States in support of U.S. Armed Forces operations. This action is necessary to avoid penalizing these U.S. personnel who are unable to meet the regulatory time limits of their flight instructor certificate, inspection authorization, or airman written test report because they are serving outside the United States. The effect of this action is to give these U.S. personnel extra time to meet the eligibility requirements under the current rules.

DATES: This final rule is effective June 30, 2005 through June 20, 2010.

FOR FURTHER INFORMATION CONTACT: John Lynch, Certification Branch, AFS-840, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3844.

SUPPLEMENTARY INFORMATION:**Availability of Rulemaking Documents**

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>);

(2) Visiting the Office of Rulemaking's Web page at <http://www.faa.gov/avr/arm/index.cfm>; or

(3) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation

Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

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>.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at <http://www.faa.gov/avr/arm/sbrefa.cfm>.

Background

Currently, the U.S. Armed Forces are engaged in activities that have resulted in overseas assignments for both military and civilian personnel. Because of the unexpected duration of these assignments, the FAA has determined that the flight instructor certificates, inspection authorizations, and airman written test reports held by some U.S. military and civilian personnel may expire before they return to the United States. If so, these individuals would have to reestablish their qualifications. We believe it is unfair to penalize these military and civilian personnel in this manner. Therefore the FAA has determined that we should provide relief to these U.S. personnel who are unable to comply with the regulatory time constraints as a result of their assignment outside the United States in support of U.S. Armed Forces operations.

Previous Regulatory Action

After the terrorist attacks of September 11, 2001, many U.S. military and civilian personnel were assigned outside the United States in support of Operation Enduring Freedom. For this reason, we adopted SFAR 96 to provide relief to a narrow range of individuals

in a narrow set of circumstances. (67 FR 30524, May 6, 2002).

As a result of the continuing conflicts, the FAA superceded SFAR 96 with SFAR 100 (68 FR 36902, June 20, 2003) that applies to all military and civilian personnel assigned overseas in support of any and all U.S. Armed Forces operations. Most of these U.S. military and civilian personnel are or will be located at military bases that are away from their normal training or work environment. There are no FAA aviation safety inspectors, designated examiners, or FAA facilities readily available in the areas where these U.S. military and civilian personnel are assigned.

This rule does the following:

- Replaces SFAR 100, which expired on June 20, 2005; and
- Ensures U.S. military and civilian personnel, who continue to preserve, protect and defend the American public, between September 11, 2001, through June 20, 2010, can attain additional time for renewal of their flight instructor certificates, inspection authorizations, and airman written test reports.

Who Is Affected by This SFAR?

To be eligible for the relief provided by this SFAR, a person must meet two criteria—one related to the person's assignment and the second related to the expiration of the person's certificate, authorization, or test report.

Assignment. The person must have served in a civilian or military capacity outside the United States in support of U.S. Armed Forces operations some time on or after September 11, 2001. The term "United States" is defined under 14 CFR 1.1 and means "the States, the District of Columbia, Puerto Rico, and the possessions, including the territorial waters and the airspace of those areas."

"In support of U.S. Armed Forces operations" means an assignment that supports operations being conducted by our U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard, including their regular and reserve components. Members serving without component status are also covered. A person seeking relief under this SFAR must be able to show that he or she had an assignment as described above by providing appropriate documentation that is described below.

Expiration. The person's flight instructor certificate, inspection authorization, or airman written test report must have expired some time on or after September 11, 2001.

Renewing a Flight Instructor Certificate

The FAA regulations governing flight instructor certificates provide that they

expire 24 calendar months after the month of issuance. The regulations also provide that a flight instructor may renew his or her certificate before it expires, but if it expires, the flight instructor must get a new certificate. If you are interested in the details of how to get or renew a flight instructor certificate, please see 14 CFR 61.197 and 61.199.

This SFAR changes the existing regulations for a certain class of individuals by allowing FAA Flight Standards District Offices to accept for a limited amount of time an *expired* flight instructor certificate for the purpose of *renewing* the certificate. Therefore, a person who can show the kind of evidence required by this SFAR (described below) can apply for renewal of a flight instructor certificate under 14 CFR 61.197. A person cannot exercise the privileges of a flight instructor certificate if it has expired, but the person can renew the flight instructor certificate under the limited circumstances described in this SFAR.

Airman Written Test Reports of Parts 61, 63, and 65

Generally, FAA regulations give airmen a limited amount of time to take a practical test after passing a knowledge test. For example, 14 CFR 61.39(a)(1) gives a person 24 calendar months. This SFAR permits an extension of the expiration date of the airman written test reports of parts 61, 63, and 65. The extension can be for up to six calendar months after returning to the United States.

Renewing an Inspection Authorization

Under 14 CFR 65.92, an inspection authorization expires on March 31 of each year. Under 14 CFR 65.93, a person can renew an inspection authorization for an additional 12 calendar months by presenting certain evidence to the FAA during the month of March. This SFAR changes the existing regulations for individuals eligible under this SFAR by allowing FAA Flight Standards District Offices to accept for a limited amount of time an *expired* inspection authorization for the purpose of *renewing* the authorization. Therefore, a person who can show the kind of evidence required by this SFAR (described below) can apply for renewal of an inspection authorization under 14 CFR 65.93. If an inspection authorization expires, the person may not exercise the privileges of the authorization until that person renews the authorization. In this case, to meet the renewal requirements the person must attend a refresher course (see § 65.93(a)(4)) or submit to an oral test

(See § 65.93(a)(5)) within 6 calendar months after returning to the United States from an assignment while outside the United States in support of U.S. Armed Forces operations.

Evidence of an Assignment Outside the United States in Support of U.S. Armed Forces Operations

A person must show one of the following kinds of evidence to establish that the person is eligible for the relief provided by this SFAR:

1. An official U.S. Government notification of personnel action, or equivalent document, showing the person was a U.S. civilian on official duty for the U.S. Government and was assigned outside the United States in support of U.S. Armed Forces operations at some time between September 11, 2001, through June 20, 2010;
2. An official military order that shows the person was assigned to military duty outside the United States in support of U.S. Armed Forces operations at some time between September 11, 2001, through June 20, 2010; or
3. A letter from the person's military commander or civilian supervisor providing the dates during which the person served outside the United States in support of U.S. Armed Forces operations at some time between September 11, 2001, through June 20, 2010.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create

unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation).

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected cost impact is so minimal that a proposal does not warrant a full evaluation, this order permits a statement to that effect and the basis for it to be included in the preamble and a full regulatory evaluation cost benefit evaluation need not be prepared. Such a determination has been made for this rule. The reasoning for that determination follows.

The FAA has determined that the expected economic impact of this final rule is so minimal that it does not need a full regulatory evaluation. This action imposes no costs on operators subject to this rule; however, it does provide some unquantifiable benefits to some who would avoid the costs of having to reestablish expired credentials. Since this final rule merely revises and clarifies FAA rulemaking procedures, the expected outcome will have a minimal impact with positive net benefits, and a regulatory evaluation was not prepared.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.” To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a

substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This action imposes no costs on any small entities subject to this rule. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of entities.

Trade Impact Analysis

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will not have no impact on international trade by companies doing business in or with the United States.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$120.7 million in lieu of \$100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C.

3507(d), the FAA has determined that there are no new requirements for information collection associated with this SFAR.

Executive Order 13132, Federalism

The FAA analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect 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. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j) this rulemaking action qualifies for a categorical exclusion.

Energy Impact

We have assessed the energy impact of this SFAR in accord with the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, as amended (42 U.S.C. 6362), and FAA Order 1053.1. The FAA has determined that this SFAR is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 61

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Helicopters, Rotorcraft, Students.

14 CFR Part 63

Air safety, Air transportation, Airman, Aviation safety, Safety, Transportation.

14 CFR Part 65

Airman, Aviation safety, Air transportation, Aircraft.

The Rule

■ In consideration of the foregoing, the Federal Aviation Administration amends parts 61, 63, and 65 of Title 14 Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45302.

■ 2. Add Special Federal Aviation Regulation (SFAR) No. 100-1 to read as follows:

SFAR No. 100-1—Relief for U.S. Military and Civilian Personnel Who are Assigned Outside the United States in Support of U.S. Armed Forces Operations

1. *Applicability.* Flight Standards District Offices are authorized to accept from an eligible person, as described in paragraph 2 of this SFAR, the following:

(a) An expired flight instructor certificate to show eligibility for renewal of a flight instructor certificate under § 61.197, or an expired written test report to show eligibility under part 61 to take a practical test;

(b) An expired written test report to show eligibility under §§ 63.33 and 63.57 to take a practical test; and

(c) An expired written test report to show eligibility to take a practical test required under part 65 or an expired inspection authorization to show eligibility for renewal under § 65.93.

2. *Eligibility.* A person is eligible for the relief described in paragraph 1 of this SFAR if:

(a) The person served in a U.S. military or civilian capacity outside the United States in support of the U.S. Armed Forces' operation during some period of time from September 11, 2001, through June 20, 2010;

(b) The person's flight instructor certificate, airman written test report, or inspection authorization expired some time between September 11, 2001, and 6 calendar months after returning to the United States, or June 20, 2010, whichever is earlier; and

(c) The person complies with § 61.197 or § 65.93 of this chapter, as appropriate, or completes the appropriate practical test within 6 calendar months after returning to the United States, or June 20, 2010, whichever is earlier.

3. *Required documents.* The person must send the Airman Certificate and/or Rating Application (FAA Form 8710-1) to the appropriate Flight Standards District Office. The person must include with the application one of the following documents, which must show the date of assignment outside the United States and the date of return to the United States:

(a) An official U.S. Government notification of personnel action, or equivalent document, showing the person was a civilian on official duty for the U.S. Government outside the United States and was assigned to a U.S. Armed

Forces' operation some time between September 11, 2001, through June 20, 2010;

(b) Military orders showing the person was assigned to duty outside the United States and was assigned to a U.S. Armed Forces' operation some time between September 11, 2001 through June 20, 2010; or

(c) A letter from the person's military commander or civilian supervisor providing the dates during which the person served outside the United States and was assigned to a U.S. Armed Forces' operation some time between September 11, 2001 through June 20, 2010.

4. *Expiration date.* This Special Federal Aviation Regulation No.100-1 expires June 20, 2010, unless sooner superseded or rescinded.

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

■ 3. The authority citation for part 63 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45302.

■ 4. Add Special Federal Aviation Regulation (SFAR) No. 100-1 by reference as follows:

Special Federal Aviation Regulations

* * * * *

SFAR No. 100-1—Relief for U.S. Military and Civilian Personnel Who Are Assigned Outside the United States in Support of U.S. Armed Forces Operations

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

■ 5. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45302.

■ 6. Add Special Federal Aviation Regulation (SFAR) No. 100-1 by reference as follows:

Special Federal Aviation Regulations

* * * * *

SFAR No. 100-1—Relief for U.S. Military and Civilian Personnel Who are Assigned Outside the United States in Support of U.S. Armed Forces Operations

Issued in Washington, DC, on June 24, 2005.

Marion C. Blakey,
Administrator.

[FR Doc. 05-12930 Filed 6-29-05; 8:45 am]

BILLING CODE 4910-13-P



Federal Register

**Thursday,
June 30, 2005**

Part V

The President

**Executive Order 13381—Strengthening
Processes Relating to Determining
Eligibility for Access to Classified
National Security Information**

Presidential Documents

Title 3—

Executive Order 13381 of June 27, 2005

The President

Strengthening Processes Relating to Determining Eligibility for Access to Classified National Security Information

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to assist in determining eligibility for access to classified national security information, while taking appropriate account of title III of Public Law 108–458, it is hereby ordered as follows:

Section 1. *Policy.* To the extent consistent with safeguarding the security of the United States and protecting classified national security information from unauthorized disclosure, agency functions relating to determining eligibility for access to classified national security information shall be appropriately uniform, centralized, efficient, effective, timely, and reciprocal.

Sec. 2. *Functions of the Office of Management and Budget.* The Director of the Office of Management and Budget (Director):

(a) may, to ensure the effective implementation of the policy set forth in section 1 of this order, assign, in whole or in part, to the head of any agency (solely or jointly) any process relating to determinations of eligibility for access to classified national security information, with the agency's exercise of such assigned process to be subject to the Director's supervision and to such terms and conditions (including approval by the Office of Management and Budget) as the Director determines appropriate;

(b) shall carry out any process that the Director does not assign to another agency (or agencies) under subsection (a);

(c) may, after consultation with the Secretary of State, Secretary of Defense, the Attorney General, the Secretary of Energy, the Secretary of Homeland Security, the Director of National Intelligence (DNI), and the Director of the Office of Personnel Management, issue guidelines and instructions to the heads of agencies to ensure appropriate uniformity, centralization, efficiency, effectiveness, and timeliness in processes relating to determinations by agencies of eligibility for access to classified national security information;

(d) may, with regard to determining eligibility for access to Sensitive Compartmented Information (SCI) and "special access programs pertaining to intelligence activities; including special activities, but not including military operational, strategic, and tactical programs" (Intelligence SAPs) under section 4.3(a) of Executive Order 12958 of April 17, 1995, as amended, issue guidelines and instructions with the concurrence of the DNI to the heads of agencies to ensure appropriate uniformity, centralization, efficiency, effectiveness, and timeliness in making such determinations relating to those programs;

(e) may, with regard to determining eligibility for access to special access programs (SAP) as defined in Executive Order 12958 other than Intelligence SAPs, issue guidelines and instructions with the concurrence of the agency head with responsibility for the SAP to ensure appropriate uniformity, centralization, efficiency, effectiveness, and timeliness in making such determinations relating to those programs;

(f) may report periodically to the President on implementation by agencies of the policy set forth in section 1; and

(g) shall submit reports to the Congress relating to the subject matter of this order to the extent required by law.

Sec. 3. Functions of the Heads of Agencies. (a) Heads of agencies shall:

(i) carry out any process assigned to the agency head by the Director under subsection 2(a) of this order, and shall assist the Director in carrying out any process under subsection 2(b);

(ii) implement guidelines and instructions issued by the Director under subsections 2(c), 2(d), and 2(e) of this order;

(iii) to the extent permitted by law, make available to the Director such information as the Director may request to implement this order;

(iv) ensure that all actions taken under this order take appropriate account of the counterintelligence interests of the United States; and

(v) ensure that all actions taken under this order are consistent with the DNI's responsibility to protect intelligence sources and methods.

(b) The Director and other heads of agencies shall ensure that all actions taken under this order are consistent with the President's constitutional authority to (i) conduct the foreign affairs of the United States, (ii) withhold information the disclosure of which could impair the foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties, (iii) recommend for congressional consideration such measures as the President may judge necessary or expedient, and (iv) supervise the unitary executive branch.

Sec. 4. Definitions. As used in this order:

(a) the term "agencies" means: (i) any "executive department" as defined in section 101 of title 5, United States Code, as well as the Department of Homeland Security; (ii) any "military department" as defined in section 102 of title 5, United States Code; (iii) any "government corporation" as defined in section 103 of title 5, United States Code; and (iv) any "independent establishment" as defined in section 104 of title 5, United States Code, but excluding the Government Accountability Office and including the United States Postal Service and the Postal Rate Commission.

(b) the term "classified national security information" means information that is classified pursuant to Executive Order 12958;

(c) the term "counterintelligence" has the meaning specified for that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a); and

(d) the term "process" means: (i) oversight of determinations of eligibility for access to classified national security information, including for SCI and SAPs made by any agency, as well as the acquisition of information through investigation or other means upon which such determinations are made; (ii) developing and implementing uniform and consistent policies and procedures to ensure the effective, efficient, and timely completion of access eligibility determinations, to include for SAPs; (iii) designating an authorized agency for making access eligibility determinations and an authorized agency for collecting information through investigation upon which such determinations are made; (iv) ensuring reciprocal recognition of determinations of eligibility for access to classified information among the agencies of the United States Government, including resolution of disputes involving the reciprocity of security clearances and access to SCI and SAPs; (v) ensuring the availability of resources to achieve clearance and investigative program goals regarding the making of access determinations as well as the collection of information through investigation and other means upon which such determinations are made; and (vi) developing tools and techniques for enhancing the making of access eligibility determinations as well as the collection of information through investigation and other means upon which such determinations are made.

Sec. 5. General Provisions. (a) Nothing in this order shall be construed to supersede, impede, or otherwise affect:

(1) Executive Order 10865 of February 20, 1960, as amended;

- (2) Executive Order 12333 of December 4, 1981, as amended;
- (3) Executive Order 12958, as amended;
- (4) Executive Order 12968 of August 2, 1995;
- (5) Executive Order 12829 of January 6, 1993, as amended;
- (6) subsections 102A(i) and (j) of the National Security Act of 1947 (50 U.S.C. 403-1(i) and (j)); and
- (7) sections 141 through 146 of the Atomic Energy Act of 1954 (42 U.S.C. 2161 through 2166).

(b) Executive Order 12171 of November 19, 1979, as amended, is further amended by inserting after section after 1-215 the following new section: "1-216. The Center for Federal Investigative Services, Office of Personnel Management."

(c) Nothing in this order shall be construed to impair or otherwise affect any authority of the Director, including with respect to budget, legislative, or administrative proposals. The Director may use any authority of the Office of Management and Budget in carrying out this order.

(d) Existing delegations of authority to any agency relating to granting access to classified information and conducting investigations shall remain in effect, subject to the authority of the Office of Management and Budget under section 2 of this order to revise or revoke such delegation.

(e) This order is intended solely to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

Sec. 6. *Submission of Report and Expiration of Order.*

(a) The Director shall submit a report to the President, on or before April 1, 2006, on the implementation of this order and the policy set forth in section 1 of this order.

(b) Unless extended by the President, this order shall expire on July 1, 2006.



THE WHITE HOUSE,
June 27, 2005.



Federal Register

**Thursday,
June 30, 2005**

Part VI

The President

Proclamation 7912—To Modify Duty-Free Treatment Under the Generalized System of Preferences and Certain Rules of Origin Under the North American Free Trade Agreement, and for Other Purposes

Presidential Documents

Title 3—**The President****Proclamation 7912 of June 29, 2005****To Modify Duty-Free Treatment Under the Generalized System of Preferences and Certain Rules of Origin Under the North American Free Trade Agreement, and for Other Purposes****By the President of the United States of America****A Proclamation**

1. Pursuant to section 502(a)(1) of the Trade Act of 1974, as amended (the “1974 Act”) (19 U.S.C. 2462(a)(1)), the President is authorized to designate countries as beneficiary developing countries for purposes of the Generalized System of Preferences (GSP).
2. In Proclamation 6425 of April 29, 1992, the President suspended duty-free treatment for certain eligible articles imported from India after considering the factors set forth in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2461, 2462(c)), in particular section 502(c)(5) of the 1974 Act (19 U.S.C. 2462(c)(5)) on the extent to which India provides adequate and effective protection of intellectual property rights.
3. In Proclamation 6942 of October 17, 1996, the President suspended duty-free treatment for certain eligible articles imported from Pakistan because of insufficient progress on affording workers in that country internationally recognized worker rights.
4. Pursuant to sections 501 and 503(a)(1)(A) of the 1974 Act (19 U.S.C. 2463(a)(1)(A)), the President may designate articles as eligible for preferential tariff treatment under the GSP.
5. Pursuant to section 503(c)(2)(A) of the 1974 Act (19 U.S.C. 2463(c)(2)(A)), beneficiary developing countries, except those designated as least-developed beneficiary developing countries or beneficiary sub-Saharan African countries as provided in section 503(c)(2)(D) of the 1974 Act (19 U.S.C. 2463(c)(2)(D)), are subject to competitive need limitations on the preferential treatment afforded under the GSP to eligible articles.
6. Section 503(c)(2)(C) of the 1974 Act (19 U.S.C. 2463(c)(2)(C)) provides that a country that is no longer treated as a beneficiary developing country with respect to an eligible article may be redesignated as a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the competitive need limitations in section 503(c)(2)(A) of the 1974 Act during the preceding calendar year.
7. Section 503(c)(2)(F)(i) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)(i)) provides that the President may disregard the competitive need limitation provided in section 503(c)(2)(A)(i)(II) (19 U.S.C. 2463(c)(2)(A)(i)(II)) with respect to any eligible article from any beneficiary developing country if the aggregate appraised value of the imports of such article into the United States during the preceding calendar year does not exceed an amount set forth in section 503(c)(2)(F)(ii) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)(ii)).
8. Pursuant to section 503(d)(1) of the 1974 Act (19 U.S.C. 2463(d)(1)) and after giving great weight to the considerations in section 503(d)(2) of the 1974 Act (19 U.S.C. 2463(d)(2)), the President may, subject to the limitations set out in section 503(d)(4) (19 U.S.C. 2463(d)(4)), waive the application of the competitive need limitations in section 503(c)(2)(A) of the 1974 Act

with respect to any eligible article from any beneficiary developing country, if after receiving advice from the United States International Trade Commission (USITC), he determines that such waiver is in the national economic interest of the United States.

9. Section 507(2) of the 1974 Act (19 U.S.C. 2467(2)) provides that in the case of an association of countries that is a free trade area or customs union, or that is contributing to a comprehensive regional economic integration among its members through appropriate means, the President may provide that all members of such association other than members that are barred from designation under section 502(b) of the 1974 Act (19 U.S.C. 2462(b)) shall be treated as one country for purposes of the GSP.

10. Pursuant to section 502 of the 1974 Act (19 U.S.C. 2462) and taking into account the factors set forth in section 502(c) of the 1974 Act, I have decided to designate Serbia and Montenegro as a beneficiary developing country for purposes of the GSP.

11. After a review of the current situation in India and taking into account the factors set out in section 502 of the 1974 Act, in particular section 502(c)(5), I have determined that India has made progress in providing adequate and effective protection of intellectual property rights. Accordingly, I have determined to terminate the suspension of India's duty-free treatment for certain articles under the GSP.

12. After a review of the current situation in Pakistan, I have determined that Pakistan has taken or is taking steps to afford workers in that country internationally recognized worker rights as provided in section 502(c)(7) of the 1974 Act (19 U.S.C. 2462(c)(7)). Accordingly, I have determined to restore Pakistan's eligibility for certain articles for preferential treatment under the GSP.

13. Pursuant to sections 501 and 503(a)(1)(A) of the 1974 Act, and after receiving advice from the USITC in accordance with section 503(e) of the 1974 Act (19 U.S.C. 2463(e)), I have determined to designate certain articles, some of which were previously designated under section 503(a)(1)(B) of the 1974 Act (19 U.S.C. 2463(a)(1)(B)), as eligible articles. In order to do so for certain articles, it is necessary to subdivide and amend the nomenclature of certain existing subheadings of the Harmonized Tariff Schedule of the United States (HTS).

14. Pursuant to section 503(c)(2)(A) of the 1974 Act, I have determined that certain beneficiary countries have exported certain eligible articles in quantities exceeding the applicable competitive need limitation in 2004, and I therefore terminate the duty-free treatment for such articles from such beneficiary developing countries.

15. Pursuant to section 503(c)(2)(C) of the 1974 Act, and subject to the considerations set forth in sections 501 and 502 of the 1974 Act, I redesignate certain countries as beneficiary developing countries with respect to certain eligible articles that previously had been imported in quantities exceeding the competitive need limitations of section 503(c)(2)(A) of the 1974 Act.

16. Pursuant to section 503(c)(2)(F)(i) of the 1974 Act, I have determined that the competitive need limitation provided in section 503(c)(2)(A)(i)(II) of the 1974 Act should be disregarded with respect to certain eligible articles from certain beneficiary developing countries.

17. Pursuant to section 503(d)(1) of the 1974 Act, I have received the advice of the USITC on whether any industries in the United States are likely to be adversely affected by such waivers, and I have determined, based on that advice and on the considerations described in sections 501 and 502(c) of the 1974 Act, and after giving great weight to the considerations in section 503(d)(2) of the 1974 Act, that such waivers are in the national economic interest of the United States. Accordingly, I have determined that the competitive need limitations of section 503(c)(2)(A) should be waived with respect to certain eligible articles from certain beneficiary developing countries.

18. Pursuant to section 507(2) of the 1974 Act, I have determined that currently qualifying members of the South Asian Association for Regional Cooperation (SAARC) should be treated as one country for purposes of the GSP.

19. Presidential Proclamation 6641 of December 15, 1993, implemented the North American Free Trade Agreement (NAFTA) with respect to the United States and, pursuant to the North American Free Trade Agreement Implementation Act (Public Law 103-182) (the "NAFTA Implementation Act") incorporated in the HTS the tariff modifications and rules of origin necessary or appropriate to carry out the NAFTA.

20. Section 202 of the NAFTA Implementation Act (19 U.S.C. 3332) provides rules for determining whether goods imported into the United States originate in the territory of a NAFTA Party and thus are eligible for the tariff and other treatment contemplated under the NAFTA. Section 202(q) of the NAFTA Implementation Act (19 U.S.C. 3332(q)) authorizes the President to proclaim, as a part of the HTS, the rules of origin set out in the NAFTA and to proclaim modifications to such previously proclaimed rules of origin, subject to the consultation and layover requirements of section 103(a) of the NAFTA Implementation Act (19 U.S.C. 3313(a)).

21. The United States and Canada have agreed to modifications to certain NAFTA rules of origin. Modifications to the NAFTA rules of origin set out in Proclamation 6641 are therefore necessary.

22. Section 1558 of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108-429) (the "Miscellaneous Trade Act") amended section 213(b) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2703(b)) to exclude certain footwear from duty-free treatment under the CBERA and to provide duty-free treatment for certain other footwear that is the product of a designated beneficiary Caribbean Basin Trade Partnership Act country.

23. In order to implement the tariff treatment provided under section 1558 of the Miscellaneous Trade Act, it is necessary to modify the HTS.

24. Section 7(c) of the AGOA Acceleration Act of 2004 (Public Law 108-274) (the "AGOA Acceleration Act") amended section 112(b)(6) of the African Growth and Opportunity Act (title I of Public Law 106-200) (AGOA) (19 U.S.C. 3721(b)(6)) by adding ethnic printed fabrics to the list of textile and apparel goods of beneficiary sub-Saharan African countries that may be eligible for the preferential treatment described in section 112(a) of the AGOA (19 U.S.C. 3721(a)).

25. Section 2 of Executive Order 13191 of January 17, 2001, delegated the President's authority under section 112(b)(6) of the AGOA to the Committee for the Implementation of Textile Agreements (Committee), in consultation with the then-Commissioner, United States Customs Service, now the Commissioner, Bureau of Customs and Border Protection (Commissioner), to determine which, if any, particular textile and apparel goods of beneficiary sub-Saharan African countries shall be treated as being hand loomed, hand-made, or folklore articles. Executive Order 13191 further ordered the Commissioner to take actions directed by the Committee to carry out such determinations.

26. In order to implement section 7(c) of the AGOA Acceleration Act, it is necessary to modify Executive Order 13191.

27. Section 604 of the 1974 Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including title V and section 604 of

the 1974 Act, section 202 of the NAFTA Implementation Act, section 1558 of the Miscellaneous Trade Act, section 7(c) of the AGOA Acceleration Act, and section 301 of title 3, United States Code, do hereby proclaim:

(1) In order to reflect in the HTS the addition of Serbia and Montenegro as a beneficiary developing country under the GSP, general note 4(a) to the HTS is modified as provided in section A(1) of Annex I to this proclamation.

(2) In order to provide that one or more countries that have not been treated as beneficiary developing countries with respect to one or more eligible articles should be designated or redesignated as beneficiary developing countries with respect to such article or articles for purposes of the GSP, in order to terminate the suspensions of India's and Pakistan's eligibility for certain articles, and in order to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to one or more eligible articles for purposes of the GSP, general note 4(d) to the HTS is modified as provided in section A(2) of Annex I to this proclamation.

(3) In order to designate certain articles as eligible articles for purposes of the GSP, the HTS is modified by amending and subdividing the nomenclature of certain existing HTS subheadings as provided in section B of Annex I to this proclamation.

(4) (a) In order to designate certain articles as eligible articles for purposes of the GSP, the Rates of Duty 1-Special subcolumn for such HTS subheadings is modified as provided in sections C(1) and C(2) of Annex I to this proclamation.

(b) In order to designate certain articles as eligible articles for purposes of the GSP when imported from any beneficiary developing country except for a country or countries exceeding the applicable competitive need limitation in 2004, the Rates of Duty 1-Special subcolumn for such HTS subheadings is modified as provided for in section C(3) of Annex I to this proclamation.

(c) In order to provide preferential tariff treatment under the GSP to a beneficiary developing country that has been excluded from the benefits of the GSP for certain eligible articles, the Rates of Duty 1-Special subcolumn for such HTS subheadings is modified as provided for in section C(4) of Annex I to this proclamation.

(d) In order to provide that one or more countries should not be treated as beneficiary developing countries with respect to certain eligible articles for purposes of the GSP, the Rates of Duty 1-Special subcolumn for such HTS subheadings is modified as provided for in section C(5) of Annex I to this proclamation.

(e) In order to reflect in the HTS the decision that certain members of the SAARC should be treated as one country for purposes of title V of the 1974 Act, and to enumerate those countries, general note 4(a) to the HTS is modified as provided in section D of Annex I to this proclamation.

(5) A waiver of the application of section 503(c)(2)(A)(i)(II) of the 1974 Act shall apply to the eligible articles in the HTS subheadings and to the beneficiary developing countries listed in Annex II to this proclamation.

(6) A waiver of the application of section 503(c)(2)(A) of the 1974 Act shall apply to the eligible articles in the HTS subheading and to the beneficiary developing countries set forth in Annex III to this proclamation.

(7) In order to modify the rules of origin under the NAFTA, general note 12 to the HTS is modified as provided in Annex IV to this proclamation.

(8) The modifications made by Annex IV to this proclamation shall be effective with respect to goods of Canada that are entered, or withdrawn from warehouse for consumption, on or after the date provided in that Annex.

(9) General notes 7 and 17 to the HTS are modified as set forth in Annex V to this proclamation.

(10) The modifications made by Annex V to this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after December 18, 2004.

(11) In order to make technical corrections to the HTS, the HTS is modified as provided in Annex VI to this proclamation.

(12) The modifications made by Annex VI to this proclamation shall be effective with respect to articles entered, or withdrawn for consumption, on or after the dates provided in that Annex.

(13) Section 2 of Executive Order 13191 of January 17, 2001, is modified by revising the heading to state "Handloomed, Handmade, and Folklore Articles and Ethnic Printed Fabrics" and deleting the phrase "handloomed, handmade, or folklore articles," and inserting in lieu thereof, "handloomed, handmade, or folklore articles or ethnic printed fabrics."

(14) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of June, 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 fluid and cursive, with a large initial "G" and a distinct "W" and "B".

Annex I

Modifications to the Harmonized Tariff
Schedule of the United States (HTS)Section A. General note 4 to the HTS is modified by:

(1). General note 4(a) to the HTS is modified effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the fifteenth day after the date of publication of the proclamation in the Federal Register by adding "Serbia and Montenegro" to the list entitled "Independent Countries".

(2). General note 4(d) to the HTS, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the July 1, 2005, is modified by:

(i). deleting the following subheadings and the country set out opposite such subheading:

| | | |
|------------------|------------------|------------------|
| 2801.30.10 India | 2820.90.00 India | 2827.31.00 India |
| 2804.10.00 India | 2821.10.00 India | 2827.33.00 India |
| 2804.21.00 India | 2821.20.00 India | 2827.34.00 India |
| 2804.29.00 India | 2822.00.00 India | 2827.35.00 India |
| 2804.30.00 India | 2823.00.00 India | 2827.36.00 India |
| 2804.40.00 India | 2824.10.00 India | 2827.39.10 India |
| 2805.19.10 India | 2824.20.00 India | 2827.39.20 India |
| 2806.20.00 India | 2824.90.10 India | 2827.39.25 India |
| 2810.00.00 India | 2824.90.50 India | 2827.39.30 India |
| 2811.19.10 India | 2825.10.00 India | 2827.39.45 India |
| 2811.19.60 India | 2825.20.00 India | 2827.39.50 India |
| 2811.21.00 India | 2825.30.00 India | 2827.41.00 India |
| 2811.22.10 India | 2825.50.10 India | 2827.49.10 India |
| 2811.23.00 India | 2825.50.20 India | 2827.49.50 India |
| 2811.29.50 India | 2825.50.30 India | 2827.59.50 India |
| 2812.10.50 India | 2825.60.00 India | 2827.60.20 India |
| 2812.90.00 India | 2825.70.00 India | 2827.60.50 India |
| 2813.10.00 India | 2825.90.10 India | 2828.10.00 India |
| 2815.30.00 India | 2825.90.20 India | 2828.90.00 India |
| 2816.10.00 India | 2825.90.90 India | 2829.19.00 India |
| 2816.40.10 India | 2826.11.10 India | 2829.90.40 India |
| 2816.40.20 India | 2826.11.50 India | 2829.90.60 India |
| 2818.10.20 India | 2826.19.00 India | 2830.10.00 India |
| 2819.10.00 India | 2826.20.00 India | 2830.20.20 India |
| 2819.90.00 India | 2826.90.00 India | 2830.30.00 India |
| 2820.10.00 India | 2827.10.00 India | 2830.90.00 India |
| 2831.10.50 India | 2833.21.00 India | 2833.29.10 India |
| 2831.90.00 India | 2833.23.00 India | 2833.29.30 India |
| 2832.10.00 India | 2833.24.00 India | 2833.29.50 India |
| 2832.20.00 India | 2833.25.00 India | 2833.30.00 India |
| 2832.30.50 India | 2833.26.00 India | 2833.40.20 India |
| 2833.11.50 India | 2833.27.00 India | 2833.40.60 India |

Annex I (continued)

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|------------------|------------------|------------------|
| 2834.10.10 India | 2841.61.00 India | 2903.30.20 India |
| 2834.10.50 India | 2841.69.00 India | 2903.41.00 India |
| 2834.29.05 India | 2841.70.10 India | 2903.42.00 India |
| 2834.29.20 India | 2841.70.50 India | 2903.43.00 India |
| 2834.29.50 India | 2841.90.10 India | 2903.44.00 India |
| 2835.10.00 India | 2841.90.20 India | 2903.45.00 India |
| 2835.22.00 India | 2841.90.30 India | 2903.46.00 India |
| 2835.23.00 India | 2841.90.50 India | 2903.47.00 India |
| 2835.24.00 India | 2842.90.00 India | 2903.49.90 India |
| 2835.29.20 India | 2843.21.00 India | 2903.51.00 India |
| 2835.29.50 India | 2843.29.00 India | 2903.59.10 India |
| 2835.31.00 India | 2843.90.00 India | 2903.59.30 India |
| 2835.39.10 India | 2844.10.10 India | 2903.59.40 India |
| 2835.39.50 India | 2844.30.10 India | 2903.59.70 India |
| 2836.10.00 India | 2844.30.50 India | 2903.61.10 India |
| 2836.20.00 India | 2846.10.00 India | 2903.61.30 India |
| 2836.40.10 India | 2846.90.80 India | 2903.69.05 India |
| 2836.40.20 India | 2847.00.00 India | 2903.69.08 India |
| 2836.60.00 India | 2848.00.10 India | 2903.69.30 India |
| 2836.70.00 India | 2849.20.20 India | 2904.10.04 India |
| 2836.91.00 India | 2849.90.10 India | 2904.10.08 India |
| 2836.92.00 India | 2849.90.20 India | 2904.20.30 India |
| 2836.99.10 India | 2849.90.50 India | 2904.20.50 India |
| 2836.99.20 India | 2850.00.07 India | 2904.90.04 India |
| 2836.99.50 India | 2850.00.20 India | 2904.90.35 India |
| 2837.20.10 India | 2851.00.00 India | 2904.90.50 India |
| 2837.20.50 India | 2903.11.00 India | 2905.14.50 India |
| 2838.00.00 India | 2903.12.00 India | 2905.15.00 India |
| 2839.11.00 India | 2903.13.00 India | 2905.16.00 India |
| 2839.19.00 India | 2903.14.00 India | 2905.19.00 India |
| 2839.20.00 India | 2903.15.00 India | 2905.22.10 India |
| 2840.11.00 India | 2903.19.05 India | 2905.22.20 India |
| 2840.19.00 India | 2903.19.10 India | 2905.29.10 India |
| 2840.20.00 India | 2903.19.60 India | 2905.29.90 India |
| 2840.30.00 India | 2903.21.00 India | 2905.31.00 India |
| 2841.10.00 India | 2903.22.00 India | 2905.32.00 India |
| 2841.20.00 India | 2903.23.00 India | 2905.39.10 India |
| 2841.50.10 India | 2903.29.00 India | 2905.39.20 India |
| 2905.39.90 India | 2905.59.10 India | 2907.19.40 India |
| 2905.41.00 India | 2905.59.90 India | 2907.22.10 India |
| 2905.43.00 India | 2906.13.50 India | 2907.23.00 India |
| 2905.44.00 India | 2906.19.50 India | 2907.29.10 India |
| 2905.45.00 India | 2906.29.10 India | 2907.29.25 India |
| 2905.49.10 India | 2906.29.20 India | 2908.10.15 India |
| 2905.49.20 India | 2907.11.00 India | 2908.10.20 India |
| 2905.49.40 India | 2907.12.00 India | 2908.20.15 India |
| 2905.49.50 India | 2907.15.10 India | 2908.90.04 India |

Annex I (continued)

| | | |
|------------------|------------------|------------------|
| 2908.90.24 India | 2912.41.00 India | 2915.33.00 India |
| 2908.90.30 India | 2912.42.00 India | 2915.34.00 India |
| 2909.11.00 India | 2912.49.10 India | 2915.35.00 India |
| 2909.19.18 India | 2912.49.25 India | 2915.39.10 India |
| 2909.19.60 India | 2912.49.50 India | 2915.39.20 India |
| 2909.20.00 India | 2912.50.50 India | 2915.39.40 India |
| 2909.30.10 India | 2912.60.00 India | 2915.39.45 India |
| 2909.30.20 India | 2913.00.50 India | 2915.39.47 India |
| 2909.30.30 India | 2914.19.00 India | 2915.39.90 India |
| 2909.41.00 India | 2914.21.20 India | 2915.40.10 India |
| 2909.42.00 India | 2914.22.10 India | 2915.40.50 India |
| 2909.43.00 India | 2914.22.20 India | 2915.50.10 India |
| 2909.44.00 India | 2914.23.00 India | 2915.50.20 India |
| 2909.49.20 India | 2914.29.10 India | 2915.50.50 India |
| 2909.49.60 India | 2914.29.50 India | 2915.60.10 India |
| 2909.50.20 India | 2914.31.00 India | 2915.60.50 India |
| 2909.50.40 India | 2914.39.90 India | 2915.90.10 India |
| 2909.60.50 India | 2914.40.10 India | 2915.90.14 India |
| 2910.10.00 India | 2914.40.20 India | 2915.90.20 India |
| 2910.20.00 India | 2914.40.90 India | 2915.90.50 India |
| 2910.30.00 India | 2914.50.50 India | 2916.12.10 India |
| 2910.90.10 India | 2914.69.10 India | 2916.12.50 India |
| 2910.90.50 India | 2914.70.10 India | 2916.14.20 India |
| 2911.00.50 India | 2914.70.90 India | 2916.15.50 India |
| 2912.11.00 India | 2915.11.00 India | 2916.19.10 India |
| 2912.12.00 India | 2915.12.00 India | 2916.19.20 India |
| 2912.19.10 India | 2915.13.10 India | 2916.19.50 India |
| 2912.19.20 India | 2915.13.50 India | 2916.20.50 India |
| 2912.19.30 India | 2915.21.00 India | 2916.31.10 India |
| 2912.19.40 India | 2915.22.00 India | 2916.31.20 India |
| 2912.19.50 India | 2915.23.00 India | 2916.34.15 India |
| 2912.29.10 India | 2915.24.00 India | 2916.35.15 India |
| 2912.29.60 India | 2915.29.50 India | 2916.39.06 India |
| 2912.30.20 India | 2915.31.00 India | 2916.39.08 India |
| 2912.30.50 India | 2915.32.00 India | 2916.39.12 India |
| 2916.39.16 India | 2917.31.00 India | 2918.15.50 India |
| 2916.39.20 India | 2917.32.00 India | 2918.16.10 India |
| 2917.11.00 India | 2917.33.00 India | 2918.16.50 India |
| 2917.12.20 India | 2917.34.00 India | 2918.19.60 India |
| 2917.13.00 India | 2917.35.00 India | 2918.21.10 India |
| 2917.14.10 India | 2917.37.00 India | 2918.23.10 India |
| 2917.19.10 India | 2917.39.20 India | 2918.23.20 India |
| 2917.19.15 India | 2918.11.10 India | 2918.29.22 India |
| 2917.19.17 India | 2918.11.50 India | 2918.29.25 India |
| 2917.19.23 India | 2918.13.50 India | 2918.29.30 India |
| 2917.19.30 India | 2918.14.00 India | 2918.30.90 India |
| 2917.19.70 India | 2918.15.10 India | 2918.90.18 India |

Annex I (continued)

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|------------------|------------------|------------------|
| 2918.90.20 India | 2922.19.95 India | 2926.90.14 India |
| 2918.90.30 India | 2922.29.26 India | 2926.90.17 India |
| 2918.90.35 India | 2922.29.29 India | 2926.90.21 India |
| 2918.90.50 India | 2922.39.14 India | 2926.90.23 India |
| 2919.00.25 India | 2922.39.50 India | 2926.90.25 India |
| 2919.00.50 India | 2922.41.00 India | 2926.90.30 India |
| 2920.10.10 India | 2922.42.50 India | 2927.00.15 India |
| 2920.10.40 India | 2922.49.40 India | 2927.00.25 India |
| 2920.10.50 India | 2922.49.80 India | 2927.00.30 India |
| 2920.90.10 India | 2922.50.11 India | 2928.00.30 India |
| 2920.90.50 India | 2922.50.19 India | 2928.00.50 India |
| 2921.11.00 India | 2922.50.50 India | 2929.10.30 India |
| 2921.12.00 India | 2923.10.00 India | 2929.90.50 India |
| 2921.19.10 India | 2923.20.20 India | 2930.10.00 India |
| 2921.19.60 India | 2923.90.00 India | 2930.20.10 India |
| 2921.21.00 India | 2924.19.10 India | 2930.20.90 India |
| 2921.22.05 India | 2924.21.04 India | 2930.30.60 India |
| 2921.22.50 India | 2924.21.18 India | 2930.90.10 India |
| 2921.29.00 India | 2924.21.50 India | 2930.90.24 India |
| 2921.30.50 India | 2924.29.10 India | 2930.90.30 India |
| 2921.42.15 India | 2924.29.36 India | 2930.90.44 India |
| 2921.42.21 India | 2924.29.43 India | 2930.90.90 India |
| 2921.42.55 India | 2924.29.47 India | 2931.00.25 India |
| 2921.43.15 India | 2924.29.52 India | 2931.00.90 India |
| 2921.43.19 India | 2924.29.62 India | 2932.11.00 India |
| 2921.43.22 India | 2924.29.65 India | 2932.13.00 India |
| 2921.49.32 India | 2924.29.95 India | 2932.19.50 India |
| 2921.51.20 India | 2925.11.00 India | 2932.21.00 India |
| 2921.59.20 India | 2925.19.90 India | 2932.29.10 India |
| 2922.11.00 India | 2925.20.90 India | 2932.29.25 India |
| 2922.12.00 India | 2926.10.00 India | 2932.29.50 India |
| 2922.13.00 India | 2926.90.08 India | 2932.94.00 India |
| 2932.99.08 India | 2933.49.08 India | 2933.99.17 India |
| 2932.99.20 India | 2933.49.10 India | 2933.99.22 India |
| 2933.11.00 India | 2933.59.10 India | 2933.99.24 India |
| 2933.19.23 India | 2933.59.15 India | 2933.99.85 India |
| 2933.19.30 India | 2933.59.18 India | 2933.99.87 India |
| 2933.19.35 India | 2933.59.59 India | 2933.99.90 India |
| 2933.19.45 India | 2933.59.95 India | 2933.99.97 India |
| 2933.19.90 India | 2933.61.00 India | 2934.10.90 India |
| 2933.21.00 India | 2933.69.60 India | 2934.20.05 India |
| 2933.29.20 India | 2933.71.00 India | 2934.20.10 India |
| 2933.29.45 India | 2933.79.20 India | 2934.20.15 India |
| 2933.29.90 India | 2933.79.30 India | 2934.20.35 India |
| 2933.39.21 India | 2933.79.85 India | 2934.99.08 India |
| 2933.39.25 India | 2933.99.06 India | 2934.99.11 India |
| 2933.39.27 India | 2933.99.14 India | 2934.99.12 India |

Annex I (continued)

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|------------------|------------------|------------------|
| 2934.99.15 India | 3206.41.00 India | 3307.10.20 India |
| 2934.99.16 India | 3206.42.00 India | 3307.30.10 India |
| 2934.99.18 India | 3206.43.00 India | 3307.30.50 India |
| 2934.99.20 India | 3206.49.10 India | 3307.41.00 India |
| 2934.99.30 India | 3206.49.30 India | 3307.90.00 India |
| 2934.99.47 India | 3206.49.50 India | 3401.30.10 India |
| 2934.99.90 India | 3207.10.00 India | 3402.11.20 India |
| 2935.00.06 India | 3207.20.00 India | 3402.11.40 India |
| 2935.00.20 India | 3207.30.00 India | 3402.11.50 India |
| 2935.00.32 India | 3207.40.10 India | 3402.12.10 India |
| 2938.10.00 India | 3208.10.00 India | 3402.12.50 India |
| 2938.90.00 India | 3208.20.00 India | 3402.13.10 India |
| 2940.00.60 India | 3208.90.00 India | 3402.13.20 India |
| 2941.20.10 India | 3209.10.00 India | 3402.13.50 India |
| 2942.00.50 India | 3210.00.00 India | 3402.19.10 India |
| 3201.90.10 India | 3212.10.00 India | 3402.19.50 India |
| 3201.90.50 India | 3213.10.00 India | 3402.20.11 India |
| 3202.10.10 India | 3213.90.00 India | 3402.90.10 India |
| 3202.90.50 India | 3214.10.00 India | 3402.90.30 India |
| 3203.00.80 India | 3215.11.00 India | 3402.90.50 India |
| 3204.19.35 India | 3215.19.00 India | 3403.11.40 India |
| 3204.20.10 India | 3215.90.10 India | 3403.11.50 India |
| 3204.20.80 India | 3215.90.50 India | 3403.19.50 India |
| 3204.90.00 India | 3301.24.00 India | 3403.91.10 India |
| 3205.00.15 India | 3301.29.10 India | 3404.20.00 India |
| 3206.11.00 India | 3301.29.20 India | 3501.10.10 India |
| 3206.19.00 India | 3302.10.40 India | 3501.90.60 India |
| 3206.20.00 India | 3302.10.50 India | 3503.00.10 India |
| 3206.30.00 India | 3307.10.10 India | 3503.00.55 India |
| 3504.00.10 India | 3702.20.00 India | 3703.20.60 India |
| 3505.10.00 India | 3702.31.00 India | 3703.90.30 India |
| 3505.20.00 India | 3702.32.00 India | 3703.90.60 India |
| 3506.10.50 India | 3702.39.00 India | 3707.10.00 India |
| 3506.91.00 India | 3702.41.00 India | 3707.90.60 India |
| 3601.00.00 India | 3702.42.00 India | 3801.10.10 India |
| 3603.00.30 India | 3702.43.00 India | 3801.30.00 India |
| 3603.00.60 India | 3702.44.00 India | 3801.90.00 India |
| 3603.00.90 India | 3702.51.00 India | 3802.10.00 India |
| 3604.10.10 India | 3702.52.00 India | 3802.90.10 India |
| 3604.10.90 India | 3702.53.00 India | 3802.90.20 India |
| 3604.90.00 India | 3702.54.00 India | 3802.90.50 India |
| 3606.90.80 India | 3702.91.01 India | 3805.10.00 India |
| 3701.20.00 India | 3702.93.00 India | 3806.10.00 India |
| 3701.30.00 India | 3702.95.00 India | 3806.20.00 India |
| 3701.91.00 India | 3703.10.30 India | 3806.30.00 India |
| 3701.99.30 India | 3703.10.60 India | 3806.90.00 India |
| 3701.99.60 India | 3703.20.30 India | 3807.00.00 India |

Annex I (continued)

| | | |
|------------------|---------------------|----------------------|
| 3808.10.10 India | 3823.12.00 India | 4104.49.30 India |
| 3808.10.25 India | 3823.19.20 India; | 4203.21.20 Pakistan |
| 3808.10.30 India | Philippines | 4203.21.55 Pakistan |
| 3808.20.15 India | 3824.20.00 India | 4203.21.60 Pakistan |
| 3808.20.28 India | 3824.30.00 India | 4203.21.80 Pakistan |
| 3808.20.30 India | 3824.60.00 India | 4412.13.40 Indonesia |
| 3808.30.15 India | 3824.90.19 India | 4601.91.05 India |
| 3808.30.20 India | 3824.90.22 India | 4601.99.05 India |
| 3808.40.10 India | 3824.90.25 India | 6304.99.10 Pakistan |
| 3808.40.50 India | 3824.90.28 India | 6304.99.25 India |
| 3808.90.08 India | 3824.90.31 India | 6304.99.40 Pakistan |
| 3808.90.70 India | 3824.90.32 India | 7012.00.00 India |
| 3809.10.00 India | 3824.90.33 India | 7113.11.50 Thailand |
| 3809.91.00 India | 3824.90.34 India | 7113.19.25 Turkey |
| 3812.10.10 India | 3824.90.36 India | 7116.20.05 Thailand |
| 3812.20.10 India | 3824.90.40 India | 7116.20.15 Thailand |
| 3812.30.20 India | 3824.90.46 India | 7615.19.30 Thailand |
| 3812.30.60 India | 3926.20.30 Pakistan | 8516.50.00 Thailand |
| 3813.00.50 India | 4101.20.35 India | 9001.30.00 Indonesia |
| 3814.00.20 India | 4101.50.35 India | 9009.12.00 Thailand |
| 3815.90.20 India | 4101.90.35 India | 9506.62.80 Pakistan |
| 3816.00.00 India | 4104.11.30 India | 9506.91.00 Pakistan |
| 3817.00.15 India | 4104.19.30 India | |
| 3823.11.00 India | 4104.41.30 India | |

(ii). deleting the country set out opposite the following subheadings:

| | | |
|---------------------|------------------|-------------------|
| 0713.90.10 India | 2905.22.50 India | 2933.49.30 India |
| 1604.14.50 Thailand | 2905.42.00 India | 2933.99.55 India |
| 2403.91.20 India | 2906.14.00 India | 3209.90.00 India |
| 2804.69.10 India | 2909.19.14 India | 3212.90.00 India |
| 2805.40.00 India | 2912.13.00 India | 3301.12.00 India |
| 2813.90.50 India | 2914.12.00 India | 3301.19.10 India |
| 2825.90.15 India | 2914.13.00 India | 3307.20.00 India |
| 2832.30.10 India | 2915.70.00 India | 3307.49.00 India |
| 2839.90.00 India | 2917.14.50 India | 3501.90.20 India |
| 2841.30.00 India | 2918.21.50 India | 3504.00.50 India |
| 2841.50.90 India | 2918.22.10 India | 3506.99.00 India |
| 2843.30.00 India | 2918.22.50 India | 3701.10.00 India |
| 2849.10.00 India | 2921.42.23 India | 3702.10.00 India |
| 2850.00.50 India | 2924.21.16 India | 3706.10.30 India |
| 2904.90.15 India | 2928.00.10 India | 3707.90.32 India |
| 2905.11.20 India | 2929.10.15 India | 3815.90.10 India |
| 2905.12.00 India | 2932.99.90 India | 7403.11.00 Russia |
| 2905.13.00 India | 2933.39.23 India | |

Annex I (continued)

(iii). adding, in numerical sequence, the following provisions and countries set out opposite them:

| | |
|-------------------------------|---------------------|
| 0603.10.80 Colombia | 5702.51.20 India |
| 0710.29.15 India | 5702.91.30 India |
| 0804.50.80 Philippines | 5702.99.05 India |
| 1702.90.10 Colombia | 6406.91.00 Colombia |
| 2008.30.96 Peru | 6802.21.10 Turkey |
| 2306.50.00 Dominican Republic | 6802.91.20 Turkey |
| 2611.00.60 Bolivia | 7202.49.50 Russia |
| 4101.50.70 Colombia | 7408.11.60 Russia |
| 4103.20.20 Colombia | 7408.19.00 Brazil |
| 4412.19.40 Brazil | 8544.30.00 Honduras |

(iv). adding, in alphabetical order, the country or countries set out opposite the following subheadings:

| |
|-------------------|
| 6802.93.00 India |
| 8409.99.91 Brazil |

Section B. The HTS is modified as provided in this section, with bracketed matter included to assist in the understanding of proclaimed modifications and is effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 2005. The following provisions supersedes matter now in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively.

(1). Subheadings 5702.92.00 and 5702.99.10 are superseded and the following provisions inserted in numerical sequence:

| | | | |
|------------|---------------------------------------------------------|------|-----------------------------------------|
| | [Carpets and other textile floor coverings, woven,....] | | |
| | [Other, not of pile construction, made up:] | | |
| "5702.92 | Of man-made textile materials: | | |
| 5702.92.10 | Woven, but not made on a power-driven loom | 2.7% | Free (A,AU,CA,CL, 40% IL,JO,MX,SG) |
| 5702.92.90 | Other | 2.7% | Free (AU,CA,CL, 40% IL,JO,MX,SG) |
| | [Of other textile materials:] | | |
| | "Of cotton: | | |
| 5702.99.05 | Woven, but not made on a power-driven loom | 6.8% | Free (A*,AU,CA, 45% CL,IL,JO,MX, SG) |
| 5702.99.15 | Other | 6.8% | Free (AU,CA,CL, 45% IL,JO,MX,SG) |

Annex I (continued)

(2)(a). Subheadings 5703.10.00 and 5703.30.00 are superseded and the following provisions inserted in numerical sequence:

| | | | |
|------------|-----------------------------------------------------------------------------------------------------|--------------------------------|------|
| | [Carpets and other textile floor coverings, tufted,...] | | |
| "5703.10 | Of wool or fine animal hair: | | |
| 5703.10.20 | Hand-hooked, that is, in which the tufts were inserted by hand or by means of a hand tool 6% | Free (A,B,CA,CL, IL,JO,MX,SG) | 60% |
| | | 5.4% (AU) | |
| 5703.10.80 | Other 6% | Free (B,CA,CL,IL, IL,JO,MX,SG) | 60% |
| | | 5.4% (AU) | |
| 5703.30 | Of other man-made textile materials: | | |
| 5703.30.20 | Hand-hooked, that is, in which the tufts were inserted by hand or by means of a hand tool 6% | Free (A,B,CA,CL, IL,JO,MX,SG) | 60% |
| | | 5.4% (AU) | |
| 5703.30.80 | Other 6% | Free (B,CA,CL,IL, IL,JO,MX,SG) | 60%" |
| | | 5.4% (AU) | |

(b). Conforming changes:

(i). For subheadings 5703.10.20, 5703.10.80, 5703.30.20 and 5703.30.80 on January 1, 2010, the rate of duty in the Rates of Duty 1-Special subcolumn followed by the symbol "AU" in parentheses is deleted and the rate of duty "3%" is inserted in lieu thereof.

(ii). For subheadings 5703.10.20, 5703.10.80, 5703.30.20 and 5703.30.80 on January 1, 2015, the rate of duty followed by the symbol "AU" in parentheses and the symbol "AU" in parentheses are deleted from the Rates of Duty 1-Special subcolumn and the symbol "AU" is inserted in alphabetical order in the parentheses following the Free rate of duty in such subcolumn.

Section C. Each enumerated article's preferential tariff treatment under the Generalized System of Preferences (GSP) in the HTS is modified as provided in this section and is effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 2005.

(1). For the following subheadings, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A+," and inserting an "A," in lieu thereof.

0804.10.40

0804.10.60

(2). For the following subheading, the Rates of Duty 1-Special subcolumn is modified by inserting an "A," in the parentheses following the Free rate of duty in such subcolumn.

5703.20.10

Annex I (continued)

(3). For the following subheadings, the Rates of Duty 1-Special subcolumn is modified by inserting an "A*," in the parentheses following the Free rate of duty in such subcolumn.

5702.51.20
5702.91.30

(4). For the following subheadings, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A*" and inserting an "A" in lieu thereof.

| | | | |
|------------|------------|------------|------------|
| 2801.30.10 | 2804.30.00 | 2810.00.00 | 2811.22.10 |
| 2804.10.00 | 2804.40.00 | 2811.19.10 | 2811.23.00 |
| 2804.21.00 | 2805.19.10 | 2811.19.60 | 2811.29.50 |
| 2804.29.00 | 2806.20.00 | 2811.21.00 | 2812.10.50 |
| 2812.90.00 | 2826.90.00 | 2833.21.00 | 2836.99.10 |
| 2813.10.00 | 2827.10.00 | 2833.23.00 | 2836.99.20 |
| 2815.30.00 | 2827.31.00 | 2833.24.00 | 2836.99.50 |
| 2816.10.00 | 2827.33.00 | 2833.25.00 | 2837.20.10 |
| 2816.40.10 | 2827.34.00 | 2833.26.00 | 2837.20.50 |
| 2816.40.20 | 2827.35.00 | 2833.27.00 | 2838.00.00 |
| 2818.10.20 | 2827.36.00 | 2833.29.10 | 2839.11.00 |
| 2819.10.00 | 2827.39.10 | 2833.29.30 | 2839.19.00 |
| 2819.90.00 | 2827.39.20 | 2833.29.50 | 2839.20.00 |
| 2820.10.00 | 2827.39.25 | 2833.30.00 | 2840.11.00 |
| 2820.90.00 | 2827.39.30 | 2833.40.20 | 2840.19.00 |
| 2821.10.00 | 2827.39.45 | 2833.40.60 | 2840.20.00 |
| 2821.20.00 | 2827.39.50 | 2834.10.10 | 2840.30.00 |
| 2822.00.00 | 2827.41.00 | 2834.10.50 | 2841.10.00 |
| 2823.00.00 | 2827.49.10 | 2834.29.05 | 2841.20.00 |
| 2824.10.00 | 2827.49.50 | 2834.29.20 | 2841.50.10 |
| 2824.20.00 | 2827.59.50 | 2834.29.50 | 2841.61.00 |
| 2824.90.10 | 2827.60.20 | 2835.10.00 | 2841.69.00 |
| 2824.90.50 | 2827.60.50 | 2835.22.00 | 2841.70.10 |
| 2825.10.00 | 2828.10.00 | 2835.23.00 | 2841.70.50 |
| 2825.20.00 | 2828.90.00 | 2835.24.00 | 2841.90.10 |
| 2825.30.00 | 2829.19.00 | 2835.29.20 | 2841.90.20 |
| 2825.50.10 | 2829.90.40 | 2835.29.50 | 2841.90.30 |
| 2825.50.20 | 2829.90.60 | 2835.31.00 | 2841.90.50 |
| 2825.50.30 | 2830.10.00 | 2835.39.10 | 2842.90.00 |
| 2825.60.00 | 2830.20.20 | 2835.39.50 | 2843.21.00 |
| 2825.70.00 | 2830.30.00 | 2836.10.00 | 2843.29.00 |
| 2825.90.10 | 2830.90.00 | 2836.20.00 | 2843.90.00 |
| 2825.90.20 | 2831.10.50 | 2836.40.10 | 2844.10.10 |
| 2825.90.90 | 2831.90.00 | 2836.40.20 | 2844.30.10 |
| 2826.11.10 | 2832.10.00 | 2836.60.00 | 2844.30.50 |
| 2826.11.50 | 2832.20.00 | 2836.70.00 | 2846.10.00 |
| 2826.19.00 | 2832.30.50 | 2836.91.00 | 2846.90.80 |
| 2826.20.00 | 2833.11.50 | 2836.92.00 | 2847.00.00 |

Annex I (continued)

| | | | |
|------------|------------|------------|------------|
| 2848.00.10 | 2903.19.10 | 2903.49.90 | 2904.20.50 |
| 2849.20.20 | 2903.19.60 | 2903.51.00 | 2904.90.04 |
| 2849.90.10 | 2903.21.00 | 2903.59.10 | 2904.90.35 |
| 2849.90.20 | 2903.22.00 | 2903.59.30 | 2904.90.50 |
| 2849.90.50 | 2903.23.00 | 2903.59.40 | 2905.14.50 |
| 2850.00.07 | 2903.29.00 | 2903.59.70 | 2905.15.00 |
| 2850.00.20 | 2903.30.20 | 2903.61.10 | 2905.16.00 |
| 2851.00.00 | 2903.41.00 | 2903.61.30 | 2905.19.00 |
| 2903.11.00 | 2903.42.00 | 2903.69.05 | 2905.22.10 |
| 2903.12.00 | 2903.43.00 | 2903.69.08 | 2905.22.20 |
| 2903.13.00 | 2903.44.00 | 2903.69.30 | 2905.29.10 |
| 2903.14.00 | 2903.45.00 | 2904.10.04 | 2905.29.90 |
| 2903.15.00 | 2903.46.00 | 2904.10.08 | 2905.31.00 |
| 2903.19.05 | 2903.47.00 | 2904.20.30 | 2905.32.00 |
| 2905.39.10 | 2909.19.60 | 2912.49.10 | 2915.33.00 |
| 2905.39.20 | 2909.20.00 | 2912.49.25 | 2915.34.00 |
| 2905.39.90 | 2909.30.10 | 2912.49.50 | 2915.35.00 |
| 2905.41.00 | 2909.30.20 | 2912.50.50 | 2915.39.10 |
| 2905.43.00 | 2909.30.30 | 2912.60.00 | 2915.39.20 |
| 2905.44.00 | 2909.41.00 | 2913.00.50 | 2915.39.40 |
| 2905.45.00 | 2909.42.00 | 2914.19.00 | 2915.39.45 |
| 2905.49.10 | 2909.43.00 | 2914.21.20 | 2915.39.47 |
| 2905.49.20 | 2909.44.00 | 2914.22.10 | 2915.39.90 |
| 2905.49.40 | 2909.49.20 | 2914.22.20 | 2915.40.10 |
| 2905.49.50 | 2909.49.60 | 2914.23.00 | 2915.40.50 |
| 2905.59.10 | 2909.50.20 | 2914.29.10 | 2915.50.10 |
| 2905.59.90 | 2909.50.40 | 2914.29.50 | 2915.50.20 |
| 2906.13.50 | 2909.60.50 | 2914.31.00 | 2915.50.50 |
| 2906.19.50 | 2910.10.00 | 2914.39.90 | 2915.60.10 |
| 2906.29.10 | 2910.20.00 | 2914.40.10 | 2915.60.50 |
| 2906.29.20 | 2910.30.00 | 2914.40.20 | 2915.90.10 |
| 2907.11.00 | 2910.90.10 | 2914.40.90 | 2915.90.14 |
| 2907.12.00 | 2910.90.50 | 2914.50.50 | 2915.90.20 |
| 2907.15.10 | 2911.00.50 | 2914.69.10 | 2915.90.50 |
| 2907.19.40 | 2912.11.00 | 2914.70.10 | 2916.12.10 |
| 2907.22.10 | 2912.12.00 | 2914.70.90 | 2916.12.50 |
| 2907.23.00 | 2912.19.10 | 2915.11.00 | 2916.14.20 |
| 2907.29.10 | 2912.19.20 | 2915.12.00 | 2916.15.50 |
| 2907.29.25 | 2912.19.30 | 2915.13.10 | 2916.19.10 |
| 2908.10.15 | 2912.19.40 | 2915.13.50 | 2916.19.20 |
| 2908.10.20 | 2912.19.50 | 2915.21.00 | 2916.19.50 |
| 2908.20.15 | 2912.29.10 | 2915.22.00 | 2916.20.50 |
| 2908.90.04 | 2912.29.60 | 2915.23.00 | 2916.31.10 |
| 2908.90.24 | 2912.30.20 | 2915.24.00 | 2916.31.20 |
| 2908.90.30 | 2912.30.50 | 2915.29.50 | 2916.34.15 |
| 2909.11.00 | 2912.41.00 | 2915.31.00 | 2916.35.15 |
| 2909.19.18 | 2912.42.00 | 2915.32.00 | 2916.39.06 |

Annex I (continued)

| | | | |
|------------|------------|------------|------------|
| 2916.39.08 | 2917.32.00 | 2918.21.10 | 2920.10.40 |
| 2916.39.12 | 2917.33.00 | 2918.23.10 | 2920.10.50 |
| 2916.39.16 | 2917.34.00 | 2918.23.20 | 2920.90.10 |
| 2916.39.20 | 2917.35.00 | 2918.29.22 | 2920.90.50 |
| 2917.11.00 | 2917.37.00 | 2918.29.25 | 2921.11.00 |
| 2917.12.20 | 2917.39.20 | 2918.29.30 | 2921.12.00 |
| 2917.13.00 | 2918.11.10 | 2918.30.90 | 2921.19.10 |
| 2917.14.10 | 2918.11.50 | 2918.90.18 | 2921.19.60 |
| 2917.19.10 | 2918.13.50 | 2918.90.20 | 2921.21.00 |
| 2917.19.15 | 2918.14.00 | 2918.90.30 | 2921.22.05 |
| 2917.19.17 | 2918.15.10 | 2918.90.35 | 2921.22.50 |
| 2917.19.23 | 2918.15.50 | 2918.90.50 | 2921.29.00 |
| 2917.19.30 | 2918.16.10 | 2919.00.25 | 2921.30.50 |
| 2917.19.70 | 2918.16.50 | 2919.00.50 | 2921.42.15 |
| 2917.31.00 | 2918.19.60 | 2920.10.10 | 2921.42.21 |
| 2921.42.55 | 2924.29.47 | 2931.00.25 | 2933.61.00 |
| 2921.43.15 | 2924.29.52 | 2931.00.90 | 2933.69.60 |
| 2921.43.19 | 2924.29.62 | 2932.11.00 | 2933.71.00 |
| 2921.43.22 | 2924.29.65 | 2932.13.00 | 2933.79.20 |
| 2921.49.32 | 2924.29.95 | 2932.19.50 | 2933.79.30 |
| 2921.51.20 | 2925.11.00 | 2932.21.00 | 2933.79.85 |
| 2921.59.20 | 2925.19.90 | 2932.29.10 | 2933.99.06 |
| 2922.11.00 | 2925.20.90 | 2932.29.25 | 2933.99.14 |
| 2922.12.00 | 2926.10.00 | 2932.29.50 | 2933.99.17 |
| 2922.13.00 | 2926.90.08 | 2932.94.00 | 2933.99.22 |
| 2922.19.95 | 2926.90.14 | 2932.99.08 | 2933.99.24 |
| 2922.29.26 | 2926.90.17 | 2932.99.20 | 2933.99.85 |
| 2922.29.29 | 2926.90.21 | 2933.11.00 | 2933.99.87 |
| 2922.39.14 | 2926.90.23 | 2933.19.23 | 2933.99.90 |
| 2922.39.50 | 2926.90.25 | 2933.19.30 | 2933.99.97 |
| 2922.41.00 | 2926.90.30 | 2933.19.35 | 2934.10.90 |
| 2922.42.50 | 2927.00.15 | 2933.19.45 | 2934.20.05 |
| 2922.49.40 | 2927.00.25 | 2933.19.90 | 2934.20.10 |
| 2922.49.80 | 2927.00.30 | 2933.21.00 | 2934.20.15 |
| 2922.50.11 | 2928.00.30 | 2933.29.20 | 2934.20.35 |
| 2922.50.19 | 2928.00.50 | 2933.29.45 | 2934.99.08 |
| 2922.50.50 | 2929.10.30 | 2933.29.90 | 2934.99.11 |
| 2923.10.00 | 2929.90.50 | 2933.39.21 | 2934.99.12 |
| 2923.20.20 | 2930.10.00 | 2933.39.25 | 2934.99.15 |
| 2923.90.00 | 2930.20.10 | 2933.39.27 | 2934.99.16 |
| 2924.19.10 | 2930.20.90 | 2933.49.08 | 2934.99.18 |
| 2924.21.04 | 2930.30.60 | 2933.49.10 | 2934.99.20 |
| 2924.21.18 | 2930.90.10 | 2933.59.10 | 2934.99.30 |
| 2924.21.50 | 2930.90.24 | 2933.59.15 | 2934.99.47 |
| 2924.29.10 | 2930.90.30 | 2933.59.18 | 2934.99.90 |
| 2924.29.36 | 2930.90.44 | 2933.59.59 | 2935.00.06 |
| 2924.29.43 | 2930.90.90 | 2933.59.95 | 2935.00.20 |

Annex I (continued)

| | | | |
|------------|------------|------------|------------|
| 2935.00.32 | 3206.11.00 | 3208.90.00 | 3307.10.10 |
| 2938.10.00 | 3206.19.00 | 3209.10.00 | 3307.10.20 |
| 2938.90.00 | 3206.20.00 | 3210.00.00 | 3307.30.10 |
| 2940.00.60 | 3206.30.00 | 3212.10.00 | 3307.30.50 |
| 2941.20.10 | 3206.41.00 | 3213.10.00 | 3307.41.00 |
| 2942.00.50 | 3206.42.00 | 3213.90.00 | 3307.90.00 |
| 3201.90.10 | 3206.43.00 | 3214.10.00 | 3401.30.10 |
| 3201.90.50 | 3206.49.10 | 3215.11.00 | 3402.11.20 |
| 3202.10.10 | 3206.49.30 | 3215.19.00 | 3402.11.40 |
| 3202.90.50 | 3206.49.50 | 3215.90.10 | 3402.11.50 |
| 3203.00.80 | 3207.10.00 | 3215.90.50 | 3402.12.10 |
| 3204.19.35 | 3207.20.00 | 3301.24.00 | 3402.12.50 |
| 3204.20.10 | 3207.30.00 | 3301.29.10 | 3402.13.10 |
| 3204.20.80 | 3207.40.10 | 3301.29.20 | 3402.13.20 |
| 3204.90.00 | 3208.10.00 | 3302.10.40 | 3402.13.50 |
| 3205.00.15 | 3208.20.00 | 3302.10.50 | 3402.19.10 |
| 3402.19.50 | 3701.99.60 | 3805.10.00 | 3823.19.20 |
| 3402.20.11 | 3702.20.00 | 3806.10.00 | 3824.20.00 |
| 3402.90.10 | 3702.31.00 | 3806.20.00 | 3824.30.00 |
| 3402.90.30 | 3702.32.00 | 3806.30.00 | 3824.60.00 |
| 3402.90.50 | 3702.39.00 | 3806.90.00 | 3824.90.19 |
| 3403.11.40 | 3702.41.00 | 3807.00.00 | 3824.90.22 |
| 3403.11.50 | 3702.42.00 | 3808.10.10 | 3824.90.25 |
| 3403.19.50 | 3702.43.00 | 3808.10.25 | 3824.90.28 |
| 3403.91.10 | 3702.44.00 | 3808.10.30 | 3824.90.31 |
| 3404.20.00 | 3702.51.00 | 3808.20.15 | 3824.90.32 |
| 3501.10.10 | 3702.52.00 | 3808.20.28 | 3824.90.33 |
| 3501.90.60 | 3702.53.00 | 3808.20.30 | 3824.90.34 |
| 3503.00.10 | 3702.54.00 | 3808.30.15 | 3824.90.36 |
| 3503.00.55 | 3702.91.01 | 3808.30.20 | 3824.90.40 |
| 3504.00.10 | 3702.93.00 | 3808.40.10 | 3824.90.46 |
| 3505.10.00 | 3702.95.00 | 3808.40.50 | 3926.20.30 |
| 3505.20.00 | 3703.10.30 | 3808.90.08 | 4101.20.35 |
| 3506.10.50 | 3703.10.60 | 3808.90.70 | 4101.50.35 |
| 3506.91.00 | 3703.20.30 | 3809.10.00 | 4101.90.35 |
| 3601.00.00 | 3703.20.60 | 3809.91.00 | 4104.11.30 |
| 3603.00.30 | 3703.90.30 | 3812.10.10 | 4104.19.30 |
| 3603.00.60 | 3703.90.60 | 3812.20.10 | 4104.41.30 |
| 3603.00.90 | 3707.10.00 | 3812.30.20 | 4104.49.30 |
| 3604.10.10 | 3707.90.60 | 3812.30.60 | 4203.21.20 |
| 3604.10.90 | 3801.10.10 | 3813.00.50 | 4203.21.55 |
| 3604.90.00 | 3801.30.00 | 3814.00.20 | 4203.21.60 |
| 3606.90.80 | 3801.90.00 | 3815.90.20 | 4203.21.80 |
| 3701.20.00 | 3802.10.00 | 3816.00.00 | 4412.13.40 |
| 3701.30.00 | 3802.90.10 | 3817.00.15 | 4601.91.05 |
| 3701.91.00 | 3802.90.20 | 3823.11.00 | 4601.99.05 |
| 3701.99.30 | 3802.90.50 | 3823.12.00 | 6304.99.10 |

Annex I (continued)

| | | | |
|------------|------------|------------|------------|
| 6304.99.25 | 7113.19.25 | 8516.50.00 | 9506.91.00 |
| 6304.99.40 | 7116.20.05 | 9001.30.00 | |
| 7012.00.00 | 7116.20.15 | 9009.12.00 | |
| 7113.11.50 | 7615.19.30 | 9506.62.80 | |

(5). For the following provisions, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A" and inserting an "A*" in lieu thereof:

| | | | |
|------------|------------|------------|------------|
| 0603.10.80 | 2306.50.00 | 6406.91.00 | 7408.19.00 |
| 0710.29.15 | 2611.00.60 | 6802.21.10 | 8544.30.00 |
| 0804.50.80 | 4101.50.70 | 6802.91.20 | |
| 1702.90.10 | 4103.20.20 | 7202.49.50 | |
| 2008.30.96 | 4412.19.40 | 7408.11.60 | |

Section D. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 2005, general note 4(a) of the Harmonized Tariff Schedule of the United States is modified by adding to the "Associations of Countries (treated as one country)", the following:

"Member countries of the South Asian Association for Regional Cooperation (SAARC)

Currently qualifying:

Bangladesh
Bhutan
India
Nepal
Pakistan
Sri Lanka"

Annex II

HTS subheading and countries for which the competitive need limitation provided in section 503(c)(2)(A)(i)(II) is waived

| | |
|------------------------|----------------------|
| 0202.30.02 Uruguay | 0813.40.80 Thailand |
| 0302.69.10 Philippines | 1102.30.00 Thailand |
| 0305.20.20 Russia | 1202.10.40 Egypt |
| 0410.00.00 Indonesia | 1301.90.40 India |
| 0711.40.00 India | 1401.90.40 Argentina |
| 0712.90.70 Egypt | 1517.90.10 Argentina |
| 0713.90.60 India | 1601.00.40 Brazil |
| 0713.90.80 India | 1602.50.09 Argentina |
| 0802.50.20 Turkey | 1701.91.80 Brazil |
| 0804.10.60 Pakistan | 1702.90.35 Brazil |
| 0810.60.00 Thailand | 1806.10.43 Brazil |
| 0813.40.10 Thailand | 1901.20.45 Argentina |

Annex II (continued)

| | |
|-----------------------|------------------------|
| 2006.00.70 Thailand | 4107.11.40 India |
| 2008.99.35 Thailand | 4107.11.60 Brazil |
| 2008.99.50 Thailand | 4107.12.40 India |
| 2009.39.20 Brazil | 4107.91.40 India |
| 2305.00.00 Argentina | 4107.99.40 India |
| 2306.30.00 Argentina | 4202.92.04 Philippines |
| 2515.12.20 Turkey | 5007.10.30 India |
| 2804.29.00 Russia | 5208.31.20 India |
| 2826.20.00 Brazil | 5208.41.20 India |
| 2840.11.00 Turkey | 5208.42.10 India |
| 2840.19.00 Turkey | 5209.31.30 India |
| 2841.50.10 Kazakhstan | 5209.41.30 India |
| 2841.90.20 Kazakhstan | 7113.20.25 India |
| 2850.00.20 Russia | 7202.11.10 Georgia |
| 2903.51.00 Romania | 7307.21.10 India |
| 2903.69.08 Brazil | 7413.00.90 Turkey |
| 2909.50.40 Indonesia | 8112.12.00 Kazakhstan |
| 2915.34.00 Russia | 8112.19.00 Kazakhstan |
| 2934.99.18 Brazil | 8406.90.30 Brazil |
| 3808.40.10 Argentina | 8410.13.00 Brazil |
| 4101.20.40 Brazil | 8528.12.16 Thailand |
| 4101.50.50 Brazil | 8528.30.50 India |
| 4101.90.35 Argentina | 9016.00.40 Thailand |
| 4101.90.40 Argentina | 9614.20.60 Turkey |
| 4106.21.90 India | |
| 4106.22.00 Pakistan | |

Annex III

HTS Subheading and Country Granted A Waiver of the Application of Section 503(c)(2)(A) of the 1974 Act

| <u>HTS Subheading</u> | <u>Country</u> |
|---------------------------|----------------|
| 3823.19.20 | Philippines |
| 4107.19.50 | Argentina |
| 4107.92.80 | Argentina |
| 4412.13.40 | Indonesia |
| 7113.11.50 | Thailand |
| 9001.30.00 | Indonesia |
| 9009.12.00 | Thailand |

Annex IV

Effective with respect to goods of Canada under the terms of general note 12 that are entered, or withdrawn from warehouse for consumption, on or after July 1, 2005, general note 12(t) to the Harmonized Tariff Schedule of the United States is hereby modified as follows:

1. Tariff classification rule (TCR) 3 to chapter 51 is redesignated as 3B, and the following new provisions are inserted immediately below TCR 2 to such chapter:

Note: The following TCRs 3 and 3A apply only to goods of Canada under the terms of this note.

3. A change to woven fabrics (other than tapestry fabrics or upholstery fabrics of a weight not exceeding 140 grams per square meter) of combed fine animal hair of subheading 5112.11 from yarn of combed camel hair or combed cashmere of subheading 5108.20 or any other heading, except from headings 5106 through 5107, any other good of heading 5108 or headings 5109 through 5111, 5113, 5205 through 5206, 5401 through 5404 or 5509 through 5510.
- 3A. A change to woven fabrics, other than tapestry fabrics or upholstery fabrics, of combed fine animal hair of subheading 5112.19 from yarn of combed camel hair or combed cashmere of subheading 5108.20 or any other heading, except from headings 5106 through 5107, any other good of heading 5108 or headings 5109 through 5111, 5113, 5205 through 5206, 5401 through 5404 or 5509 through 5510."

2. TCR 4 to chapter 54 is redesignated as 4A, and the following new provisions are inserted immediately below TCR 3 to such chapter:

Note: The following TCR 4 applies only to goods of Canada under the terms of this note.

4. A change to heading 5408 from filament yarns of viscose rayon of heading 5403 or any other chapter, except from headings 5106 through 5110, 5205 through 5206 or 5509 through 5510."

3. TCR 1 to chapter 55 is redesignated as 1A, and the following new provisions are inserted immediately below the side heading "Chapter 55":

Note: The following TCR 1 applies only to goods of Canada under the terms of this note.

1. A change to subheading 5509.31 from acid-dyeable acrylic tow of subheading 5501.30 or any other chapter, except from headings 5201 through 5203 or 5401 through 5405."

4. The text of the TCR to chapter 56 is designated as TCR 3 to such chapter and shall be included in general note 12(t) below the side heading "Chapter 56," and the following new provisions are inserted immediately below such side heading:

Note: The following TCRs 1 and 2 and heading rule apply only to goods of Canada under the terms of this note.

1. A change to sanitary towels or tampons of subheading 5601.10 from tri-lobal rayon staple fiber (38 mm, 3.3 decitex) of subheading 5504.10 or any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311 or chapters 54 through 55.

Heading rule: For the purposes of TCR 2 to this chapter, the term "flat yarns" means multifilament yarns of nylon 66 of subheading 5402.41, the foregoing which are untextured (flat) semi-dull yarns, either untwisted or with a twist not exceeding 50 turns per meter, comprising 7 denier/5 filament, 10 denier/7 filament or 12 denier/5 filament.

2. A change to heading 5606 from flat yarns of subheading 5402.41 or any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311 or chapters 54 through 55."

Annex IV (continued)

5. The text of the TCR to chapter 58 is designated as TCR 2 to such chapter and shall be included in general note 12(t) below the side heading "Chapter 58," and the following new provisions are inserted immediately below such side heading:

"Note: The following TCR 1 applies only to goods of Canada under the terms of this note.

1. A change to warp pile fabrics, cut, of subheading 5801.35 (the foregoing fabrics with pile of dry-spun acrylic staple fibers of subheading 5503.30 and dyed in the piece to a single uniform color) from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, headings 5501 through 5502, subheadings 5503.10 through 5503.20 or 5503.40 through 5503.90 or headings 5504 through 5515."

Annex V

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after December 18, 2004, the Harmonized Tariff Schedule of the United States (HTS) is hereby modified as follows:

1. General note 7 to the HTS is modified by inserting at the end thereof the following new subdivision:

"(h) The duty-free treatment provided under the CBERA shall not apply to any footwear provided for in any of subheadings 6401.10.00, 6401.91.00, 6401.92.90, 6401.99.30, 6401.99.60, 6401.99.90, 6402.30.50, 6402.30.70, 6402.30.80, 6402.91.50, 6402.91.80, 6402.91.90, 6402.99.20, 6402.99.80, 6402.99.90, 6403.59.60, 6403.91.30, 6403.99.60, 6403.99.90, 6404.11.90 and 6404.19.20 of the tariff schedule that was not designated on December 18, 2004, as eligible articles for purposes of the GSP under general note 4 to the tariff schedule."

2. General note 17 to the HTS is modified as follows:

(A) by redesignating subdivision (d) of such note as subdivision (e);

(B) deleting "Articles" at the beginning of the text of subdivision (b) of such note and by inserting in lieu thereof "Except as provided in subdivision (d) of this note, articles"; and

(C) by inserting the following new subdivision (d) in sequence:

"(d) Subdivision (b)(ii) of this note shall not apply to footwear provided for in any of subheadings 6403.59.60, 6403.91.30, 6403.99.60 and 6403.99.90 of the tariff schedule, and footwear provided for in any such subheading shall be eligible for the rate of duty set forth in the "Special" rates of duty subcolumn followed by the symbol "R" in parentheses if--

- (i) the article of footwear is the growth, product or manufacture of a designated beneficiary country enumerated in subdivision (a) of this note; and
- (ii) the article meets all requirements of general note 7 to the tariff schedule other than being the growth, product or manufacture of a beneficiary country set forth in subdivision (a) of such general note 7."

3. For each of the following subheadings of HTS chapter 64, the symbol "E," is inserted in alphabetical sequence in the parenthetical expression following the duty rate of "Free" in the Rates of Duty 1-Special subcolumn:

Annex V (continued)

6401.92.60, 6402.19.05, 6402.19.15, 6402.19.50, 6402.19.70, 6402.19.90, 6402.30.30, 6402.91.40, 6402.91.60, 6402.91.70, 6402.99.05, 6402.99.10, 6402.99.14, 6402.99.18, 6402.99.30, 6402.99.60, 6402.99.70, 6403.19.10, 6403.19.30, 6403.19.40, 6403.19.50, 6403.40.30, 6403.40.60, 6403.51.30, 6403.51.60, 6403.51.90, 6403.59.30, 6403.59.90, 6403.91.60, 6403.91.90, 6403.99.20, 6403.99.40, 6403.99.75, 6404.11.20, 6404.11.40, 6404.11.50, 6404.11.60, 6404.11.70, 6404.11.80, 6404.19.15, 6404.19.25, 6404.19.30, 6404.19.35, 6404.19.40, 6404.19.50, 6404.19.60, 6404.19.70, 6404.19.80, 6404.19.90, 6404.20.20, 6404.20.40, 6404.20.60, 6405.10.00, 6405.20.30, 6405.20.60, 6405.20.90, 6405.90.90.

Annex VI

Section A. Effective with respect to goods of Singapore under the terms of general note 25 to the tariff schedule that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2004, general note 25(c)(ii)(B) is modified by inserting the expression “herein” after the word “enumerated” and by striking out “in subdivision (m) of this note”, and by inserting at the end of such subdivision (c)(ii)(B) the following new text and tabulation:

“For purposes of this note, a “remanufactured good” must, in its condition as imported, be classifiable in a tariff provision enumerated in the first column below and be described opposite such provision:

| Heading/Subheading | Articles Eligible for Treatment as Remanufactured Goods Under this Note |
|----------------------|------------------------------------------------------------------------------------------------------------|
| (1) 8408 | Compression-ignition internal combustion engines (diesel or semi-diesel engines) |
| (2) 8409.91, 8409.99 | Parts (other than aircraft engines) for use solely or principally with the engines of heading 8407 or 8408 |
| (3) 8412.21 | Linear acting hydraulic power engines and motors (cylinders) |
| (4) 8412.29 | Other hydraulic power engines and motors |
| (5) 8412.39 | Pneumatic power engines and motors (other than linear acting (cylinders)) |
| (6) 8412.90 | Parts of engines and motors of heading 8412 |
| (7) 8413.30 | Fuel, lubricating or cooling medium pumps for internal combustion engines |
| (8) 8413.50 | Other reciprocating positive displacement pumps |
| (9) 8413.60 | Other rotary positive displacement pumps |
| (10) 8413.91 | Parts of pumps for liquids, whether or not fitted with a measuring device; parts of liquid elevators |
| (11) 8414.30 | Compressors of a kind used in refrigerating equipment (including air conditioning) |
| (12) 8414.80 | Other air or vacuum pumps, air or other gas compressors |

Annex VI (continued)

- and fans not elsewhere enumerated in heading 8414; other ventilating or recycling hoods incorporating a fan, whether or not fitted with filters, the foregoing notelsewhere enumerated in heading 8414
- (13) 8414.90 Parts of air or vacuum pumps, air or other gas compressors and fans; parts of other ventilating or recycling hoods incorporating a fan, whether or not fitted with fittings
- (14) 8419.89 Other machinery, plant or equipment of heading 8419
- (15) 8431.20 Parts of machinery of heading 8427
- (16) 8431.49 Other parts of machinery, not elsewhere enumerated in heading 8431
- (17) 8481.20 Valves for oleohydraulic or pneumatic transmissions
- (18) 8481.40 Safety or relief valves
- (19) 8481.80 Other appliances, not elsewhere enumerated in heading 8481
- (20) 8481.90 Parts of taps, cocks, valves and similar appliances for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves
- (21) 8483.10 Transmission shafts (including camshafts and crankshafts) and cranks
- (22) 8483.30 Bearing housings, not incorporating ball or roller bearings; plain shaft bearings
- (23) 8483.40 Gears and gearing, other than toothed wheels, chain sprockets and other transmission elements entered separately; ball or roller screws; gear boxes and other speed changers, including torque converters
- (24) 8483.50 Flywheels and pulleys, including pulley blocks
- (25) 8483.60 Clutches and shaft couplings (including universal joints)
- (26) 8483.90 Toothed wheels, chain sprockets and other transmission elements presented separately; parts of goods of heading 8483
- (27) 8503 Parts suitable for use solely or principally with the machines of heading 8501 or 8502
- (28) 8511.40 Starter motors and dual purpose starter-generators
- (29) 8511.50 Other generators, not elsewhere enumerated in heading 8511
- (30) 8526.10 Radar apparatus
- (31) 8537.10 Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517, all the foregoing for a voltage not exceeding 1,000 V

Annex VI (continued)

| | | |
|------|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (32) | 8542.21 | Digital monolithic integrated circuits |
| (33) | 8708.31 | Mounted brake linings for the motor vehicles of headings 8701 to 8705 |
| (34) | 8708.39 | Brakes and servo-brakes for the motor vehicles of headings 8701 to 8705, and parts thereof (other than mounted brake linings of subheading 8708.31) |
| (35) | 8708.40 | Gear boxes for the motor vehicles of headings 8701 to 8705 |
| (36) | 8708.60 | Non-driving axles and parts thereof for the motor vehicles of headings 8701 to 8705 |
| (37) | 8708.70 | Road wheels and parts and accessories thereof for the motor vehicles of headings 8701 to 8705 |
| (38) | 8708.93 | Clutches and parts thereof for the motor vehicles of headings 8701 to 8705 |
| (39) | 8708.99 | Other parts and accessories of the motor vehicles of headings 8701 to 8705, not elsewhere enumerated in heading 8708 |
| (40) | 9031.49 | Other optical instruments and appliances (except for inspecting semiconductor wafers or devices or for inspecting photomasks or reticles used in manufacturing semiconductor devices), not specified or included elsewhere in chapter 90." |

Section B. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after July 1, 2005, subheadings 1604.16.10 and 1604.16.30 are deleted and the following new provision is inserted in lieu thereof, with the material inserted in the columns entitled "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively:

| | | | | |
|-------------|----------------------------------|---|------|--------|
| [1604] | : [Prepared...:] | : | : | : |
| | : [Fish,...:] | : | : | : |
| [1604.16]: | [Anchovies:] | : | : | : |
| "1604.16.20 | : In oil, in airtight containers | : | Free | : 30%" |

Section C. Effective with respect to goods of Australia under the terms of general note 28 to the tariff schedule that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2005, such general note 28 is modified as set forth below:

1. Subdivision (b) is modified by deleting the word "note," at the of clause (iv) and the expression "and is imported directly into the customs territory of the United States from the territory of Australia" and by inserting at the end of clause (iv) the word "note."
2. Subdivision (m)(vi) of such note is deleted, and subdivisions (vii), (viii), (ix), (x), (xi), (xii), (xiii) and (xiv) are redesignated as (vi), (vii), (viii), (ix), (x), (xi), (xii) and (xiii), respectively.
3. Tariff classification rule (TCR) 1 to chapter 56, as set forth in subdivision (n) of such note, is modified by deleting "chapter 54" and by inserting in lieu thereof "chapters 54".

Annex VI (continued)

4. TCRs 10 and 11 to chapter 61 are each modified by deleting "53.07 through 53.08 or 53.10 through 53.11" and by inserting in lieu thereof "5307 through 5308 or 5310 through 5311".

Section D. Effective with respect to goods of Chile under the terms of general note 26 to the tariff schedule that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2004, general note 26(n) to the HTS is modified by deleting from tariff classification rule 63 of Chapter 29 "2926.45" and by inserting in lieu thereof "2921.45".

Section E. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after December 18, 2004, the HTS is modified by inserting, in the Rates of Duty 1-Special subcolumn for subheadings 8510.20.10, 8510.20.90, and 8708.29.25, the symbols "CL," and "SG" in alphabetical sequence in the parenthetical expression following the "Free" rate of duty.

Section F. Effective with respect to goods of Singapore under the terms of general note 25 to the HTS that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2004, U.S. note 13 to subchapter X of chapter 99 of the HTS is modified as follows: by striking from subdivision (a) the word "man=made" and by inserting in lieu thereof "man-made"; and by striking from subdivision (d) the word "ttherto" and by inserting in lieu thereof "thereto".

Section G. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the date of signature of this notice, the subheadings enumerated below are each modified as provided herein:

(1) For the following subheadings, the symbol ", MX" is deleted from the parenthetical expression following the duty rate "The rate applicable to each garment in the ensemble if separately entered" from the Rates of Duty 1-Special subcolumn and the symbol "MX," is inserted in alphabetical sequence in the parenthetical expression following the duty rate "Free" in such subcolumn:

6103.21.00, 6103.22.00, 6103.23.00, 6103.29.10, 6103.29.20, 6104.21.00, 6104.22.00, 6104.23.00, 6104.29.10, 6104.29.20, 6203.21.30, 6203.21.90, 6203.22.30, 6203.23.00, 6203.29.20, 6203.29.30, 6204.21.00, 6204.22.30, 6204.23.00, 6204.29.20, 6204.29.40.

(2) For heading 9817.61.01, the symbol "MX," is deleted from the parenthetical expression following the duty rate "The rate applicable in the absence of this heading" in the Rates of Duty 1-Special subcolumn and the symbol ", MX" is inserted in alphabetical sequence in the parenthetical expression following the duty rate "Free" in such subcolumn.

Section H. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2005, the tariff classification rules (TCRs) set forth in general note 12(t) to the HTS are modified as provided herein:

(1) TCRs 8A and 8B to chapter 85 are deleted.

(2) The following language is inserted immediately above TCR 9 to chapter 85:

Note: The following TCRs 8A and 8B apply only to goods of Canada under the terms of this note.

Annex VI (continued)

8A. A change to tariff item 8504.90.65 from any other tariff item.

8B. (A) A change to subheading 8504.90 from any other heading; or

(B) No required change in tariff classification to subheading 8504.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

Note: The following TCR 8B applies only to goods of Mexico under the terms of this note:

8B. A change to subheading 8504.90 from any other heading.”

Section I. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2005, the HTS is modified by inserting, in the Rates of Duty 1-Special subcolumn for subheading 8708.29.25, the symbol “AU” in alphabetical sequence in the parenthetical expression following the “Free” rate of duty.

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Internal Revenue Service

Employment taxes and collection of income taxes at source:

Employee withholding exemption certificates; submission and notification guidance; comments due by 7-5-05; published 4-14-05 [FR 05-06719]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "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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index.html. Some laws may not yet be available.

H.R. 1760/P.L. 109-15

To designate the facility of the United States Postal Service located at 215 Martin Luther King, Jr. Boulevard in Madison, Wisconsin, as the "Robert M. La Follette, Sr. Post Office Building". (June 17, 2005; 119 Stat. 337)

Last List June 2, 2005

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